



The Florida Senate

Mandatory Review 2010-214

December 2009

Committee on Ethics and Elections

AGENCY SUNSET REVIEW OF THE DIVISION OF ELECTIONS OF THE DEPARTMENT OF STATE

Statement of the Issue

Under the Florida Government Accountability Act,¹ most state agencies are subject to a “sunset” review process to determine whether the agency should be retained, modified, or abolished. During the 2010 Regular Session, the Legislature will review the Departments of Children and Families (DCF), Community Affairs, Management Services, and State.

The sunset review process for the Department of State (DOS) began in July 2008, when the department submitted its statutorily mandated agency report. The Senate Ethics and Elections Committee is the primary sunset review committee for the Division of Elections of the Department of State, with assistance from the Senate Transportation and Economic Development Appropriations Committee. Recommendations and proposed legislation from this review must be submitted to the Legislature by March 1, 2010, for its consideration during the 2010 Regular Session.

In 2008, the Senate Ethics and Elections Committee recommended in its Issue Brief, 2009-318,² that the committee conduct further research to determine:

- The efficacy of using HAVA monies to fund operational functions of the Bureau of Voter Registration Services; and
- Division compliance with the findings of the 2008 Auditor General follow-up to the 2006 Auditor General Operational Audit.

Both issues are addressed in this report.

Background

Sunset Review

Sections 11.901-920, F.S., are known as the Florida Government Accountability Act. Under this act, most state agencies and their respective advisory committees are subject to a “sunset” review process to determine whether the agency should be retained, modified, or abolished.

Reviews are accomplished in three steps. First, an agency under review must produce a report providing specific information, as enumerated in s. 11.906, F.S., related to:

- Agency performance measures;
- The agency complaint process;
- Public participation in making agency rules and decisions;
- Compliance with state purchasing goals and programs for specified businesses;

¹ §§ 11.901-11.920, F.S.

² *Agency Sunset Review of the Division of Elections of the Department of State*, Issue Brief 2009-318, Florida Senate (October 2009) at < http://www.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-318ee.pdf> (Site last accessed on December 7, 2009).

- Compliance with statutory objectives for each program and activity;
- Program overlap or duplication with other agencies;
- Less restrictive or alternative methods of service delivery;
- Agency actions to correct deficiencies and implement recommendations of legislative and federal audit entities;
- The process by which an agency actively measures quality and efficiency of services it provides to the public;
- Compliance with public records and public meetings requirements;
- Alternative program delivery options, such as privatization, outsourcing, or insourcing;
- Agency recommendations to improve program operations, reduce costs, or reduce duplication;
- The effect of federal intervention or loss of federal funds if the agency, program, or activity is abolished;
- Agency advisory committees;
- Agency programs or functions that are performed without specific statutory authority; and
- Other information requested by the Legislature.

Upon receipt of the agency information, the Joint Legislative Sunset Committee and the House and Senate committees assigned to act as sunset review committees³ must review the information submitted and may request studies by the Office of Program Policy Analysis and Government Accountability (OPPAGA).

Based on the agency submissions, the OPPAGA studies and public input, the Joint Legislative Sunset Committee and the legislative sunset review committees will:

- Make recommendations on the abolition, continuation, or reorganization of each state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees; and
- Make recommendations on the consolidation, transfer, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review.

In addition, the House and Senate sunset review committees must propose legislation necessary to carry out the committees' recommendations.

An agency subject to review is scheduled to be abolished on June 30 following the date of review as specified in s. 11.905, F.S., provided the Legislature finds that all state laws the agency had responsibility to implement or enforce have been repealed, revised, or reassigned to another remaining agency and that adequate provision has been made to transfer certain duties and obligations to a successor agency. If an agency is not abolished, continued, or reorganized, the agency shall continue to be subject to annual sunset review by the Legislature.

The review process for the Departments of Children and Families, Community Affairs, Management Services, and State began in July of 2008, when the departments submitted their respective statutorily mandated agency reports.

