

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1673
SPONSOR(S): Kottkamp
TIED BILLS:

Second Primary Election

IDEN./SIM. BILLS: CS/SB 1268, SB 1956

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---------------------------------|----------|----------|----------------|
| 1) Ethics & Elections Committee | 8 Y, 3 N | Mitchell | Mitchell |
| 2) State Administration Council | 7 Y, 1 N | Mitchell | Bussey |
| 3) _____ | _____ | _____ | _____ |
| 4) _____ | _____ | _____ | _____ |
| 5) _____ | _____ | _____ | _____ |

SUMMARY ANALYSIS

In 2003, the Legislature suspended the second primary election for the 2004 election cycle. Without further legislative action, the second primary is slated to return on January 1, 2006, for the fall 2006 election cycle.

HB 1673 would permanently repeal the second primary election in Florida. The bill also makes conforming changes to the campaign reporting schedules to account for the repeal of the second primary.

The bill is effective January 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to affect any House principles.

B. EFFECT OF PROPOSED CHANGES:

Background –

In 2003, the Legislature suspended the second primary election for the 2004 election cycle. (s. 30, ch. 2003-415, Laws of Fla; HB 29B). Without further legislative action, the second primary is slated to return on January 1, 2006, for the fall 2006 election cycle.

Florida has had some form of a second primary or runoff election since the early 1900's. Under Florida's current election scheme, the general election is held on the first Tuesday after the first Monday in November in each even-numbered year. Art. VI, s.5(a), Fla. Const. By law, the second primary is held five weeks prior to the general election. s. 100.091, F.S. (the first primary is held four weeks prior to the second primary election. s. 100.061, F.S. (9 weeks before the general election). This schedule provides one of the tightest election timeframes in the United States with three major elections occurring in a nine-week period.

In any primary contest, the two candidates receiving the highest number of votes are placed in a runoff primary election when one of the candidates does not receive a majority of those voting (assuming there are more than two candidates in the race). The candidate receiving a majority of the votes cast in the second primary proceeds to the general election as the nominee of his or her respective party.

Run-off Process –

Voter turn-out in second primary or run-off elections is typically much lower than first primary elections, averaging around 8-10%. While candidates are receiving a majority of votes cast in the run-off election, they may actually receive substantially fewer votes than they received in the first primary. For example, a candidate may receive 35% of a total 10,000 votes cast in the first primary or 3,500 votes (assuming 40% turnout) and then receive a majority 51% of 2,000 votes cast in the second primary or 1,020 votes (assuming 8% turnout).

The State Constitution was amended in 1998 to provide for equal ballot access for minor party candidates and those with no party affiliation, so candidates may now be elected without a majority of the votes cast. Third party candidates only appear on the general election ballot. For example, a 2002 Congressional race, District 5, was decided by a non-majority. In the general election, Ginny Brown-Waite (R) received 47.9% of the votes, Karen Thurman (D) received 46.2%, Jack Gargan (no party affiliation) received 3.4% and Brian Moore (no party affiliation) received 2.4%. Thus, under the current run-off election scheme, candidates must be nominated by a majority of the voters, but may be elected by a non-majority.

Other States -

There are currently ten states that have a second primary election.¹ Those states are primarily southern states: Alabama, Arkansas, Florida, Georgia, Mississippi, North Carolina, Oklahoma, South Carolina, South Dakota and Texas.

Campaign Reports -

Under current law, the filing of campaign reports is tied to primary and general election dates. Reports must be filed on the 32nd, 18th and 4th days immediately preceding the first primary election, and on the 18th and 4th days immediately preceding the second primary and general elections. s. 106.07(1), F.S. Statewide candidates who are participating in public campaign financing,² or statewide candidates who are in a race with a participating candidate must file reports on the 32nd, 25th, 18th, 11th and 4th days prior to the first primary and general elections, and on the 25th, 18th, 11th and 4th days prior to the second primary.

Proposed Situation -

HB 1673 would permanently repeal the second primary election in Florida. The bill also makes conforming changes to the reporting schedules discussed above to account for the repeal of the second primary.

C. SECTION DIRECTORY:

Section 1. Repeals ss. 100.091, 100.096, F.S.

Section 2. Revises the definition of primary election to account for repeal of the second primary election.

Sections 3-23. Makes conforming changes to ss. 97.055, 97.071, 97.081, 99.061, 99.063, 99.095, 99.103, 100.061, 100.081, 100.111, 100.141, 101.252, 101.62, 102.014, 103.021, 103.022, 103.091, 105.031, 105.041 and 105.051, F.S.

Section 24. Amends s. 106.07, F.S., relating to campaign reporting deadlines. Candidates and political committees would still be required to submit reports on the 32nd, 18th and 4th days before the primary, and on the 46th, 32nd, 18th and 4th days before the general election. Candidates participating in the public matching funds program would have to file campaign reports on a weekly basis beginning with the 32nd day before a primary election, and beginning on the 53rd day before a general election.

Section 25. Amends s. 106.08, F.S., relating to campaign contributions. It should be noted that the \$500 contribution limit applies to each election so by repealing the second primary there would only be two election cycles under which to contribute up to \$500 per cycle.

Section 26. Makes a conforming change to s. 106.29, F.S.

Section 27. Provides an effective date of January 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

¹ *Book of the States*, 2002.

² ss.106.30-106.36, F.S.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

2. Expenditures:

Elimination of the second primary would save the state and counties approximately \$13-20 million per election cycle, based upon recent estimates from the supervisors of elections. A recent survey of the supervisors by the Department of State³ on the cost of a stand-alone special election seems to confirm this range in cost. The estimate for the special election is \$18.5 million.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

2. Expenditures:

Elimination of the second primary would save the state and counties approximately \$13-20 million per election cycle, based upon recent estimates from the supervisors of elections. A recent survey of the supervisors by the Department of State⁴ on the cost of a stand-alone special election seems to confirm this range in cost. The estimate for the special election is \$18.5 million.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Election laws are exempt from the mandates provision of s. 18(a), Article VII, of the State Constitution.

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

³ Survey conducted March 2005 with four responses from supervisors lacking at the time of publication.

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IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES