

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.)

BILL: CS/SB 1542

SPONSOR: Committee on Ethics and Elections, Senator Cowin and Senator Lynn

SUBJECT: Second primary election

DATE: March 20, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Rubinas</u>	<u>EE</u>	<u>Fav/CS</u>
2.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

Committee Substitute for Senate Bill 1542 extends the current moratorium on the second primary election through December 31, 2005; there would be no second primary election for the 2004 election cycle. The second primary would return by operation of law on January 1, 2006, should the Legislature fail to take further action to suspend or repeal its operation. For the 2004 election cycle, the sole primary election would take place on August 31, 2004.

The committee substitute creates an unnumbered section of Florida Statutes.

II. Present Situation:

The second primary election is a runoff election between the two top vote-getters to determine the nomination of major party candidates for office. A second primary election is held when no candidate wins a majority in the first primary election.

Florida held its first runoff election in 1904. It is currently one of only about 10 states that holds a second primary election --- all Southern states, with the exception of South Dakota.

Since 1984, with the exception of the 2002 election cycle, Florida's first primary election has been held 9 weeks prior to the general election and the second primary election has been held 5 weeks prior to the general election. Because of this tight schedule and the difficulties in mailing and receiving ballots, a federal court has ordered Florida to count certain absentee ballots from overseas voters received up to 10 days following the general election (see, VII. Related Issues, below).

The Florida Election Reform Act of 2001¹ eliminated the second primary election for the 2002 election cycle only. The second primary will return for the 2004 election cycle and thereafter by operation of law if the Legislature does not enact legislation to further suspend its operation.

III. Effect of Proposed Changes:

The committee substitute provides that the State will not have a second primary election during the 2004 election cycle by suspending the second primary election through December 31, 2005. After that date, the second primary would return by operation of law should the Legislature fail to affirmatively act to further suspend its operation or repeal it.

For 2004, the committee substitute also returns the primary election to 9 weeks before the general election (August 31, 2004), consistent with the pre-2001 law governing the timing of the first primary election.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The committee substitute reduces *overall* contribution limits for most partisan candidates from \$1,500 to \$1,000 per contributor, per *election cycle*.

C. Government Sector Impact:

Until 2001, a statewide election was estimated to cost a minimum of \$4 to \$5 million. It is unclear precisely how the introduction of new voting technology in 41 of Florida's 67 counties in 2001-2002 will impact these cost estimates. The experiences of the 2002

¹ Ch. 2001-40, Laws of Fla.

election cycle suggest that these costs could be much higher. Current estimates are somewhere between \$10 million and \$13 million.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Overseas Absentee Ballots

In the early 1980's, the Federal Government sued the State of Florida claiming that the state's system of holding three elections from September to November violated the Uniformed and Overseas Citizens Voting Rights Act and the Federal Voting Assistance Act. The suit alleged that the time frame 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 10 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 in the 1982 general election to be counted if the ballots were postmarked by election day and received by the supervisors no later than 10 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 the State draw up a plan of compliance to provide for the mailing of overseas ballots at least 35 days prior to the deadline for the receipt of ballots in future elections.

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 10 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.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