The Senate Ethics and Elections Committee is the primary sunset review committee for review of the Division of Elections within the Department of State. The Senate Transportation and Economic Development Appropriations Committee is assisting in this review.

Evaluation Method

Based upon statutory directives and a review of previous sunset reports, Senate staff has developed the following guidelines to be used in a preliminary and subsequent review of the agencies, their programs, and their advisory committees. Guidelines include:

³ Senate Committees for 2010 reviews include: Children, Families, and Elder Affairs; Commerce; Ethics and Elections, and Governmental Oversight and Accountability, together with their respective Appropriations Committee.

- What is the mission of the agency?
- Why is the agency performing this mission?
- How are the programs of the agency funded?
- What would be the impact to public health, safety and welfare should the programs be eliminated or modified?
- What duplication of programs exists within the agency or by other agencies or governments?
- Can these agency programs be provided more efficiently?
- What initiatives has the agency undertaken to increase program efficiency?
- Are there management tools in place to appropriately measure program performance?

Guidelines for Agency Advisory Committees include:

- Was the agency advisory committee created to resolve a problem or provide a service? If so, has the problem been solved or the service provided?
- Would there be an adverse effect on the agency if the advisory body were abolished?
- Is the advisory body representative of the public and stakeholders impacted by their actions?

The Department of State reports that the Division of Elections has no advisory committees.⁴

Purpose of Interim Project 2010-214

In 2008, the Senate Ethics and Elections Committee recommended in its Issue Brief, 2009-318, that the committee conduct further research to determine:

- The efficacy of using HAVA monies to fund the operational functions of the Bureau of Voter Registration Services; and
- Division compliance with the findings of the 2008 Auditor General follow-up to the 2006 Auditor General Operational Audit.

Both issues are addressed in this report.

Findings

HAVA

In October 2002, the U.S. Congress passed and the President signed the Help America Vote Act of 2002 (HAVA).⁵ It initially authorized over \$3 billion dollars over 3 years in federal aid to the states to upgrade antiquated voting equipment, to assist the States in meeting the new election administration requirements, and for other election administration projects. Since 2002, Florida has received over 158 million dollars directly from HAVA disbursements, earned over 18 million dollars in interest on those HAVA funds, and has augmented these monies with required state matching funds of over 7 million dollars, boosting the Department of State's total HAVA fund receipts to over 184 million dollars since 2003.

⁴ Dep't of State Sunset Review Agency Report to the Legislature, July 2008. Pgs. II-23-38.

⁵ H.R. 3295 (2002) [Enrolled].

DEPARTMENT OF STATE DIVISION OF ELECTIONS HAVA FUNDS RECEIVED STATE FISCAL YEARS 2003-04 THROUGH 2008-09	HAVA FUNDS RECEIVED
Title I, Section 101 -- Election Administration Improvements Payments (2003)	14,447,580
Funds can be used for voter education, poll worker training, training election officials and improvement of federal elections.	
Title I, Section 102 -- Replacement of Punch Card & Lever Voting Systems (2003)	11,581,377
Funds were used to reimburse the state for funds provided to counties to replace punch card and lever voting equipment.	
Title II, Section 251 -- Requirements Payments (2004)	132,502,091
Funds must be used to meet the requirements of Title III which include: Development of a statewide voter registration system and voting systems that meet the requirements of HAVA. These funds may be used for improvement to the administration of Federal elections after the state has met the requirements of Title III. Florida certified to the U.S. Election Assistance Commission (EAC) that it had met all of the Title III requirements in August 2006.	
State Match - Deposited through 6-30-09	7,365,706
Interest Earned through 6-30-09	18,623,888
TOTALS	184,520,642

Source: FL Dep't. of State

HAVA was, at least in part, a response to circumstances surrounding the 2000 U.S. presidential recount and the subsequent problems experienced in two of Florida's largest counties during the September 2002 primary election. Many of the key components of the federal HAVA legislation reflect the reforms adopted by the Florida Legislature in the Florida Election Reform Act of 2002, and subsequent legislation.

For Florida, some of the more important substantive requirements of HAVA included insuring that every polling place had technology allowing individuals with a disability to cast a secret and independent ballot and the creation of a statewide voter registration system to serve as the official registration record for all federal elections. This system, for the first time, cross-referenced driver's license and social security administration data to confirm the identities of persons registering to vote.

Since 2002, the HAVA funds received by Florida have been primarily expended for the design, development, and operation of the new statewide voter registration system, purchasing and locating one disability-friendly, touch screen voting system with audio ballot capacity in every polling place in the state, and purchasing almost 28 million dollars of voting equipment for the statewide transition to paper ballots in 2007. HAVA monies have also been used to fund certain operational functions of the Division of Elections. It is this utilization of HAVA monies upon which we will focus.

There are three sources of funding provided by HAVA to improve the administration of federal elections in the states and to meet the other substantive requirements of the act. Those sources are found in Section 101, Section 102, and Section 251 of HAVA.

The funds Florida received under Section 102 could only be used for the purpose of replacing punch card and lever voting systems with HAVA compliant voting systems. Florida, in 2003, used HAVA dollars to reimburse

the general revenue fund over 11.5 million dollars the state earlier provided counties to replace their punch card and lever voting equipment.

Section 101 funds received by Florida may be used to provide voter education, poll worker training, and the training of election officials, as well as the improvement of the administration of federal elections. States are also permitted to use the HAVA monies comprising the Section 251 funds to meet the substantive requirements of the act, including creation and implementation of a statewide voter registration system, and for the improvement of the administration of federal elections. From fiscal year 2003-2004 through fiscal year 2008-2009, over 60 million HAVA dollars were sent to Florida counties from Section 101 and 251 monies, including over 25 million dollars for the purchase of disability compliant voting systems.

A significant amount of the HAVA monies, however, have been used internally by the Department of State for the “improvement of federal election administration.” These HAVA dollars have been directed to the Bureau of Voter Registration Services (BVRS) which was established in 2005 to meet HAVA’s requirement for the establishment of a single, official, centralized, interactive computerized statewide voter registration system. Almost 34 million dollars have been expended for the development, implementation, and maintenance of the Florida Voter Registration System (FVRS) and other bureau functions since 2003. During that same period, additional HAVA monies totaling almost 6 million dollars have been used to fund a position in the office of the division director, fund a portion of the budget for the Bureau of Voting Systems Certification, and for other operations in the Division of Elections.

**DEPARTMENT OF STATE
DIVISION OF ELECTIONS
HAVA FUNDS EXPENDED
STATE FISCAL YEARS 2003-04 THROUGH 2008-09**

EXPENDITURES DURING FY 2003-09	TRANSFER TO STATE	FLORIDA VOTER REGISTRATION SYSTEM (FVRS) EXPENDITURES BY FISCAL YEAR.	EXPENDITURES FOR OPERATING DIVISION OF ELECTIONS BY FISCAL YEAR	HAVA FUNDS DISBURSED TO FLORIDA COUNTIES	BALANCE AS OF 06/30/09
Expenditures During FY 2003-04		1,888,294	422,624	2,976,755	
Expenditures During FY 2004-05		11,857,953	426,604	14,499,982	
Expenditures During FY 2005-06		11,064,453	496,229	18,783,288	
Expenditures During FY 2006-07		3,087,694	1,318,413	3,654,770	
Expenditures During FY 2007-08		2,912,102	1,396,961	17,598,751	
Expenditures During FY 2008-09		2,963,984	1,633,264	2,685,123	
TOTALS	24,093,750	33,774,480	5,694,095	60,198,669	60,759,648

Source: FL Dep’t. of State

The significance of this HAVA fund spending is profound since continued federal HAVA funding is problematic. The department only anticipates receipt of approximately 6 million dollars of additional HAVA and state matching funds in fiscal year 2010-2011, and none thereafter. Election reform is always ongoing, but the bulk of election administration improvements nationwide have been completed. Florida is unique and, in this economic climate, fortunate in having significant HAVA funds on hand as a result of its prompt self-funded reform action after the 2000 election prior to congressional adoption of HAVA. In addition, county funding of certain election reforms softened the state's fiscal burden; however, the day of reckoning is rapidly approaching. The department estimates future annual expenditures of almost 9 million dollars from these funds for division operations. The department consequently forecasts depletion of remaining HAVA funds during fiscal year 2017-2018. Any additional legislative spending mandates would hasten HAVA fund depletion. The chart below details the current projected HAVA fund balance and annual estimated expenditures.

DEPARTMENT OF STATE HELP AMERICA VOTE ACT (HAVA) HAVA PROJECTED REVENUE VS. ESTIMATED EXPENDITURES	PROJECTED HAVA FUNDS INCLUDING STATE MATCH AND INVESTMENTS	ESTIMATED EXPENDITURES PER FISCAL YEAR
CASH BALANCE - JUNE 30, 2009	60,753,898	
ESTIMATED ANNUAL COSTS BASED ON FY 2009-10 APPROPRIATION		8,670,916
PROJECTED REVENUE/ESTIMATED EXPENDITURES	60,753,898	8,670,916
PROJECTED FUND BALANCE BY FISCAL YEAR		ESTIMATED ANNUAL EXPENDITURES
FY 6-30-09 Cash Balance		60,753,898
Additional HAVA Funds Received July 2009		6,477,573
FY 2009-10 Estimated Expenditures		(8,670,916)
<i>Projected Balance as of June 30, 2010</i>		58,560,555
FY 2010-11 Estimated Expenditures		(8,670,916)
Anticipated additional HAVA Funds		5,632,672
Anticipated additional State Matching Funds		296,456
<i>Projected Balance as of June 30, 2011</i>		55,818,767
FY 2011-12 Estimated Expenditures		(8,670,916)
<i>Projected Balance as of June 30, 2012</i>		47,147,851
FY 2012-13 Estimated Expenditures		(8,670,916)
<i>Projected Balance as of June 30, 2013</i>		38,476,935
FY 2013-14 Estimated Expenditures		(8,670,916)
<i>Projected Balance as of June 30, 2014</i>		29,806,019
FY 2014-15 Estimated Expenditures		(8,670,916)
<i>Projected Balance as of June 30, 2015</i>		21,135,103
FY 2015-16 Estimated Expenditures		(8,670,916)
<i>Projected Balance as of June 30, 2016</i>		12,464,187
FY 2016-17 Estimated Expenditures		(8,670,916)
<i>Projected Balance as of June 30, 2017</i>		3,793,271
FUNDS WILL BE DEPLETED DURING FY 2017-18 - BASED ON FY 2009-10 APPROPRIATION		

Source: FL Dep't. of State

The recognition that more than half of the funding for the Division of Elections today is derived from HAVA dollars, a funding source which will be depleted during fiscal year 2017-2018, is sobering. If the decision is made to retain the division, by fiscal year 2017-2018, priorities must be examined, replacement funding for these functions identified, or division duties and responsibilities must be shifted to other substantive areas, modified, or some eliminated altogether.

Division Compliance with Auditor General Follow-up Findings

The Auditor General performed an operational audit in 2006 focused upon the Department of State's administration of the Federal Help America Vote Act of 2002, and the effectiveness of selected controls regarding the Florida Voter Registration System, and satisfaction of the requirements for creation of a computerized statewide voter registration system.⁶ The Auditor General performed a follow-up on prior audit findings in 2008, and made the following findings:

- Finding 1: A comprehensive information technology risk assessment of FVRS had been performed and the department was in the process of addressing the risks identified in the risk assessment report. However, the department's written policies and procedures for authorizing access to FVRS needed enhancement and the department had not established written policies and procedures for monitoring and terminating access to FVRS.
- Finding 2: Although some policies and procedures had been developed, the department's information technology governance model continued to lack important provisions relating to the management, use, and operation of FVRS.
- Finding 3: Although the department had put measures in place to help ensure the integrity of data in FVRS, improvements were still needed in the comprehensive check of all felony convictions against all voters.⁷

Response to Finding 1

In response to the first finding, the Department of State took the following corrective actions:

- A. The separation of duties has been mitigated by the addition of extra positions within FVRS. The positions were filled in late 2006, and have allowed for additional separation where previously none was available.
- B. All 67 counties have executed a [sic] MOU [Memorandum of Understanding] with the department that outline[s] the minimum requirements to access FVRS. This is being augmented with the introduction of the specific procedures for county security administration. These procedures are DOSIT-01-06-A006 FVRS County SSA Guide and DOSIT-01-06-A005 Access Controls for FVRS Users. These procedures are currently in draft form and in the approval process.
- C. The department has recently installed a Network Access Control solution to provide detailed traffic auditing and reporting. This will significantly enhance the FVRS security manager's ability to monitor access to critical system components. The security manager is also in the process of producing additional security administration procedures to enhance the effectiveness of the FVRS security environment. Procedure DOSIT-01-06-A005 Access Controls for FVRS Users is in draft form and in the approval process.

⁶ *Dep't of State Help America Vote Act (HAVA) and the Florida Voter Registration System (FVRS) Operational Audit*, Florida Auditor General Report No. 2006-194, pg. 1.

⁷ *Dep't of State Florida Voter Registration System (FVRS) Follow-Up on Prior Audit Findings*, Florida Auditor General Report No. 2008-187, pg. 1.

- D. The FVRS security manager is in the process of developing a detailed security program that addresses department and county access controls within FVRS. This program will address the FVRS users and the county system security administrators. The procedure DOSIT-01-06-A005 Access Controls for FVRS Users is in draft form and in the approval process.
- E. The FVRS security manager has developed a script to monitor application access and to provide alerts when exceptions are noted. This script is completed and in production at this time. The application programs also audit pertinent data changes submitted to the system for processing. These changes are logged by user-id and date/time and are available for reporting and monitoring as needed.
- F. The FVRS security manager is in the process of creating a number of security administration procedures to enhance the access control to FVRS. Specifically these documents are “DOSIT-01-06-A005 Access Controls for FVRS Users”, “DOSIT-01-06-A004 Access Controls for FVRS Machine Access”, “DOSIT-01-06-A007 FVRS County Contact Maintenance”, and “DOSIT-01-06-A006 FVRS County SSA Guide.” These procedures are in draft form and in the approval process.
- G. The infrastructure deficiencies addressed by the risk assessment in 2006 identified the need for protection against the interruption of power and/or against generated or induced electromagnetic radiation and protection against ambient temperature and humidity fluctuations. The DCF data center to which the DOS data center moved in the fall of 2007 has provided significant improvements in the protection against the interruption of power, against generated or induced electromagnetic radiation, and against ambient temperature and humidity fluctuations. The new facility has also significantly enhanced the physical security controls of the FVRS system.⁸

Since the department’s first response to these findings, six of the seven responses outlined above have been completed by the department.⁹ Response C has not been completed. With regard to response C, the department explained that

[t]he Network Access Control Solution did not perform as expected therefore the project was cancelled. We are currently seeking a new solution. Additional security procedures have been created to enhance the effectiveness of the FVRS security environment. Procedure DOSIT-01-06-A005 Access Controls for FVRS Users has been completed to address this issue.¹⁰

With regard to the risk assessment report addressed in Finding 1, the department provided the following response:

The department completed a risk assessment for the FVRS system and delivered the risk assessment to the Office of Information Security on November 13, 2008. The department has in draft form the following procedures that address county and department employee authorization. These procedures are currently moving through the approval process:

- A. “DOSIT-01-06-A005 Access Controls for FVRS Users” - This document covers all aspects of access to FVRS as a user, especially Department of State users. It also provides instructions for State Security Administrators as they assist County System Security Administrators (SSA’s). This procedure also defines monitoring and audit requirements, including periodic production of user reports that are sent to County SSA’s on a periodic basis.
- B. “DOSIT-01-06-A004 Access Controls for FVRS Machine Access” - Procedure addresses access to the machines that support the FVRS functions. This affects about a dozen people who,

⁸ Dep’t of State, Schedule IX: Major Audit Findings and Recommendations: Budget Period 2010-2011, pgs. 1-4.

⁹ *Id.* at pg. 4.

¹⁰ *Id.*

according to the FVRS System Security Plan are, Systems/Network Administrators, Applications/Database Administrators, or Security Administrators.

- C. “DOSIT-01-06-A006 FVRS County SSA Guide” - In addition to describing the specific tasks of adding and removing users from the FVRS system, the document provides guidance on greater security policy issues and references the existing Memorandum of Agreement to continue to establish ground rules for development of an overall Interagency Information Security Program. It also specifies a required response to the periodic user reports that are prepared by the FVRS Info Sec Admin.¹¹

Since the department’s response, it has completed the procedures outlined in A, B, and C above.¹²

Response to Finding 2

Regarding finding 2, the department gave the following response:

- A. The department has completed a draft of the county SSA guide that is currently under review by the counties. This document provides the guidelines for FVRS security administration in the counties.
- B. The department is in the process of developing a security and awareness training program.
- C. The department is in the process of creating a disaster recovery plan that includes FVRS.
- D. The department has implemented a process to monitor and review the access audit logs to identify specific unauthorized access attempts to penetrate the system and to identify any unauthorized procedures performed by authorized users. A script is now in production that produces a daily report of failed access attempts to the FVRS transaction system. All members of the FVRS security team receive email alerts with regard to this matter.
- E. The department has completed the transition of all 52 employees associated with FVRS to positions of special trust. These positions have all had the FBI Level II check completed.¹³

Since the department’s response to finding 2, it has completed all of the procedures outlined above, except for C. The department is currently working on its disaster recovery plan that includes FVRS.¹⁴

Response to Finding 3

The department continues to evaluate systematic felon matching and is working with different agencies involved with the reporting of criminal felony history to enhance data exchanges. The completion of the new workflows will be critical to an analysis of a comprehensive match process. It is important to note that the department has measures in place to systematically match all new and existing registrations that are updated or otherwise changed against felony conviction files. Furthermore, the entire voter registration list is matched against all new felony or changed felony records reducing the number of registrants who have not been matched. These two processes and the gradual attrition of voters due to movement or deceased status will continue to reduce the number of registrants who may not have been initially matched against the felon file.¹⁵

¹¹ *Id.* at pgs. 3-4.

¹² *Id.* at pg. 5.

¹³ *Id.* at pg. 5.

¹⁴ *Id.* at pg. 6.

¹⁵ *Id.* at pg. 7.

Recommendations

Recommendation #1

The Legislature should retain the Division of Elections of the Department of State since programs and functions of the division are not currently duplicated by any other agency of Florida government.

Recommendation # 2

The Legislature should recognize and address the Department of State's anticipated future use of HAVA monies to ameliorate the funding needs of the Division of Elections, especially in light of anticipated HAVA funds depletion during fiscal year 2017-2018.

Recommendation # 3

The Legislature should continue to follow-up with the department regarding its implementation of its response to the Auditor General's 2008 follow-up to its 2006 audit by:

- Confirming when a solution is found to provide detailed traffic auditing and reporting given that the department's Network Access Control Solution did perform up to standards.
- Confirming when a disaster recovery plan is created that includes FVRS.
- Continued monitoring of the department's systematic felon matching program.