HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1589 CS   Elections
SPONSOR(S): Brown
TIED BILLS: HB 1591   **IDEN./SIM. BILLS:** SB 2176

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Ethics & Elections Committee	6 Y, 4 N, w/CS	West	Mitchell
2) Transportation & Economic Development Appropriations Committee			
3) State Administration Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1589 is designed to implement the statewide voter registration database required under 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.

HAVA requires each state to maintain and operate a statewide voter registration system. Section 303(a) of HAVA provides, in pertinent part:

> "*Each State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State.*"

HB 1589 is an attempt to meet the federal mandate to move the statewide voter registration system from the control of the 67 county supervisors of elections (supervisors) to the Department of State's Division of Elections.

This bill authorizes the Secretary of State as chief elections officer to maintain uniformity in the application of the election code by issuing statements of interpretation to the supervisors and canvassing boards when it identifies that a "lack of uniformity exists in the application, operation, or interpretation of the election laws."

The bill takes effect January 1, 2006, except as otherwise provided therein.

NOTE: A STRIKE-ALL AMENDMENT WAS ADOPTED BY THE ETHICS & ELECTIONS COMMITTEE ON MARCH 30, 2005. SEE SECTION IV OF THE ANALYSIS.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.
STORAGE NAME: h1589b.ETEL.doc
DATE: 3/31/2005

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

<u>Provide limited government</u>

This bill in s. 106.23 F.S. gives the Division of Elections the power to issues a statement of interpretation of the election laws to assure uniformity exists in the application of Florida election law. These statements shall be binding on the supervisors, county canvassing boards and other officials performing election-related duties. The Division through the Secretary of State shall have the authority to take supervisors to court and to hold them responsible the penalties contained in s. 104.051(2)

B. EFFECT OF PROPOSED CHANGES:

<u>The Help America Vote Act of 2002</u>

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 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.

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 2001 and subsequent glitch legislation. Despite the foresight of the State's legislative leaders, there are still some provisions of Florida law that need retrofitting to meet HAVA's new, somewhat technical substantive 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.

<u>HAVA Computerized Statewide Voter Registration List Requirements</u>

The statewide voter registration list 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 having the following attributes:

- Serves as the single system for storing and managing the official list of voters
- Must contain the name and registration information of every registered voter in the state
- Must have a unique identifier assigned to each voter
- Must coordinate with other agency databases
- Any election official in the state must be able to obtain immediate electronic access to the information
- Supervisors of elections must enter information in the database on a expedited basis

- State must provide support to supervisors
- Computerized list serves as the official voter registration list for federal elections

HB 1589 is an attempt to meet this federal mandate to move the statewide voter registration system from the control of the 67 county supervisors of elections and place it under the control of the Department of State's Division of Elections.

Statements of Interpretation

Section 106.23, F.S., is amended to authorize the Secretary of State to issue a statement of interpretation to the county supervisors of elections and county canvassing boards to assure uniformity in the application, operation, or interpretation of the election laws. The Division of Elections may issue advisory opinions to supervisors of elections, the county canvassing boards, or any other officials performing election-related duties, but such opinions are only binding on the party that requested the opinion. s 106.23, f.s.

The Secretary of State sees a need to be able to issue these statements of interpretation in order to bring more uniformity in the application and operation of Florida's election laws. There were a number of examples of disparate treatment of ballots, voters and registrants during the 2004 elections:

- Voter Challenges: The election code requires voter challenges to be handled by the Election Board (precinct clerks and inspectors, i.e. poll workers), which by statute must make the initial determination of whether to sustain a challenge. When it became evident that voter challenges were likely to occur, the Division of Elections sent a memorandum to all supervisors discussing the statutory process and provided suggested procedures to ensure uniformity. Several counties established their own hybrid challenge process: one decided challenges by a subset of the Election Board; one used the precinct clerk and the supervisor of elections to make the determination, rather than the Election Board; and one county even advised the Division they would not implement the procedures outlined in the memorandum and stated, "[t]he Division does not have the authority to mandate it" and that, "[t]hey will follow procedures as they interpret them."

- Early Voting: During the primary, one south Florida county permitted 16 hours of early voting on the weekend (only 8 hours total is permitted under current law) and, while most counties permitted voters in line at the close of early voting to cast their ballots, some counties, forced voters to leave and come back another day.

- Voter Registration Applications: Notwithstanding clear language in the statute and legislative history, five counties accepted incomplete voter registration applications in which the voter failed to mark the citizenship check box, as required by law. The other counties followed the Division's interpretation of the law and treated such applications as incomplete.

