

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1861 (PCB PC-03-07) Elections
SPONSOR(S): Procedures and Hogan
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Appropriations			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The proposed committee bill is designed to implement the federal Help America Vote Act of 2002 (HAVA), which was enacted on October 29, 2002. HAVA establishes election standards that must be followed by every state, while also authorizing federal funds to help states meet those standards. HAVA's federal funding is designed to improve election administration, replace antiquated voting equipment to include providing access to disabled voters and improve other aspects of the election process. Florida is at the forefront of election reform since the 2000 general election and thus will have relatively less work to do than other states, particularly with regard to voting system technology and access to voters with disabilities.

Under HAVA, states will be required to meet certain uniform voting standards. Among those requirements, the bill mandates that:

- States must give voters an opportunity to check for and correct ballot errors in private.
- States must ensure that at least one voting machine per precinct is accessible to the disabled. Florida enacted similar requirements in 2002 under CS/SB 1350 (effective within one year after \$8.7 million is appropriated).
- States are responsible for establishing an interactive, computerized statewide voter registration list. This database must be maintained at the state level and contain the name and registration of every legally registered voter in the state. Florida already has such a system but it must be modified to comply with the new HAVA requirements.
- States are required to define a uniform standard for legal votes. Florida has already done this by agency rule.
- States must provide provisional ballots to ensure that no individual is denied the opportunity to vote while his or her eligibility is under review. Florida enacted provisional ballot regulations in 2001.

Except as otherwise provided, the bill takes effect January 1, 2004.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1861.pr.doc
DATE: April 17, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

The bill requires that state and local election officials make a number of improvements to the method by which elections are conducted.

B. EFFECT OF PROPOSED CHANGES:

Current Situation:

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”).¹ It authorizes over \$3 billion dollars in federal aid over 3 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. Florida expects to receive about \$83 million dollars this fiscal year from HAVA disbursements, the bulk of which must be used to bring the State into compliance with the new substantive federal requirements and for future election administration projects.

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 already enacted a number of reforms that go a long way toward meeting 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 2001² and subsequent glitch legislation³. Despite the foresight of the State’s legislative leaders, there are still many provisions of Florida law that need retrofitting to meet HAVA’s new, somewhat technical substantive requirements.

Some of the more important substantive requirements of HAVA include:

- **Voting Systems for the Disabled:** By January 1, 2006, every polling place must have technology that allows an individual with a disability to cast a secret and independent ballot.
- **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.

¹ H.R. 3295 (2002) [Enrolled].

² CS/SB 1118 (ch. 2001-40, Laws of Fla.).

³ CS/SB 618 (ch. 2002-17, Laws of Fla.).

- **Expanded Use of Provisional Ballots**

- “Late-Voted” Provisional Ballots: Voters who cast ballots after the polls close *pursuant to court or other order extending hours* must vote by provisional ballot. Any such “late-voted” provisional ballots must be kept separate and apart from other provisional ballots.
- Certain First-Time Voters/Mail-In Registrants at the Polls: Persons who register by mail, are voting for the first-time and do not bring the requisite identification to the polls must be allowed to vote a provisional ballot.
- Certain First-Time Voters/Mail-In Registrants at the Polls: Persons who register by mail, are voting for the first-time by absentee ballot and do not include the requisite identification must have their absentee ballot treated as a provisional ballot.

- **New Identification Requirements for First-Time Voters Who Register by Mail (hereinafter, “Unknown Voters”)**: Unknown voters must provide a copy of a current valid photo identification or other prescribed document with the voter’s name & address at the time of registration or when voting, either in person or by absentee ballot; otherwise, they must vote by provisional ballot. Exceptions exist for absent military and overseas voters and their families, persons voting pursuant to the federal Elderly and Handicapped Act, and anyone otherwise entitled to vote an absentee ballot under federal law.

Proposed Changes:

This proposed committee bill is designed to make changes to Florida law that are required for implementation of HAVA. A section-by-section list of those changes follows.

