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**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE  
PROCEDURAL & REDISTRICTING COUNCIL  
ANALYSIS**

**BILL #:** CS/HB 1925

**RELATING TO:** Elections

**SPONSOR(S):** Procedural & Redistricting Council, Committee on Rules, Ethics, & Elections and Representative Goodlette

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) RULES, ETHICS, & ELECTIONS (PRC) YEAS 12 NAYS 0
  - (2) PROCEDURAL & REDISTRICTING COUNCIL YEAS 11 NAYS 6
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

CS/HB 1925 is a comprehensive election reform bill, which proposes the following changes to the Florida Election Code:

- The terms, "error in vote tabulation" and "provisional ballot" are defined;
- The Elections Canvassing Commission membership is reorganized and vested with exclusive jurisdiction to hear and resolve election protests, including ordering recounts, relating to any election for multicounty district, state or federal office or multicounty ballot measure;
- The deadline for filing election returns for the election of a federal or state officer with the Department of State is extended for the general election to 5 p.m. on the 11<sup>th</sup> day following the general election. The bill provides that the filing deadlines for the primary and general election returns are mandatory, with an exception provided for the late filing of election returns due to an emergency;
- Automatic machine recounts shall be conducted by each county canvassing board responsible for certifying the results, and the ballots must be recounted with the vote tabulation system. If an automatic machine recount reveals that the returns reflect that a candidate was defeated or eliminated, or a judicial candidate was retained or not retained, or a ballot measure was approved or rejected by one-quarter of a percent or less of the votes cast for such office or measure, each county canvassing board responsible for certifying the results shall order a full manual recount;
- The Division of Elections is directed to develop and publish standards for determining voter intent;
- The procedures relating to election contests are clarified;
- A provisional ballot process is created;
- The Department of State is directed to develop a statewide voter registration database to be operational by June 1, 2002;
- The second primary is eliminated;
- Contribution limits have been raised from \$500 per election, to \$1,000 per election to reflect the elimination of the second primary;

- Increased ballot access potential for candidates of minor political parties by providing automatic ballot access for a minor political party's entire slate of candidates if at the last election a candidate member of the minor political party was able to garner at least 1 percent of the votes statewide; and
- The Florida Election Campaign Financing Act is modified to further clarify what will qualify as a matching contribution; to prohibit participants from accepting contributions from political committees or committees of continuous existence; and to cap the total amount of public dollars to be distributed under the Act in an election cycle.

The bill will have a fiscal impact on the state with respect to the development of a statewide voter registration database, although the exact cost has yet to be determined. Local governments will see a significant fiscal savings with the elimination of the second primary.

Except as otherwise provided, the bill has an effective date of July 1, 2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Primary Elections

Florida holds three elections in a nine-week period. The first primary election is held nine weeks prior to the general election and the second primary election is held five weeks prior to the general election. 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 ten 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 ten 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-7.013, 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 ten days after the election.

In an effort to further facilitate absentee voting by overseas electors, the 1989 Legislature adopted the advance ballot system still in use today. 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.

#### Statewide Voter Registration Database

The supervisors of elections in the 67 counties are responsible for receiving voter registration applications and maintaining the voter registration records of the county. [See generally, ss. 98.045, 98.055, 98.065, 98.075, 98.093, and 98.095, F.S.] The Division of Elections maintains a statewide central database of registered voters in the state; however, this system relies on a quarterly "batch" update and is therefore never current. [Otherwise referred to as the "Central Voter File," ss. 98.097, 98.0975, F.S.].

#### Provisional Ballots

Currently, Florida does not provide for provisional ballots. Florida law requires a person to meet certain eligibility requirements in order to vote. Supervisors of elections keep lists of all registered voters in their respective counties to insure that persons eligible to vote are allowed to do so and that those ineligible are not permitted to vote.

On Election Day, each election board is provided a precinct register, which includes names of registered voters in the county who have been assigned to that precinct. An elector is required to vote in the precinct in which he or she resides. [See generally, ss. 98.461, 98.471, F.S.].

When a voter enters the polling place, he or she provides picture identification to the poll worker, who locates the voter's name on the precinct register. If the poll worker is satisfied that the person presenting himself or herself to vote is the same person as listed on the precinct register, the voter is allowed to vote. If the person's name does not appear on the precinct register, the poll worker must contact the supervisor of elections to verify the person's status as a registered voter. Upon such verification, the person is allowed to vote.

During the 2000 General Election, there were reports of voters presenting themselves at the polls only to find that their names were not on the precinct register. Numerous poll workers reported that they were unable to reach the supervisor of elections' offices to verify whether the persons were registered to vote. Some voters were turned away, others were told to come back later, and still others were allowed to vote even though their eligibility was questionable.

### The Elections Canvassing Commission

Section 102.111, F.S., sets forth the composition of the Elections Canvassing Commission ("Commission"):

- The Governor;
- The Secretary of State; and
- The Director of the Division of Elections.

In the event that any member of the Commission is unable to serve, the Director of the Division of Elections replaces the member. The Division of Elections provides the staff services required by the Commission. The Commission is responsible for certifying the official results from all counties concerning the election of any federal or state officer.

### Deadline for Submission of County Returns to the Department of State

Florida law requires that each county canvassing board certify the results of all elections for a federal or state officer no later than seven days after the first primary and the general election. [ss. 102.111(1), 102.112(1), F.S.]. Returns for the second primary are due three days after the election. [s. 102.112(1), F.S.]. The 2000 Presidential election demonstrated that these deadlines are problematic because, in many cases, manual recounts cannot be completed prior to the deadline. In addition, in federal general elections, overseas absentee ballots must be counted up to ten days after the election.<sup>1</sup> Thus, Florida's one-week general election certification precedes the date on which all valid ballots must be received.<sup>2</sup>

In addition to the timing problem, the 2000 Presidential general election brought to light a conflict in Florida law concerning the effect of a county missing the certification deadline. Section 102.111, F.S., mandates that late-filed returns "shall" not be included in the official results. Section 102.112, F.S., states that such late-filed returns "may be ignored," arguably vesting the Secretary of State with the discretionary authority to accept or reject late-filed returns. This ambiguity led to a tremendous amount of confusion, uncertainty, and litigation during the 2000 Presidential election.

Through 1988, s. 102.111, F.S., required the Secretary of State to reject late-filed returns. In *State of Florida on the relation of Bill Chappell v. Martinez*, 536 So.2d 1007 (1988), the Florida Supreme Court was faced with the question of whether to disregard 11,000 votes from Flagler County in a U.S. congressional general election because the returns were phoned in to the Department of State instead of "on file" by the certification deadline. The Court held that the Flagler votes had to be

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<sup>1</sup> In the early 1980's, the United States Government sued the State of Florida claiming that the State's system of holding three elections in nine weeks failed to provide eligible overseas voters sufficient time to receive and vote the ballot. As a result, the State entered into a Consent Decree and court-approved Plan of Compliance with the U.S. Department of Justice, requiring Florida to modify the timing of its overseas ballot mailings in federal elections and mandating that such ballots be counted if postmarked or signed and dated by election day, provided they are received no later than 10 days following the election.

<sup>2</sup> The certification deadline for the 2000 Presidential general election was November 14, 2000, seven days after the election. On November 15, 2000, the results forwarded by the county canvassing boards to the Department of State indicated that the Bush/Cheney ticket was ahead of the Gore/Lieberman ticket by 300 votes (Bush/Cheney: 2,910,492; Gore/Lieberman: 2,910,192). At that time, as it turned out, there were 2,490 valid absentee ballots from overseas voters on their way to the county supervisors of elections, but yet to be received and counted. The number of outstanding overseas ballots was greater than the margin of victory as it appeared on November 15<sup>th</sup>.

counted since the statute was “substantially complied” with. The Court’s rationale was that the purpose of an election is to effectuate the will of the voter, and hyper technical compliance with statutes should not defeat that purpose.

In 1989, the Florida Legislature, as part of a major election reform package, enacted s. 102.112, F.S. The new statute maintained the one-week certification deadline but provided that returns not timely filed “may be ignored.” [Ch. 89-338, Section 30, at 2162, Laws of Fla.]. The statute also directed that civil fines of \$200 per day be assessed against the personal funds of each county canvassing board member for late-filed returns. The Legislature did not repeal the provision in s. 102.111, F.S., providing that late-filed returns “shall be ignored,” thereby creating, on its face, a statutory conflict.

### Automatic Recounts

Section 102.141(4), F.S., provides for an automatic recount when the returns indicate that:

- A candidate was defeated or eliminated by one-half of one percent or less of the votes cast for the office;
- A judicial candidate was retained or not retained by one-half of one percent or less of the votes cast on the question of retention; or
- A ballot issue was approved or rejected by one-half of one percent or less of the votes cast on such issue.

The canvassing board responsible for certifying the results of the election orders the automatic recount upon a determination that a recount is warranted by the vote. If the candidate or candidates defeated or eliminated by one-half of one percent or less request in writing that a recount not be made, the canvassing board is not required to order the recount. The canvassing board conducting the recount is required to examine the counters on the machines or the tabulation of the ballots cast in each precinct and determine whether or not the returns correctly reflect the votes cast.

During the 2000 Presidential election, an automatic recount was ordered based on the vote totals reported election night. County canvassing boards immediately began the automatic recount. Counties conducted their recounts in different manners. Some counties ran their ballots back through the tabulators while other counties instead checked the memory cards on the automatic tabulating equipment for clerical or mathematical errors. Some counties looked at the ballots to determine if votes not counted by the automatic tabulating equipment should be counted as a vote.<sup>3</sup>

### Protest of Election Returns and Discretionary Manual Recounts

Section 102.166, F.S., sets forth the procedures to be followed when protesting election returns. Any candidate for nomination or election, or any elector qualified to vote in the election related to such candidacy, has the right to protest the returns of the election as being erroneous by filing a sworn, written protest with the appropriate county canvassing board. The protest must be filed prior to the time the canvassing board certifies the results for the office being protested, or within five days after midnight of the date the election is held, whichever occurs later. Before canvassing the returns, the canvassing board is directed to:

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<sup>3</sup> Florida Senate, *Review of the Voting Irregularities of the 2000 Presidential Election* (Report Number 2001-201), citing Debbie Salmone Wickham and Harry Wessel, *What’s A Vote? It Varies By County*, Orlando Sentinel (January 28, 2001).

- Examine the tabulation of the paper ballots cast when paper ballots are used;
- Examine the counters on the machines of nonprinter machines or the printer-pac on printer machines, when voting machines are used. If there is a discrepancy between the returns and the counters of the machines or the printer-pac, the counters or printer-pac is presumed correct; or
- Examine the precinct records and election returns, when electronic or electromechanical equipment is used. If there is a discrepancy that could affect the outcome of the election, the canvassing board may recount the ballots on the automatic tabulating equipment.

Section 102.166(4), F.S., sets forth the procedures to be followed when requesting a manual recount. Any candidate, any political committee supporting or opposing an issue on the ballot, or any political party whose candidates' names appeared on the ballot, may file a written request for a manual recount. The request must contain a statement of the reason the recount is being requested and must be filed prior to the time the canvassing board certifies the results of the election or within 72 hours after the election, whichever occurs later. The county canvassing board has the sole and complete discretion as to whether or not to authorize the manual recount. If the recount is authorized, all candidates in the affected race are notified of the time and place of the recount. The recount is required to include at least three precincts and at least 1% of the votes cast for such candidate or issue.<sup>4</sup>

If the manual recount indicates an "error in the vote tabulation" which could affect the outcome of the election, the county canvassing board has the following options:

- Correct the error and recount the remaining precincts with the vote tabulation system;
- Request the Department of State to verify the tabulation software; or
- Manually recount all of the ballots.

[s. 102.166(5), F.S.]. On November 13, 2000, the Division of Elections received a series of requests relating to the interpretation of the term "error in the vote tabulation." In response to the requests, the Division of Elections issued three opinions interpreting the term "error in vote tabulation."<sup>5</sup> The Division opined that "an 'error in vote tabulation' means a counting error in which the vote tabulation system fails to count properly marked optical scan or properly punched punch card ballots. Such error could result from incorrect election parameters, or an error in the vote tabulation and reporting software of the voting system. Voter error is not an 'error in the vote tabulation.'" The following day, the Attorney General issued AGO 2000-65 in which he disagreed with the Division's opinion and instead indicated his opinion that "the term 'error in voter [sic] tabulation' encompasses a discrepancy between the number of votes determined by a voter tabulation system and the number of votes determined by a manual count of a sampling of precincts pursuant to section 102.166(4), F.S."

In conducting the manual recount of the ballots, the canvassing board appoints teams of at least two voters with different party affiliations, where possible. The counting team reviews the ballots to see if the voter's intent can be determined. If the counting team is unable to determine a voter's intent, the ballot is presented to the county canvassing board for its determination. [s. 102.166(7), F.S.].

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<sup>4</sup> The person requesting the recount chooses the precincts to be recounted and if additional precincts are recounted, the county canvassing board chooses the additional precincts. [s. 102.166(4)(d), F.S.].

<sup>5</sup> See, DE 00-11, Definitions of Errors in Vote Tabulation, (November 13, 2000); DE 00-12, Manual Recount Procedures, (November 13, 2000); and DE 00-13, Manual Recount Procedures and Partial Certification of County Returns, (November 13, 2000).

The 2000 Presidential election highlighted a number of issues with the current recount provisions. These issues included:

- Even though the election was a statewide election, manual recounts were only requested in a few selected counties.
- Large counties conducting manual recounts were not able to meet the certification deadline prescribed by statute.<sup>6</sup>

The United States Supreme Court in *Bush v. Gore*, 121 S.Ct. 525, 530-32 (2000), held that other problems with the Florida recount scheme violated equal protection and fundamental fairness:

- While the standard of effectuating the “intent of the voter” was an adequate starting point, there were inadequate sub standards in effect prior to the recount as to what constituted a vote. The absence of sub standards resulted in the use of varying standards both county-to-county and within the same county, where the same voting system was used.
- Some counties certified partial recounts while full recounts were certified in others.
- The Florida Supreme Court ordered all counties to count under votes, but not over votes.
- The county canvassing boards had to pull together “ad hoc” counting teams with no experience or training in interpreting/handling ballots.
- Observers were prohibited from objecting during the recount.

#### Contest of Election

Under s. 102.168, F.S., the certification of election or nomination of any person to office, or the result on any question submitted by referendum, may be contested in the circuit court by any unsuccessful candidate for such office or nomination thereto, or by any elector qualified to vote in the election related to such candidacy, or by any taxpayer, respectively.

The grounds for contesting an election are:

- Misconduct, fraud, or corruption on the part of any election official or any member of the canvassing board sufficient to change or place in doubt the result of the election.
- Ineligibility of the successful candidate for the nomination or office in dispute.
- Receipt of a number of illegal votes or rejection of a number of legal votes sufficient to change or place in doubt the result of the election.
- Proof that any elector, election official, or canvassing board member was given or offered a bribe or reward in money, property, or any other thing of value for the purpose of procuring the successful candidate’s nomination or election or determining the result on any question submitted by referendum.
- Any other cause or allegation which, if sustained, would show that a person other than the successful candidate was the person duly nominated or elected to the office in question or that the outcome of the election on a question submitted by referendum was contrary to the result declared by the canvassing board or election board.

Contests must be filed with the clerk of the circuit court within ten days after midnight of the date the last county canvassing board empowered to canvass the returns certifies the results or within five days after midnight of the date the last county canvassing board empowered to canvass the returns certifies the results following a protest, whichever occurs later. The canvassing board or election

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<sup>6</sup> Section 102.111, F.S., requires returns to be submitted by the county canvassing boards by 5 p.m. on the 7<sup>th</sup> day following the general election.

board is the proper party defendant and the successful candidate is an indispensable party to any contest action.

The circuit judge may fashion such orders as he or she deems necessary to ensure that each allegation in the complaint is investigated, examined, or checked, to prevent or correct any alleged wrong, and to provide any relief appropriate under the circumstances.

#### Minor Political Parties and Ballot Access

In 1998, the electors of Florida passed Constitutional Revision No. 11. One of the more significant provisions of the constitutional amendment was the change to Art. VI, s. 1, Fla. Const., which now reads in pertinent part:

... the requirements for a candidate with no party affiliation or for a candidate of a minor political party for placement of the candidate's name on the ballot shall be no greater than the requirements for a candidate of the party having the largest number of registered voters.

In direct response to the foregoing, the Legislature passed SB 754 (Ch. 99-318, Laws of Florida) in 1999, substantially rewording s. 99.096, F.S. pertaining to minor party candidates and ballot access. Minor party candidates qualify in the same manner as do major party candidates and candidates with no party affiliation. A minor party candidate may seek to qualify for election by filing his or her qualification papers and paying the qualifying fee and, if one has been levied, the party assessment, or qualify by the alternative method. The alternative method of qualifying involves a petitioning process, requiring the candidate to obtain the signatures of a number of qualified electors in the geographical entity represented by the office sought equal to 1 percent of the registered electors in the geographical entity represented by the office sought.

#### The Florida Election Campaign Financing Act [ss. 106.30-106.36, F.S.]

The Florida Election Campaign Financing Act [hereinafter referred to as "the Act"] became law on January 1, 1987. In sum, the legislative intent states that the purpose of the Act is to alleviate certain factors that lead to the misperception that government officials are unduly influenced by special interests, and to encourage qualified persons to seek statewide elective office who would not, or could not, otherwise do so. [s. 106.31, F.S.].

The Act provides public campaign financing, in the form of matching funds, to candidates for the office of Governor or member of the Cabinet. Under the provisions of the Act, matching funds are to be paid out of the Election Campaign Financing Trust Fund on qualified contributions by individuals of \$250.00 or less. In the event of a shortfall in the Trust Fund, the Act authorizes transfers of money into the Trust Fund from general revenue. Pursuant to Art. III, s. 19(f)(2), Fla. Const., the Election Campaign Financing Trust Fund terminated on November 4, 1996. The First District Court of Appeal, State of Florida, subsequently ruled that this termination did not obviate the duty of the Secretary of State to approve the payment of matching funds to qualifying candidates. [*Secretary of State v. Milligan*, 704 So.2d 152, (1<sup>st</sup> DCA 1997), *rev.den.*, 725 So.2d 1109 (Fla. 1998)]. With the termination of the Trust Fund, public campaign financing dollars are distributed from general revenue.

In order to be eligible to receive contributions under the Act, candidates cannot be unopposed and shall agree to abide by the expenditure limits: Governor/Lt. Governor - \$5 million and Cabinet officer - \$2 million. Further, the candidate must raise threshold contributions as follows: \$150,000 for a Gubernatorial candidate and \$100,00 for a candidate for a Cabinet office. The candidate must also agree to certain contribution limits: loans or contributions from the candidate's personal funds



must be limited to \$25,000 and contributions from national, state, and county executive committees must be limited to \$25,000, in the aggregate. While statute explicitly states that personal loans or contributions and political party contributions do not count toward the threshold contribution amounts, the statute does not explicitly prohibit such loans or contributions from being considered a qualifying matching contribution. According to the Division of Elections, participating candidates have been allowed to receive matching contributions for personal loans and political party contributions.

Qualifying matching contributions making up all or any portion of the threshold amounts are distributed on a 2-to-1 basis. All other qualifying matching contributions are distributed on a 1-to-1 basis. Qualifying matching contributions are defined as contributions of \$250 or less from an individual, which are made after September 1 of the calendar year prior to the election. Aggregate contributions from an individual in excess of \$250 are matched only up to \$250. The check must be drawn on a personal bank account.

In 1991, the Legislature adopted s. 106.353, F.S., which sets forth the process by which a candidate who elects not to participate in election campaign financing may agree to the expenditure limits and contribution limits on personal and political party funds. The person must sign an irrevocable statement with the Secretary of State and if he or she then subsequently exceeds such limits, they must pay into the trust fund an amount equal to the excess.

In that same year, the Legislature adopted s. 106.355, F.S., pertaining to nonparticipating candidates who exceed the expenditure limits set forth under the Act. If a nonparticipating candidate exceeds the applicable expenditure limit, all opposing candidates participating in election campaign financing are released from the limits to the extent the nonparticipating candidate exceeded the limit. In addition, the participating candidates are still eligible for matching contributions up to such limit, and are not required to reimburse any such matching contributions. The Department of State is further directed to provide the participating candidates with funds equal to the amount by which the nonparticipating candidate exceeded the expenditure limit, not to exceed twice the amount of the applicable maximum expenditure limits, which funds shall not be considered matching funds.

In 1998, Art. VI, s. 7, Fla. Const., was adopted, as proposed by the Constitution Revision Commission, Revision No. 11. Section 7, Art. VI, Fla. Const., states:

It is the policy of this state to provide for statewide elections in which all qualified candidates may compete effectively. a method of public financing for campaigns for state-wide office shall be established by law. Spending limits shall be established for such campaigns for candidates who use public funds in their campaigns. The legislature shall provide funding for this provision. General law implementing this paragraph shall be at least as protective of effective competition by a candidate who uses public funds as the general law in effect on January 1, 1998.

#### C. EFFECT OF PROPOSED CHANGES:

##### Primary Elections

The bill eliminates the second primary election and moves the remaining primary to the second Tuesday following the first Monday in September to assure that the primary will not be the day after

Labor Day. This date change will allow 8 weeks between the primary and general election, which should provide sufficient time for overseas ballots to be printed, mailed and returned, without the need to count those ballots 10 days following the general election.

With the elimination of the second primary, the contribution limits set forth in s. 106.08(1)(a), F.S., have been raised to \$1,000 per election.

### Statewide Voter Registration Database

The bill provides for the development of a statewide voter registration database by the Department of State. The database is to contain voter registration information from every supervisor of elections in this state and shall be accessible through an Internet web site. The Department is given the authority to contract for the analysis, design, development, operation, and maintenance of a statewide, on-line voter registration database and associated Internet web site. The database system adopted must provide functionality for ensuring that the database is updated on a daily basis to determine if a registered voter is ineligible to vote. The administration of the database at the local level is to be conducted by the supervisor of elections.

To the maximum extent feasible, state and local governmental agencies are directed to facilitate the provision of information and access to data to both the Department of State and the supervisors of elections in order to compare information. These agencies are instructed to provide such data at no charge, if the cost incurred is not significant. The Division of Elections is directed to provide written, quarterly progress reports on each phase of development to the President of the Senate and the Speaker of the House of Representatives beginning July 1, 2001, and continuing until the database is fully implemented. The database is to be operational by June 1, 2002.

The bill provides a criminal penalty for any supervisor of elections who willfully refuses or willfully neglects to perform his or her duties with respect to the implementation of the statewide voter registration database by cross-referencing s. 104.051(2), F.S.

Funding for the design and implementation of the database shall be as provided for in the General Appropriations Act.

### Provisional Ballots

CS/HB 1925 provides for provisional ballots in Florida. A provisional ballot will be issued to a person who goes to the polls on Election Day and whose name does not appear on the precinct register and whose eligibility cannot be determined. The provisional ballot will be similar to an absentee ballot in that the person votes the ballot, places it in a secrecy envelope, and then places the secrecy envelope in another envelope containing a Provisional Ballot Voter's Certificate. The Voter's Certificate contains pertinent information about the person to assist the supervisor of elections in determining the person's eligibility. All provisional ballots are returned unopened to the supervisor of elections.

The county canvassing board will review the information on the Voter's Certificate and determine if the person was eligible to vote at the precinct in the election. If it is determined that the person was registered and entitled to vote, the canvassing board shall compare the signature on the provisional ballot envelope with the signature on the voter's registration and, if it matches, the ballot is counted. If it is determined that the person voting the provisional ballot was not registered or entitled to vote, the ballot is never removed from the envelope containing the Voter's Certificate.

Allowing persons to vote a provisional ballot whose names do not appear on the precinct register and whose eligibility cannot be determined should help to ensure that voters who are entitled to vote are given the opportunity to do so.

### The Elections Canvassing Commission

The bill changes the composition of the Elections Canvassing Commission to consist of the Governor and two members of the Cabinet, as determined by the Governor.<sup>7</sup> Any recusal or vacancy would be filled in the same manner as the initial appointment. If no other Cabinet member is available to serve, the Governor must appoint a registered voter.

### Deadline for Submission of County Returns to the Department of State

The bill establishes certification deadlines as follows:

- Primary – 7 days after the election (maintains current law)
- General Election – 11 days after the election (currently 7 days)

The bill maintains the certification deadlines for the primary. The bill moves the certification deadline for the general election to allow adequate time for the receipt and counting of all valid overseas ballots.

The statutory conflict between ss. 102.111 and 102.112, F.S., has been removed by providing that returns not received by the department by the time specified *shall* be ignored and the results on file at that time *shall* be certified by the Elections Canvassing Commission. An exception is provided for late-filed returns due to an emergency, as defined in s. 101.732, F.S., upon which case the Elections Canvassing Commission would determine the deadline.

The monetary penalties to be assessed against canvassing board members for filing late returns have been removed.

### Automatic Recounts

The bill provides that automatic machine recounts shall be conducted by each county canvassing board responsible for certifying the results of an election. The threshold has not been changed: one-half of a percent or less of the votes cast on that particular nomination, election, retention or measure. The bill does clarify that each county canvassing board responsible for conducting an automatic machine recount shall recount the ballots with the vote tabulation system. If after conducting a machine recount, the returns reflect that the nomination, election, retention or measure was decided by one-quarter of a percent or less of the votes cast on that particular

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<sup>7</sup> Art. IV, Section 4, Fla. Const. A Constitutional amendment was adopted in 1998 in which the Cabinet was reorganized effective January 7, 2003. The 1998 revisions reduced the number of cabinet officers from six to three –attorney general, chief financial officer and commissioner of agriculture. Although the amendments by the Constitution Revision Commission relating to executive branch reform take effect January 7, 2003, the amendments shall govern with respect to the qualifying for and the holding of primary elections in 2002.

nomination, election, retention, or measure, each county canvassing board responsible for certifying the results of the nomination, election, retention, or measure shall order a manual recount of those votes not counted by an otherwise properly functioning vote tabulation system. Manual recounts shall be conducted using the procedures described further in s. 102.166, F.S.

#### Protest of Election Returns and Discretionary Manual Recounts

The bill places broader oversight within the Elections Canvassing Commission. Specifically, the bill provides that any candidate for nomination or election to a federal, state, or multicounty district office, or any elector qualified to vote in the election related to such candidacy, who wishes to file an election protest must file the protest with the Elections Canvassing Commission. The bill changes the deadline for filing the protest from five days after the close of the polls in the election to 72 hours after the close of the polls, or prior to the time the Election Canvassing Commission certifies the results, whichever occurs later. Upon receipt of a sworn, written protest, the Elections Canvassing Commission shall direct the county canvassing board or boards to examine precinct records and election returns. If there is a discrepancy that could affect the outcome of the election, the Commission may direct each county canvassing board to conduct a machine recount on the automatic tabulating equipment.

Upon completion of a machine recount ordered by the Commission, any candidate for federal, state or multidistrict office whose name appeared on the ballot, or any political committee that supports or opposes a multicounty issue that appeared on the ballot, may file a written request with the Elections Canvassing Commission for a manual recount within 72 hours after completion of the machine recount. The manual recount would only involve those ballots not counted by the voting equipment during the machine recount. The Elections Canvassing Commission is given the discretion to authorize the manual recount, based upon its review of the validity of the reasons stated in the written request. If a manual recount is authorized, the Commission shall direct each county canvassing board within the geographic jurisdiction of the office or ballot measure to manually recount those ballots not previously counted on an otherwise properly functioning vote tabulating system. Standards for determining voter intent are to be developed and published by the Division of Elections.

The protest of election returns and discretionary manual recount procedures for county offices, municipal offices, or district offices not under the jurisdiction of the Elections Canvassing Commission mirror the procedures outlined above. However, the protest or request for a manual recount would be filed with the appropriate county canvassing board.

Appropriate changes have also been made to s. 102.167, F.S., relating to the appropriate form to be used when filing an election protest, to conform.

#### Contest of Election

One of the recommendations made by the Governor's Select Task Force on Election Procedures, Standards and Technology, was for clarification of the grounds for contesting an election. Specifically, s. 102.168(3)(e), F.S., was identified by the task force as potentially opening the door to continual contests, and perhaps delaying the finality of election results and the ability of the governing process to begin in a timely manner. The bill eliminates this particular ground for contesting an election. Further, the bill deletes s. 102.168(8), F.S., which afforded a circuit judge unfettered discretion in fashioning subsequent orders and the authority to order investigations to prevent or correct any alleged wrong and to provide any relief appropriate under such circumstances. Finally, the bill removes the ability for any elector qualified to vote for a particular candidate to contest an election related to such candidacy. Taxpayers are still afforded the ability to contest the certification of the result on any question submitted by referendum.

### Minor Political Parties and Ballot Access

The bill provides increased ballot access potential for candidates of minor political parties. Specifically, the bill provides automatic ballot access for a minor party's entire slate of candidates at the general election that immediately follows a statewide or federal election at which any candidate of the minor political party received at least one percent of the votes cast statewide. The candidates would be exempt from the qualifying fee provisions and the provisions for qualifying by the alternative method, if otherwise qualified for the office sought.

### The Florida Election Campaign Financing Act [ss. 106.30-106.36, F.S.]

The bill provides the following with respect to the legislative intent of public campaign financing:

Furthermore, it is the intent of the Legislature that the purpose of public campaign financing is to make candidates more responsive to the voters and as insulated as possible from special interest groups. To ensure that candidates are most responsive to the voters, candidates who receive public funds to run a campaign must do so at the total exclusion of all special interest funds. The Legislature intends ss. 106.30-106.36 to alleviate these factors, dispel the misperception, and encourage qualified persons to seek statewide elective office who would not, or could not, otherwise do so, and to protect the effective competition by a candidate who uses public funding. The Legislature further finds that, due to the cost of running statewide campaigns, a reasonable balance must be maintained between these goals and the need to protect other vital programs funded by the State treasury.

The bill clarifies that loans or contributions from the candidate's personal funds and contributions from national, state, and county executive committees of a political party are not to be used to meet the threshold amounts required under the Act. The bill further prohibits the use of contributions from individuals who at the time of contributing are not state residents from being used to meet the threshold amounts under the Act. A presumption is created that any person validly registered to vote in this state shall be considered a state resident. The bill provides that candidates electing to participate in public campaign financing must agree not to accept contributions from political committees or committees of continuous existence.

Under the distribution of funds provisions of the Act, the bill provides that any contribution, which is a loan, an in-kind contribution, or is received from an individual who is not a state resident at the time the contribution is made, shall not be considered a qualifying matching contribution. Further, the bill provides an over-all distribution cap of available funds under the Act of \$6 million for each general election year, to be distributed on a first-come, first-served basis, to be used first for the primary election and then, to the extent of any remaining funds, for the general election.

[See, COMMENTS for further discussion of the changes made to the Florida Election Campaign Financing Act.]

Finally, the bill provides for severability.

D. SECTION-BY-SECTION ANALYSIS:

[See, EFFECT OF PROPOSED CHANGES]

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Establishing an over-all cap on distributions from general revenue under the Florida Election Campaign Financing Act may prove to be a cost-savings for the state, depending upon the number of candidates for statewide office qualifying to participate in public campaign financing in any given election cycle.

2. Expenditures:

There will be a fiscal impact related to the development of a real-time statewide voter registration database. The approximate cost has not yet been determined.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The elimination of the second primary election will result in a significant cost savings to the counties. According to the Florida State Association of Supervisors of Elections, the statewide cost of conducting the second primary in 2000 was \$4,549,056.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Election laws are exempt from the mandates of Art. VII, s. 18, of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Election laws are exempt from the mandates of Art. VII, s. 18, of the Florida Constitution.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

Election laws are exempt from the mandates of Art. VII, s. 18, of the Florida Constitution.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

CS/HB 1925 provides greater ballot access potential for candidates of minor political parties if certain conditions are met. The bill does not provide the same for candidates with no party affiliation, or for candidates of major political parties. This provision may be constitutionally problematic on equal protection grounds.

As stated previously, the State Constitution provides that general law implementing public campaign financing shall be at least as protective of effective competition by a candidate who uses public funds as the general law in effect on January 1, 1998. [Art. VI, s. 7, Fla. Const.]. The Florida Election Campaign Financing Act, as codified in ss. 106.30-106.36, F.S., has not been substantially amended since 1991. Because the bill makes significant changes to the Act, there may be a state constitutional question as to the bill's impact on "effective competition" by a candidate who uses public funds.

It is important to note that the minutes from the Constitution Revision Commission, in discussing Proposal No. 16, which eventually became s. 7 of Art. VI, of the State Constitution, indicate that the Commission recognized that the Legislature could, as part of its implementing legislation for this proposal, prohibit participants in public campaign financing from accepting contributions from political committees or lobbyists. [Constitution Revision Commission, 1/15/98]. Therefore, legislative attempts to "strengthen" public campaign financing through efforts to further the goal of reducing the impact of special interest contributions are appropriate. On the other hand, a limitation on available public campaign finance funds could be subject to challenge under Art. VI.

B. RULE-MAKING AUTHORITY:

There is reference in the bill to the development and publication of standards for determining voter intent by the Division of Elections.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Procedural & Redistricting Council adopted three amendments to HB 1925 on April 19, 2001 and adopted a motion that the bill is made into a council substitute.

SIGNATURES:

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**DATE:** April 22, 2001

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