- Book Closing: One county permitted changes to incomplete voter registration applications after the book closing date.

- Removal of Ineligible Voters: One north Florida county has steadfastly refused to follow the process outlined in statute regarding the removal of felons from the voter registration rolls.

Supervisors may challenge a statement of interpretation, first to the Secretary and then on appeal in court if they disagree with the statement. If the statement is upheld in court and a supervisor or members of the canvassing board willfully fail to comply with the statement, they are subject to the penalties contained in s. 104.051(2).

NOTE: THE PROVISIONS RELATING TO BINDING DIRECTIVES IN THE ORIGINAL HAVE BEEN SUBSTANTIALLY AMENDED IN THE STRIKE-ALL AMENDMENT THAT WAS ADOPTED ON MARCH 30, 2005.

This bill makes changes to ss. 97.012, 97.021, 97.026, 97.051, 97.052, 97.053, 97.535, 97.055, 97.057, 97.058, 97.061, 97.071, 97.073, 97.1031, 97.105, 98.015, 98.035, 98.045, 98.055, 98.065, 98.075, 98.0755, 98.077, 98.081, 98.093, 98.095, 98.0977, 98.979, 98.0981, 98.101, 98.212, 98.231, 98.451, 98.461, 98.481, 100.371, 101.001, 101.043, 101.045, 101.048, 101.161, 101.5608, 101.62, 101.635, 101.663, 101.6921, 101.6923, 102.012, 102.151, 104.013, 104.051, 120.52 and 196.141, F.S.

The bill takes effect January 1, 2006, except as otherwise provided therein.

C. SECTION DIRECTORY:

Section 1: Section 97.012, F.S., is amended to:

- Make the Secretary the administrator of the statewide voter registration system.

Section 2: Section 97.021, F.S., is amended to:

- Update language on what constitutes a "List of registered electors".
- Update language on what constitutes a "voter registration official".

Section 3: Section 97.026, F.S, is amended to:

- Delete a reference to s. 98.055.

Section 4: Section 97.051, F.S., is amended to:

- Change the oath a person must swear when registering to vote from a statement verifying that he is a citizen to affirm that all the information is true on the registration form.

Section 5: Section 97.052, F.S, is amended to:

- Change wording from "voter registration identification card" to "voter information card."
- Add a voter signature update to actions that require completion of a voter registration application.
- Add that a person must complete a voter registration application to update the registration record.
- Change the requirements of the voter registration form to:
  - ask for the person's last, first and middle name including suffix
  - delete asking for the address in which a person has been granted homestead
  - add a question asking if the person has a Florida driver's license or Florida identification card
  - ask to acknowledge citizenship via a check box
  - ask if applicant has been convicted of a felony
  - ask if applicant has been adjudicated mentally incapacitated
- Delete the statement that voter information will be forwarded to the property appraiser.
- State that a person not having a Florida license, identification card number or social security card will need to show identification (ID) the first time he votes.

Section 6: Section 97.053, F.S., is amended to:

- Provide that a voter's application becomes official when it is completed before the book closing date. This is to ensure information is verified and determine eligibility to vote.

- Add that driver license office, recruitment office or office of supervisor are locations to which applications may be sent.
- Provide that a registration is complete if the information to establish eligibility to vote, including marking a box showing the person is a citizen, is complete.
- Require a license number. In lieu of such number a voter must provide the last four digits of his Social Security number. If the voter doesn't have either form of identification, he must affirm this fact.
- Require a mark in the check box that indicates the voter is not a felon.
- Require a mark in the check box that indicates the voter is not mentally incapacitated.
- Require an original signature from the voter or a digital signature from the Department of Highway Safety and Motor Vehicles (DMV).
- Provide that a voter registration is accepted only if it matches with DMV license or Social Security number. The voter receives a provisional ballot until verified. Registration must be entered into the statewide system within 15 days.

Section 7: Section 97.0535, F.S., is amended to:

- Require an applicant without a verified license or Social Security number to show Florida identification the first time he votes. This should be noted in the database and the voter will not need to show ID in the future.
- Require that if a applicant's ID cannot be verified, a letter is sent informing him of the need to show ID the first time he votes.
- Drop the Florida license or ID card as a valid applicant ID when not verified through DMV databases.

Section 8: Section 97.055, F.S., is amended to:

- Provide that a voter will only be able to update his name, address and signature after the close of books.

Section 9: Section 97.057, F.S., is amended to:

- Require the examiner to ask in writing if the applicant wishes to register to vote when the applicant is hearing impaired.
- Change from a hand written signature to an electronic signature to verify the accuracy of voter information at the DMV.
- Note in a voter's records and have forwarded to the statewide voter registration system when the voter does not want to register at the DMV.
- Require the voter registration form at the DMV to have the same content but not the same format and size.
- Require the DMV to forward electronic registrations to the department within 24 hours and paper registrations within 5 days.
- No longer require the DMV to compile lists of drivers who have received a drivers license in another state or send them to the supervisors.
- Require the DMV to keep information on voters they register for audit.
- Require the department to supply the DMV with all the legal addresses. The DMV will compare applicant addresses to this list for verification.
- Provide that the DMV work with the department to match license numbers for voter registration.

- Provide that the DMV work with the Commissioner of Social Security to verify Social Security numbers.

Section 10: Section 97.058, F.S., is amended to:

- Correct language.

Section 11: Section 97.061, F.S., is amended to:

- Require that the precinct register be generated by the supervisors who will also be responsible to track persons with disabilities.

Section 12: Section 97.071, F.S, is amended to:

- Change "voter identification card" to "voter information card" and remove the following information from the card: race or ethnicity, sex, and place for signature. Left the information that was on the card to the supervisor's discretion.

Section 13: Section 97.073, F.S., is amended to:

- Require that if a voter registration is incomplete the missing information be put on a registration form.
- Require that when a person registers to vote in Florida, the department and not the supervisor, notify the state from which they moved.

Section 14: Section 97.1031, F.S., is amended to:

- Require that when a voter changes name or address they fill out a new voter registration and a new voter information card will be issued. Voters will no longer be able to change information by phone.
- Require a voter to use the voter registration form to change his party affiliation and it will be done based upon requirements in s. 97.071, if far enough before the election.

Section 15: Section 97.105, F.S., is amended to:

- Clean up language.

Section 16: Section 98.015, F.S., is amended to:

- Require the supervisor to enter data into the voter registration system and maintain documentation.
- Require the supervisor to keep registration as prescribed by the department.
- Require the supervisor to use system that meets department standards. Supervisor will no longer forward voter addresses to the local property appraiser for verification.
- Requires supervisors to provide a list of valid addresses for their county to the department.

Section 17: Section 98.035, F.S., is amended to:

- Provide that the Secretary of State shall internally maintain the official statewide voting system and allow access to those that need it.
- Allow the supervisors to have their own system to maintain their voter registrations.
- Prohibits the department from contracting with any other entity for the operation of the voter registration system
- Allow the department to set-up rules for the security and operation of the voter registration system.

Section 18: Section 98.045, F.S., is amended to:

- Give the department final authority on determination of voter eligibility. Can make an applicant ineligible for following reasons: didn't complete registration, dead, felon,

mentally incapacitated, not old enough, not a citizen, is a fictitious person, false address, license not verified.

- Require the department to keep a statewide residential street address database from information provided by different government databases and give it to the DMV.

Section 19: Section 98.065, F.S., is amended to:

- Require the supervisors to send notice requesting affirmation of new address and information on how to register to vote in Florida, with prepaid return service, to people when a change of address from the Postal Service, DMV, or Jury Duty report is received. It should be requested in this notice that the enclosed form be returned in 30 days. If returned they will be removed from file if out of state. If moved in state, registration will change to new location. If they don't return card they will be marked as inactive. If no activity in 2 election cycles they will be removed from list.

Section 20: Section 98.075, F.S., is amended to:

- Require the department identify for removal the older duplicate registrations, dead people, mentally incapacitated, felons, not of age, not citizen, fictitious people, and false address. The supervisors will perform the removal

- Require the supervisor to notify ineligible voters by mail why they are ineligible to vote if reason is not due to duplication or death. They must respond in 30 days, to admit or deny the accuracy, and can request a hearing. This notice should include information for restoring civil rights. If notice is returned undeliverable, publish persons name, reason they are ineligible to vote and that they may be removed from voter list in the paper. If no response remove voter from list and notify by mail.

Section 21: Section 98.0755, F.S., is amended to:

- Provide that the supervisor's ruling can be taken to court. If person cannot show name removed, erroneously or illegally, or is indigent, the person will bear the cost of trial.

Section 22: Section 98.077, F.S., is amended to:

- Allow a registered voter to update his signature at any time up until the canvassing board meets.

Section 23: Section 98.081, F.S., is amended to:

- Clean up language for statewide registration.

Section 24: Section 98.093, F.S., is amended to:

- Provide that other agencies will deliver lists of felons, deaths, mentally incapacitated, jury notice of address change, and people that have been granted drivers license in other states to the department for the maintenance of the voter file.

Section 25: Section 98.0981, F.S., is amended to:

- Require the department to send the legislature a copy of the statewide database after each election.

Section 26: Section 98.212, F.S., is amended to:

- Clean up language.

Section 27: Section 98.461, F.S., is amended to:

- Allow for a statewide database.

Section 28: Section 100.371, F.S., is amended to:

- Require the number of petitions needed to be filed with the Secretary of State by Feb 1. The petitions are good for 4 years from date on petition. The supervisor shall record

valid petitions in the statewide database. Within 45 days of filing the petitions the financial impact shall be determined.

Section 29: Section 100.001, F.S., is amended to:

- Require the use of census blocks to delineate precincts. Allows supervisors to get a waiver of requirements till 2012.

Section 30: Section 101.043, F.S., is amended to:

- Require each elector to show a current picture ID with voter's signature. The voter shall sign the register or an electronic recording device. If the person is voting for the first time and doesn't have ID they must use a provisional ballot. If they have voted before, they must fill out an affidavit.

Section 31: Section 101.045, F.S., is amended to:

- Allows voters that move within the state to vote in their new precinct even if they have not submitted a change of address prior to election day..

Section 32: Section 101.048, F.S., is amended to:

- Change the word "county" to "state".

Section 33: Section 101.161, F.S., is amended to:

- Change a reference.

Section 34: Section 101.56062, F.S., is amended to:

- Changes the word "precinct" to "polling place". This will save the money without lowering service by allow the supervisors to have one accessible voting system device per location.

Section 35: Section 101.5608, F.S., is amended to:

- Allow other methods of signing the voter registration than with a pen.

Section 36: Section 101.5614, F.S., is amended to:

- Adds accountability by recording absentee and early voting back to the precincts.

Section 37: Section 101.573, F.S., is amended to:

- Within 75 days of a general election will require supervisors to file with the department election results by precinct.

Section 38: Section 101.62, F.S., is amended to:

- Change a reference.

Section 39: Section 101.64, F.S., is amended to:

- Requires supervisor to track the precinct of each absentee ballot.

Section 40: Section 101.657, F.S., is amended to:

- Requires supervisor to track the precinct of each early voting ballots.

Section 41: Section 101.663, F.S., is amended to:

- Delete a section that allows a person who moves after the book closing deadline to vote absentee in the precinct of former residence.

Section 42: Section 101.6921, F.S., is amended to:

- Make the voter subject to showing ID the first time he registers.

Section 43: Section 101.6923, F.S., is amended to:

- Make the voter subject to showing ID the first time he registers and allowing voter to send a copy with ballot.

Section 44: Section 102.012, F.S., is amended to:

- Require supervisors to use list rather than registration books to list electors in a particular precinct.

Section 45: Section 104.013, F.S., is amended to:

- Conform section.

Section 46: Section 106.23, F.S., is amended to:

- Allows Secretary of State to issue statements of interpretation of election laws to the supervisors, canvassing boards, or any other official performing election duties. Allows for an appeal process to the Secretary. Allows for a disagreement to be taken to the courts. Allows for someone the willfully fails to comply with statements to be subject to the penalties contained in 104.051(2)

Section 47: Section 196.141, F.S., is amended to:

- Remove the property appraiser review of county voter registration list.

Section 48: Repeals the following sections:

- 98.055 Registration list maintenance forms.

- 98.095 County registers open to inspection; copies.

- 98.0977 Statewide voter registration database; operation and maintenance.

- 98.0979 Statewide voter registration database open to inspection; copies.

- 98.101 Specifications for permanent registration binders, files, and forms.

- 98.181 Supervisor of elections to make up indexes or records.

- 98.231 Supervisor of elections to furnish Department of State number of registered electors.

- 98.451 Registration; automation in processing.

- 98.481 Challenge to electors.

- 101.635 Distribution of blocks of printed ballots.

Section 49:

- Provides that the bill is effective on January 1, 2006, except as otherwise provided therein.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

2. Expenditures:

   The Division of Elections has proposed 23 new positions for the handling of the operation and maintenance of the statewide voter registration system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

  1. Revenues:

  2. Expenditures:

    The workload for supervisors may actually be reduced with respect to maintenance of their county voter registration lists.

    The supervisors will realize some cost savings attributed to mailing of address confirmations for voter list maintenance. They may have some cost savings from not having to buy some voting machines where more than one precinct meets at one polling place.

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 & 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.