Section 1. *General Duties (s. 97.012, F.S.)* -- Modifies the responsibilities of the Secretary of State; replaces the term “central voter file” with “statewide voter registration database”; designates an office within the Department of State (Department) to provide information regarding registration and absentee ballot procedures to military and overseas voters.

Section 2. *Definitions (s. 97.021, F.S.)* -- Amends the definition of “provisional ballot” to mean generally a “conditional” ballot that meets certain other criteria, thereby accommodating HAVA’s expanded use of provisional voting (i.e., extended polling hours voting, first-time voter, mail-in registrant without proper identification). The specific circumstances under which a provisional ballot is issued and canvassed are enumerated in the substantive statutes.

Section 3. *First-Time Voters Registering by Mail (hereinafter, “Unknown Voters”) (s. 97.052, F.S.)* -- Amends the statewide voter registration application; adds a statement informing first-time, mail-in registrants that they will be required to provide identification prior to voting.

Section 4. *Voter Registration Application/Requirements for Acceptance (s. 97.053, F.S.)* -- Modifies the requirements for acceptance of a voter registration application; provides that an application must contain one of the following: a Florida driver’s license number; the identification number from a Florida identification card; or the last four digits of the applicant’s social security number.

Section 5. *Administrative Complaint Procedure (s. 97.028, F.S.)* – Effective upon becoming a law, establishes a summary administrative complaint procedure within the Department for alleged violations of Title III of HAVA (substantive election administration provisions); provides for an administrative hearing; authorizes the Department to issue orders to remedy violations; specifically excludes the new administrative complaint procedure from procedures in chapter 120, Florida Statutes.

Section 6. *Unknown Voters/Voter Registration (s. 97.0535, F.S.)* -- Contains additional identification requirements for mail-in voter registrants who have never previously voted in the county; allows such voters to include required picture identification with a registration application in lieu of having to produce documentation at the time of voting; lists acceptable forms of identification; provides exemptions for certain active duty military voters and their spouses/dependents, overseas voters, voters over 65 years of age, and persons with temporary or permanent physical disabilities.

Section 7. *Voter Registration (s. 98.045, F.S.)* – Deletes an obsolete provision of law (conforming amendment).

Section 8. *Central Voter File (s. 98.097, F.S.)* – Repeals an obsolete provision of law governing the Central Voter File, which has been replaced by the Statewide Voter Registration Database.

Section 9. *Statewide Voter Registration Database (s. 98.0977, F.S.)* – Provides that the Department shall continue to operate the statewide voter registration database until the Statewide Voter Registration System mandated by HAVA is operational; deletes obsolete references.

Section 10. *Statewide Voter Registration System (unnumbered)* – Contains a timetable and plan for developing and implementing the Statewide Voter Registration System mandated by HAVA, such system to be operational no later than January 1, 2006; authorizes the State to request a waiver from the 2004 HAVA deadline, which cannot practically be met; provides for a periodic progress report to the Governor and Legislature.

Section 11. *Supervisor of Elections' Duties (s. 98.212, F.S.)* – Deletes an obsolete provision of law (conforming amendment).

Section 12. *Precinct Registers (s. 98.461, F.S.)* – Modifies the items included in the precinct register; removes a permissive provision relating to permissible picture identification; deletes an obsolete reference.

Section 13. *Picture Identification at the Polls (s. 98.471, F.S.)* – Clarifies the types of picture identification that must be presented by a voter at the polls; provides that if a first-time, mail-in registrant at the polls does not have the requisite picture I.D., he or she must vote a provisional ballot.

Section 14. *Alternative Procedure (s. 98.491, F.S.)* – Repeals an obsolete provision of law (conforming amendment).

Section 15. *Provisional Ballots (s. 101.048, F.S.)* – Modifies the Provisional Ballot Voter's Certificate and Affirmation to include a line for "driver's license number or last four digits of social security number"; authorizes the Department to further prescribe the form of the provisional ballot envelope; authorizes the use of electronic, or touch screen, provisional ballots provided the system is certified by the Division of Elections; requires each supervisor of elections to set up a free access system to allow provisional voters to find out no later than 30 days after the election if their vote counted, and if not, why it was not counted; requires poll workers to give written instructions to provisional voters regarding the free access system.

Section 16. *Provisional Ballots/Extended Polling Hours (s. 101.049, F.S.)* -- Creates a sub-category of provisional ballots called "late-voted" provisional ballots, consisting of ballots cast after the polls close *pursuant to court or other order extending polling hours*; requires these "late-voted" provisional ballots to remain segregated from all other ballots for purposes of counting and canvassing; authorizes the use of electronic, or touch screen, provisional ballots, provided the system is certified by the Division of Elections.

Section 17. *Provisional Ballots/Challenged Voter (s. 101.111, F.S.)* – Modifies the written oaths involved with a challenge to a voter's right to cast a ballot at the polls; provides that if a challenged

voter refuses to take an oath or if the poll workers doubt the eligibility of the person to vote, the person shall cast a provisional ballot.

Section 18. *Standards for Accessible Voting Systems (s. 101.56062, F.S.)* – Deletes a requirement that audio and visual access must be made available simultaneously to disabled voters.

Section 19. *Absentee Ballots/Requests For (s. 101.62, F.S.)* – Technical; adds a cross-reference to conform Section 22 of the bill relating to requests for absentee ballots by federal postcard application.

Section 20. *Absentee Ballots/Voter's Certificate (s. 101.64, F.S.)* – Technical; modifies a reference to the absentee ballot instruction sheet.

Section 21. *Absentee Ballots/Instructions (s. 101.65, F.S.)* – Directs voters to mark only the number of candidates or issue choices for each race as indicated on the ballot; warns voters that if they vote for more than one choice in a race labeled "Vote for One," their vote in that race will not count.

Section 22. *Absentee Ballots/Voting in Person (s. 101.657, F.S.)* – Modifies the photo identification requirements for persons seeking to cast an in-office absentee ballot to mirror the requirements at the polls (see Sections 5 and 11 of the bill); unknown voters who fail to furnish the requisite photo I.D. and who have not previously provided I.D. to the supervisor shall be allowed to cast a provisional ballot.

Section 23. *Unknown Voters/Special Absentee Ballots (s. 101.6921, F.S.)* – Creates a new section that applies only to unknown voters who have not previously provided the requisite identification information to the supervisor of elections by the time the absentee ballot is mailed; creates a new procedure for absentee balloting requiring the unknown absentee voter to place identification information inside an outer mailing envelope (the ballot is sealed in a secrecy envelope, which is then inserted into the envelope containing the voter's certificate, which, in turn, is inserted into a mailing envelope along with the I.D. information); creates a new voter's certificate; exempts certain voters from the I.D. requirements (as provided in Section 5 of the bill) if they certify on the voter's certificate that they are exempt by checking the appropriate box (i.e., 65 years of age or older).

Section 24. *Unknown Voters/Special Absentee Ballot Instructions (s. 101.6923, F.S.)* – Creates a new instruction sheet to accompany special absentee ballots for unknown voters; identifies the acceptable forms of identification and directs the voter to insert a copy of the identification in the mailing envelope and notifies the voter that if the identification is inserted into either the secrecy envelope or the envelope bearing the voter's certificate, the ballot will not be counted.

Section 25. *Unknown Voters/Canvassing Special Absentee Ballots (s. 101.6925, F.S.)* – Creates a procedure for canvassing special absentee ballots of unknown voters; provides that the outer mailing envelope is opened to see if the voter has provided the requisite I.D. or indicated that he or she is exempt for one of the reasons enumerated on the voter's certificate; if so, the supervisor notes that the voter has provided the I.D. on the voter's registration records and proceeds to canvass the ballot like any other absentee ballot; if no I.D. is inside the mailing envelope and no exemption indicated on the voter's certificate, the supervisor shall check the voter registration records to determine if the voter had previously submitted the requisite I.D. or notified the supervisor's office that he or she was exempt from the identification requirements; if not, the envelope with the voter's certificate shall not be opened unless the supervisor has received the required information or written indication of exemption by 7 p.m. on election day.

Section 26. *Absentee Ballots/Requests For (s. 101.694, F.S.)* – Provides that a request for an absentee ballot made by federal postcard application shall be effective through the next two general elections; requests made in other manners are valid for one calendar year, pursuant to section 101.62(1), Florida Statutes.

Section 27. *County Canvassing Board Duties/ Provisional Ballots (s. 102.141, F.S.)* – Technical/conforming; adds cross-references to incorporate the expanded use of provisional ballots (i.e., “late-filed” provisionals, special absentee ballot provisionals, etc.); requires canvassing boards to canvass provisional ballots such that votes on late-filed provisional ballots can be segregated from other votes.

Section 28. *Powers and Duties of County Governments. (s. 125.01, F.S.)* – Deletes an obsolete provision of law (conforming amendment).

Section 29. *Voting Technology for the Disabled.* Repeals section 20 of chapter 2002-281, Laws of Florida (conforming amendment).

Section 30. *Special Neighborhood Improvement Districts. (s. 165.511, F.S.)* – Deletes an obsolete provision of law (conforming amendment).

Section 31. *Voting Technology for Disabled Community* – Modifies the contingent effective date in chapter 2002-281, Laws of Florida (CS/SB 1350), making the remaining sections of the bill effective January 1, 2006; requires each polling place to have at least one disability-friendly, touch screen voting machine in each polling place offering an audio ballot; requires most voting forms and materials to be available in disability-friendly formats.

Section 32. Provides for an effective date of January 1, 2004, except as otherwise provided.

C. SECTION DIRECTORY:

See “Effect of Proposed Changes.”

I. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

HAVA authorizes about \$3.65 billion in federal funding to the States over a 3-year period. While it is doubtful that all this funding will be specifically appropriated by Congress, Florida’s share of the first year monies (already specifically appropriated by Congress) is over \$83 million. Most of this money is tied to election administration, and would not be available as General Revenue to fund non-election-related projects.

The two main costs associated with the bill are: the design, development, and operation of the statewide voter registration system; and, purchasing and locating one disability-friendly touch screen voting system in every polling place in the State. There are also other relatively minor costs associated with: reprinting voter registration forms, ballot instructions, and ballot envelopes; making forms available in disability-friendly alternative formats; and, additional election administration efforts by the Division of Elections and local supervisors.

The State should realize a sizeable net gain from the initial influx of federal funds, even if Congress does not specifically appropriate any additional monies in Years 2 and 3 as HAVA envisions.

2. Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

2. Expenditures:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Following a favorable recommendation from the Subcommittee on Ethics and Elections, committee staff made two changes to address concerns raised by the disability community. Those changes were made in sections 3 and 32 of the PCB. In section 3, a reference to section 101.56062 was amended in the definition of "tactile input device" contained in section 97.021(32), Florida Statutes, and the updated definition was given a new effective date – it now is effective when the amendment to section 101.56062 takes effect.

Section 32 amends section 22 of chapter 2002-281, Laws of Florida (CS/SB 1350). Under that act, changes to Florida's voting systems must be made to accommodate voters with disabilities, further requiring that there be a voting system in each precinct that is accessible to disabled voters one year after the Legislature appropriates money to the Department of State for distribution to the counties. The amount to be appropriated is currently \$8.7 million, but will likely be higher given the current market and increased demand nationwide for new voting technology. Section 32 of the PCB clarifies that the voting system provisions of chapter 2002-281 now take effect the earlier two dates - January 1, 2006 (the deadline for such changes to be made under HAVA) or one year after the Legislature makes the appropriation described above.