PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT
(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Ethics and Elections Committee

BILL: SB 494

INTRODUCER: Senator Bennett

SUBJECT: Elections; ballot design

DATE: April 19, 2007   REVISED: 04/23/07

	ANALYST	STAFF DIRECTOR	REFERENCE		ACTION
1.	Fox	Rubinas	EE		**Fav/1 amendment**
2.					
3.					
4.					
5.					
6.					

Please see last section for Summary of Amendments

X	Technical amendments were recommended
	Amendments were recommended
	Significant amendments were recommended

I.   Summary:

Senate Bill 494 requires that the voter have an opportunity to select the option "I choose not to vote," for each candidate race on the ballot.

The bill takes effect on July 1, 2007.

This bill substantially amends section 101.151 of the Florida Statutes.

II.   Present Situation:

In the 2006 District 13 congressional race between Republican Vern Buchanan and Democrat Christine Jennings, a whopping 13% of the ballots (about 18,000) in Sarasota County showed no vote cast. Buchanan was certified as the winner by a slim margin of 369 votes (0.2%). The 13% undervote rate was dramatically higher than the undervote rate in Charlotte County for the race, which uses the same Election Systems & Software iVotronic touchscreen voting system.

Testing of the voting equipment confirmed that the machines worked properly, although that issue is currently being litigated by the Jennings camp and a challenge to the election result is pending in the U.S. Congress.
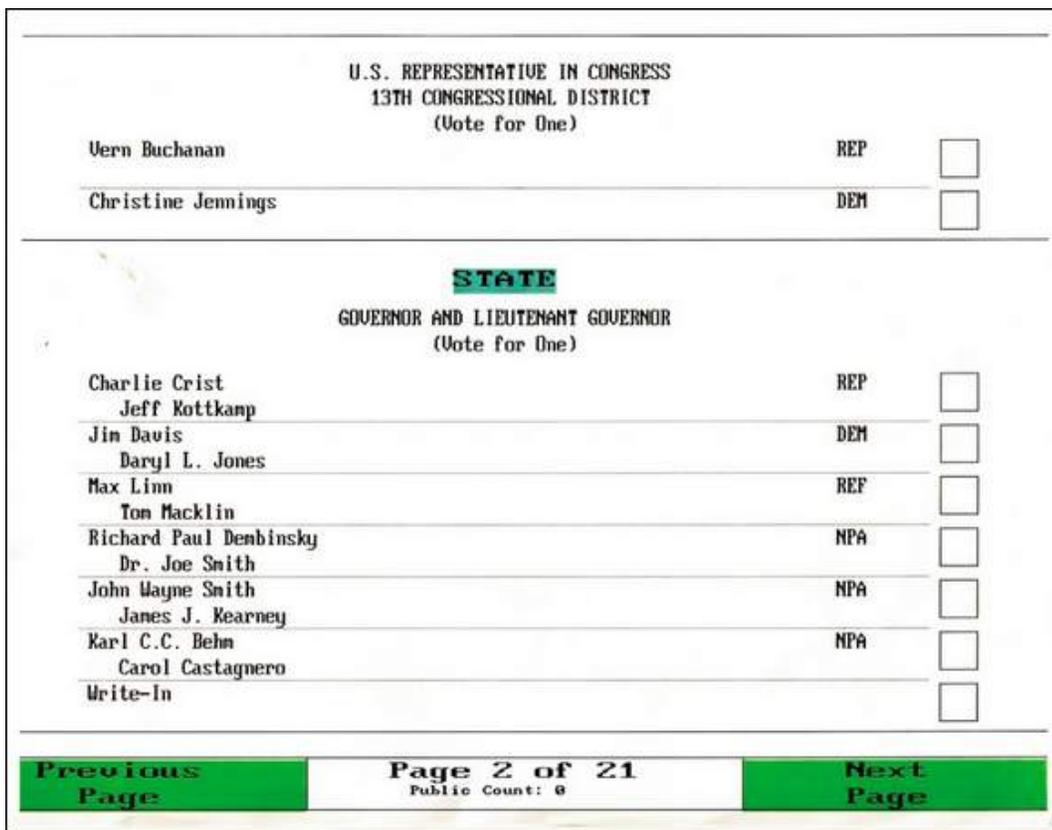
The most likely culprit, in whole or in part, is ***poor ballot design***.[1] The Sarasota ballot had two major deficiencies that may have caused voters to miss or skip the congressional race:

- The congressional race on the second screen of the Sarasota Ballot was the first of ***two races on the same computer screen***, the other being the more obvious six-candidate Florida governor's race.

- The governor's race was preceded by a ***turquoise-colored banner*** highlighting the word "STATE," to which the eye is immediately drawn. The congressional race appearing above the governor's race did not contain a header or colored banner. The header "CONGRESSIONAL," which presumably contained the colored banner, probably appeared on the previous screen.[2]

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[1] Some may argue that design deficiencies are corrected by providing the voter with a "review screen" before he or she casts the ballot, identifying the races in which the voter failed to vote. It is unclear, however, whether the voters actually take the time to thoroughly check this screen or would even want to take the time to go back to correct oversights. Therefore, committee staff views the review screen as a necessary component of any DRE system, but not one that nullifies poor ballot design.

[2] *See* Doig & Tamman, *Analysis Points to Bad Ballot Design*, SARASOTA HERALD TRIB. (Dec. 5, 2006) (containing a screen shot of page 2 of the Sarasota County 2006 General Election Ballot)
http://www.heraldtribune.com/apps/pbcs.dll/article?AID=/20061205/NEWS/612050604/1060 .

III. Effect of Proposed Changes:

Senate Bill 494 provides that, for each office on the ballot sought by a candidate, the ballot must include a selection that states, "I choose not to vote."

Had this bill been in effect for the 2006 District 13 Congressional race, *some* of the 18,000 voters who deliberately left that race blank *may* have chosen to select "I choose not to vote." In the absence of a requirement that the touchscreens and optical scan tabulators be required to reject *every* ballot unless the voter has made a selection in *every* race --- which poses some significant administrative difficulties --- it is likely that offering the option "I choose not to vote" will only redress a portion of the current problem with ballot design (see, **Section VII. Related Issues**).

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:

    None.

    C.   Government Sector Impact:

    None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The "none of the above" idea, of which this bill is essentially a variant, was discussed back in 2001 after the Florida presidential recount as a way to unequivocally determine the voter's intent on every ballot cast. It soon proved a political nonstarter because, as many Senators and

Representatives put it, nobody wants to be elected and finish second to "None of the above."
Indeed, such elected officials would likely be perceived as not having received a mandate from
their constituents.

Further, there were some practical, administrative difficulties in implementing the proposal.
First, in order for it to work, you have to *require* every voter to make a selection in *every race* on
the ballot. Many ballots cast contain at least one or two races that voters skip because they are
unfamiliar with the candidates or issues, or for any one of a myriad number of other reasons. So
a major voter education effort would be necessary to get voters to embrace the requirement that
they make a selection in every race.

Second, in order to require every voter to make a selection in every race, you would need to have
the touchscreen machines and the optical scan tabulators programmed to refuse to accept a ballot
that contains a single race without any selection (an "undervote").[3] Otherwise, you would again
have some ballots cast without a designation in every race.

Given many voters' current inclination to not make a selection in every race and the inherent
difficulties in educating them otherwise, there is a very high likelihood that many of the ballots
would be rejected --- at least once. This means that the voter would have to go back through the
ballot, find the undervoted race(s), and correct it. This could be an arduous process for
touchscreen machine voters, who might have to utilize the review screen and/or scroll back
through several pages. Many will likely require poll worker assistance. Optical scan voters
attempting to put their ballots in tabulators would have to return to a privacy booth, locate the
problem, re-mark their ballots, and return to the optical scan tabulator to try again. This has the
potential to disrupt the entire traffic flow through the polling place. All this could result in
significant delays in processing voters at the polls.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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[3] The 2001 Florida Election Reform Act requires optical-scan tabulators to reject a ballot if there is an "overvote"
(more than one selection) in a single race (where only one candidate may be selected) or if the **entire ballot** is
undervoted (registers no votes in any race). It was determined at the time that rejecting ballots containing a single
undervoted race would not be administratively feasible, as many voters choose to skip at least one race on the
ballot. Also, both touchscreen voters with review screens showing an undervoted race and optical scan voters
whose ballots are kicked-back because of an overvoted race or a completely undervoted ballot have the option to
go ahead and cast that ballot anyway. (Touchscreen voters can ignore the review screen and cast the ballot, and
optical scan voters can indicate that they don't want to make corrections and the poll worker will override the
tabulator to accept the ballot.)

VIII.   Summary of Amendments:

Barcode 345898 by Ethics and Elections:
Clarifies that if "I choose not to vote" receives the highest number of votes in a race, the candidate receiving the next highest number of votes shall be the winner.

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