

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 537 Presidential Preference Primary
SPONSOR(S): Rivera and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1010

| DIRECTOR | REFERENCE | ACTION | ANALYST | STAFF |
|----------|---|------------------|---------|----------|
| 1) | Committee on Ethics & Elections | 9 Y, 0 N | West | Mitchell |
| 2) | Economic Expansion & Infrastructure Council | 12 Y, 0 N, As CS | West | Tinker |
| 3) | | | | |
| 4) | | | | |
| 5) | | | | |

SUMMARY ANALYSIS

HB 537 changes the date of Florida's presidential preference primary election from the second Tuesday in March to the first Tuesday in February, or the first Tuesday immediately following the New Hampshire presidential preference primary, whichever occurs first, but no sooner than the second Tuesday in January of the year in which the election is held.

The bill changes the dates for submission of candidate lists by the major political parties to accommodate a change in the primary date.

This bill is effective July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility – The bill is designed to increase Florida’s voice in the selection of presidential candidates of both parties. For the first time in recent history, Florida’s voters will be heard with this change in the law.

B. EFFECT OF PROPOSED CHANGES:

The bill places Florida’s presidential preference primary on January 29, 2008, one week after the current New Hampshire presidential preference primary. The New Hampshire Secretary of State has the ability under New Hampshire law to move up its primary so that it occurs seven days before any other state’s primary. It is possible that the New Hampshire election could be moved up even into late 2007.

New Hampshire Law RSA 653:9 provides:

“The presidential primary election shall be held on the second Tuesday in March or on a Tuesday selected by the secretary of state which is 7 days or more immediately preceding the date on which any other state shall hold a similar election, whichever is earlier, of each year when a president of the United States is to be elected or the year previous. Said primary shall be held in connection with the regular March town meeting or, if held on any other day, at a special election called by the secretary of state for that purpose.”

Early voting in Florida begins on the 15th day before an election.¹ Assuming that the primary is held on January 29, 2008 (one week after the New Hampshire primary), early voting in Florida would begin on January 14, 2008, the same day of the Iowa caucus.² County supervisors of elections (supervisors) can send out absentee ballots as soon as they are printed, following the second Friday in November, the date that this bill would require party delegates to be qualified. The supervisors may begin tabulating absentee ballots four days before election day, but may not release any totals until the polls close at 7 p.m. on election day, January 29, 2008.

Should New Hampshire move up its presidential primary under this bill, Florida’s primary would occur the first Tuesday immediately following the New Hampshire date; however, Florida’s primary would be no earlier than the second Tuesday in January of the year in which the election is held. For the 2008 presidential primary, the date would be January 8, 2008.

Effect of Political Party Rules on a Change in the Primary Date

Republican Party rules are established and adopted at the party convention every 4 years. According to current party rules, if any state has its primary before February 5th, 2008, and *after* the call to the national convention, it may lose up to 90% of its delegates, thereby reducing

¹ s. 101.657(1)(d), F.S. (2006).

² January 14, 2008, is also a state holiday, Martin Luther King Day.

Florida's delegation from 114 to 12 delegates.³ The amount of delegates that Florida would lose may depend on the interpretation of what constitutes a violation of the rules. A reduction in Florida's delegates might prompt the Florida delegation to challenge the delegations from Iowa, Nevada, New Mexico, New Hampshire, and North Carolina who would also be violating the same rule.

Democratic Party rules can be changed between conventions by its Rules & Bylaws committee. On July 22, 2006, the National Democratic Party's Rules and Bylaws Committee recommended the following 2008 primary schedule:

- Iowa Caucus - January 14, 2008
- Nevada Caucus - January 19, 2008,
- New Hampshire Primary - January 22, 2008,
- South Carolina Primary - January 29, 2006, and
- Other states beginning February 5, 2008.

The Democratic National Committee approved this rule on August 19, 2006. The new rules also impose new sanctions on presidential candidates if they campaign in states that do not comply with the new rules. Campaigning is defined as making personal appearances in the state, hiring campaign workers, and buying advertising, etc. They will also suffer a reduction in delegates to the national convention similar to that of the Republican Party.

It is not known if the national parties will change or enforce these rules in order to avoid alienating a pivotal state such as Florida.

Florida is Demographically Representative of the Nation

In the last two presidential elections, Florida has been one of the few states that have closely mirrored the final nationwide results.⁴ This means money spent to win the Florida primary will also benefit candidates in the general election.

While Iowa and New Hampshire may reflect the nation in election outcomes, they don't reflect the nation's ethnic diversity. Iowa and New Hampshire have less than 3% black or Hispanic populations. In fact, New Hampshire's black population is a fraction of 1%. Florida, on the other hand, more closely tracks the nation in its ethnic diversity. The nation is currently 75%

³ Rule 16(2) provides:

If a state or state party violates the Rules of the Republican Party relating to the timing of the selection process resulting in the election of delegates or alternate delegates to the national convention **after** the call to the national convention is issued, then the number of delegates to the national convention from that state shall be reduced by ninety percent (90%), and the corresponding alternate delegates shall also be reduced.

(emphasis added.)

Rule 16(1) provides:

If a state or state party violates the Rules of the Republican Party relating to the timing of the selection process resulting in the election of delegates or alternate delegates to the national convention **before** the call to the national convention is issued, then the number of delegates to the national convention from that state shall be reduced by fifty percent (50%).

(emphasis added.)

⁴ Florida's presidential election results for 2004 were Bush 52% and Kerry 47%. The national results were Bush 50% and Kerry 48%.

white, 12% black and 16% Hispanic – similarly, Florida is 78% white, 15% black and 17% Hispanic⁵.

New Hampshire has the 4th highest medium income in the nation. The average person in New Hampshire earns \$10,000 more income than the average American. Florida is 27th in terms of percentage of people over the age of 25 with a bachelor's degree. Florida is 25th in terms of median home value. New Hampshire has the fewest people in the nation that are below the poverty level. Florida is 20th in terms of poverty level. Florida clearly reflects the demographic diversity of the nation.

C. SECTION DIRECTORY:

Section 1. Amends s. 103.101, F.S., to change the date that the presidential preference primary will be held in Florida to the first Tuesday in February, or the first Tuesday immediately following the New Hampshire presidential preference primary, whichever occurs first, but no sooner than the second Tuesday in January of the year in which the election is held; also makes conforming changes to dates for submission of presidential candidates to the Secretary of State.

Section 2. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill should have a positive effect on any local sales tax, rental car and hotel tax revenues.

2. Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill should have a positive effect on sales tax, rental car and hotel tax revenues.

2. Expenditures:

The cost of holding a statewide election at the polls is about \$19 million, traditionally paid by the counties. This would not change under this bill. Some cities have concurrent local elections to save money and may need to coordinate their election dates so that they may continue to realize these cost savings.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Holding Florida's primary earlier in the year is accompanied by a host of economic benefits. The media, candidates, and special interest groups will spend millions of dollars for political advertising, food, lodging, and transportation. The economic benefits to New Hampshire alone

⁵ The percentages, when totaled, exceed 100% because of the method by which the U.S. Census Bureau collects its data. Census figures include categories for "Hispanic White" and "Hispanic Black," thus resulting in some overlap among the classifications.

are currently estimated at over \$250 million dollars.⁶ By comparison, Florida is more than six times larger than the State of New Hampshire.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Election laws are exempt from the mandates requirements of Art. VII, s. 18(a), Florida Constitution.

2. Other:

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

D. STATEMENT OF THE SPONSOR

This statement serves to address two issues raised in the staff analysis for HB 537 related to the Florida presidential preference primary: Challenges to Moving the Primary Date and Effect of Political Party Rules on a Change in the Primary Date.

With respect to challenges involved in moving the primary date, Secretary of State Kurt Browning recently testified before the House Ethics and Elections Committee that the presidential primary dates contemplated in HB 537, under the current condition of holding the New Hampshire primary on January 22nd, do not pose obstacles for implementation by supervisors of elections. If New Hampshire decided to move its primary earlier than January 22nd, it would then possibly be pre-empting the Iowa caucuses currently scheduled for January 14th. Should this highly unlikely scenario crystallize and Florida be placed in a position to move its presidential primary into early or mid-January, then supervisors of elections should make preparations to accommodate potential conflicts associated with holiday functions at churches or community buildings. Supervisors of elections are accustomed to dealing with such potential conflicts under current early voting requirements which overlap weekend days of worship. In terms of the actual election day, any Tuesday from 7:00 am to 7:00 pm, holiday season or not, should not pose an insurmountable obstacle in terms of potential conflicts with existing polling places.

In terms of the effect of political party rules on a change in the primary date, the sponsor of

⁶ "The overall value of primary-related media exposure, in terms of tourism promotion and business development, is \$33 million for one year leading up to the primary...The one-year economic impact of the 2000 primary, including \$33 million in publicity benefits, was \$264 million." Library and Archives of New Hampshire's Political Tradition at the New Hampshire State Library, found at www.nhprimary.nhsl.lib.nh.us.

HB 537 readily concedes that both the Democrat and Republican parties have the authority and ability to sanction Florida if the presidential primary is moved before February 5th. The most practical sanction at the disposal of the Democrat and Republican parties is the reduction of the number of delegates credentialed for their respective national conventions. As most observers of presidential politics would agree, national conventions in the modern era have become pro-forma exercises organized to coronate a pre-determined presidential nominee rather than a genuine selection or nomination process where the outcome is in question. The role of a delegate in a modern day political party convention has been relegated to that of rubber-stamping the decision made in each delegate's respective state during that state's presidential primary. Under these conditions, priority should be placed on the role Florida will play in selecting a presidential nominee rather than on the opportunities for a select few Floridians to attend a national convention.

Finally, it is important to note that Florida, a state which has decided presidential elections and is considered competitive by both major parties, is widely recognized as a leading state for fundraising efforts by presidential candidates. If presidential candidates are going to utilize Florida for the extraction of financial resources that under the current campaign format are utilized in states such as Iowa, New Hampshire and South Carolina, then it should seem reasonable for the people of Florida to expect presidential candidates to also dedicate time and resources campaigning in the State of Florida.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES