

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 12, 1998 Revised: _____

Subject: Election Integrity; Absentee Voting; Voter Registration

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Fox</u>	<u>Bradshaw</u>	<u>EE</u>	<u>Favorable/CS</u>
2.	<u>_____</u>	<u>_____</u>	<u>WM</u>	<u>_____</u>
3.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
4.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

I. Summary:

Committee Substitute for Senate Bill 1402 is an omnibus election bill targeted at reforming Florida’s voter registration and absentee voting system by:

- **Strengthening the Voter Registration Process:** requires applicants to provide more identification information and requires the Department of State to cross-reference the State’s Central Voter File against other databases to insure voter eligibility.
- **Modifying the Absentee Ballot Voting Process:** narrows the qualifications and procedures for requesting, mailing, witnessing, voting, and returning absentee ballots.
- **Enhancing Criminal Penalties:** increases several existing misdemeanors to 3rd degree felonies, and creates a number of new election law crimes as 3rd degree felonies.

The bill is the culmination of the work by the Select Subcommittee on Election Integrity, which concluded that implementation of the National Voter Registration Act (“NVRA”) combined with Florida’s recent changes to the absentee voting law which allows virtually unfettered access to absentee ballots, have increased the potential for election fraud.

This bill substantially amends sections 97.012, 97.021, 97.041, 97.052, 97.053, 97.071, 98.461, 98.471, 100.041, 101.62, 101.64, 101.65, 101.68, 104.012, 104.013, 104.031, 104.045, 104.0515, 104.061, 104.081, 104.24, 104.42, 117.05, 106.25, 106.26, 106.265, 106.27, 196.111, 196.121, of the Florida Statutes, and creates sections 97.056, 98.0975, 101.647, 101.657, 101.66, 104.047, 196.115, of the Florida Statutes.

II. Present Situation:

Florida law allows any eligible voter who is “unable to attend the polls on election day” to vote by absentee ballot. s. 97.021 (1), F.S. (1997). The voter need not give any reason why he or she is “unable” to attend. Additionally, federal law provides that limited categories of voters, most notably military, overseas, elderly, and handicapped voters, have a legal right to vote by absentee ballot.

Issues of voter fraud, with an emphasis on absentee balloting, arose in the 1997 Miami mayoral race and in a 1997 city commission race in Miami Beach. Similar allegations had arisen as early as 1993 in the Hialeah mayoral election. Specific allegations in the Miami mayor’s race include:

- Someone voting on behalf of someone else
- The purchasing or selling of absentee ballots or another’s vote
- Non-City-of-Miami residents voting
- Changing the markings on ballots
- False statements or information being provided with regard to address information and changes of address on voter registrations
- Use of certain addresses within the City as the “new address” for persons not residing within the City for the sole purpose of allowing non-residents to vote in the municipal election
- Voting by absentee ballots under the name of deceased persons
- Voting by non-U.S. citizens

Florida Department of Law Enforcement, *Florida Voter Fraud Issues: An FDLE Report and Observations*, at p. 4 (January 5, 1998). On March 3, 1998, a circuit court in Miami threw out the results of the Miami mayoral election and ordered that a new election be held in 60 days. The court found that one of the City’s voting districts “was the center of a massive, well conceived and well orchestrated absentee ballot voter fraud scheme,” and that the scheme “literally and figuratively, stole the ballot from the hands of every honest voter in the City of Miami.” Final Judgment at 2-3, Case No. 97-25596-CA-09 (March 3, 1998, Fla. 11th Circuit Court). On March 11, 1998, the Florida Third District Court of Appeal agreed with the trial court’s findings, but overturned the order for a new election. *In re the Matter of the Protest of Election Returns*, Case No. 98-507 (Fla. 3rd DCA 1998). The appellate court held that because the fraud affected the outcome of the election, precedent and policy dictated that all the absentee ballots be invalidated and the election decided solely on the machine count. *Id.*

The Select Subcommittee on Election Integrity held hearings in Miami and Tallahassee and received oral and written testimony from a variety of sources, including the Florida Department of Law Enforcement, state attorneys, supervisors of elections, public officials, candidates, and others concerned with the integrity of the voting system. After reviewing all the materials, the Select Subcommittee concluded that the recent changes to voter registration process mandated by Congress in the National Voter Registration Act (“NVRA”) coupled with the changes to Florida’s absentee voting laws have increased the potential for fraud in the election process. Letter from

Senator Latvala to Senator Crist (February 5, 1998). The Select Subcommittee recommended “significant changes” to the voter registration system and the absentee voting process. *Id.* Committee Substitute for Senate Bill 1402 embodies the Select Subcommittee’s recommendations.

The following is a summary of relevant sections of Florida’s voter registration and absentee ballot voting laws:

A. *Voter Registration*

1. **NVRA and Florida Voter Registration Requirements**

The National Voter Registration Act, passed by Congress and signed into law in 1993, requires states to provide opportunities for voter registration in conjunction with obtaining a driver’s license or identification card, by mail, or at voter registration agencies. 42 U.S.C.S. s. 1973gg, *et seq.* The requirements of the NVRA relate only to voter registration for Federal elections. However, the Florida Legislature determined that failure to maintain a single registration system, which allows a person to register once and thereafter be entitled to vote in federal, state, county, municipal and district elections, would result in an unmanageable system and would cause undue confusion to voters. Therefore, the Florida law implements the NVRA requirement for registration to vote in all elections in the state.

The NVRA sets forth the registration application content and format and *prohibits states from requiring notarization or other formal authentication of a registration form.* The forms may require only such identifying information and other information necessary to assess eligibility of the applicant and to administer voter registration and other parts of the election process. In addition, the NVRA contains extensive provisions relating to procedures for maintaining accurate and current voter registration rolls.

The Florida Legislature implemented the NVRA in 1994 (Chapter 94-224, Laws of Florida), which became effective on January 1, 1995. The Florida Voter Registration Act provides opportunities to register to vote by mail, at driver’s license agencies, and at various other voter registration agencies.

a. ***Eligibility Requirements***

In order to register to vote in Florida, a person must be:

- at least 18 years old;
- a citizen of the United States;
- a legal resident of the State of Florida; and
- a legal resident of the county in which that person seeks to be registered.

A person who has been convicted of a felony and has not had his or her civil rights restored or a person who has been adjudicated mentally incapacitated with respect to voting and who has not had his or her right to vote restored is not eligible to register or to vote. s. 97.041, F.S. (1997).

b. Application Content

Recently, Florida's law was revised regarding the voter registration application form and the minimum information required in order for an application form to be complete. Ch. 97-13, s. 26, Laws of Florida. Effective January 1, 1998, an application must include an affirmative indication that the applicant is a citizen of the United States, has not been convicted of a felony or, if convicted, has had his or her civil rights restored, and has not been adjudicated mentally incapacitated with respect to voting or, if so adjudicated, has had his or her right to vote restored. Prior to January, the applicant signed an oath that he or she met these requirements. These items are in addition to the following items which have been required since the original law took effect in January 1995:

- Name
- Legal residence address
- Date of birth
- Signature of the applicant, under penalty for false swearing, that the information is true and subscribing to the constitutional oath. s. 97.053(5), F.S. (1997)

Other information elicited on the voter registration form, but not required for registration, includes:

- Mailing address
- County of legal residence
- Race or ethnicity
- Sex
- Party Affiliation
- Whether the applicant needs assistance in voting
- Name and address where last registered
- Social security number
- Telephone number

c. Application Disposition

The supervisor of elections is required to notify each applicant of the disposition of the applicant's voter registration application. 42 U.S.C.S. s. 1973gg-6(a)(2)(Supp. 1997); s. 97.073, F.S. (1997). The notice must inform the applicant that the application has been approved, is incomplete, has been denied, or is a duplicate of a current registration. If the application has been approved, the voter's name is added to the voter registration rolls and the voter identification card sent to the applicant's mailing address constitutes notice of approval. The NVRA does not prohibit the supervisor from mailing each applicant a verification mailing to confirm the

applicant's address *before* adding the name to the registration records. However, since this would require two mailings, most supervisors of elections do not utilize this option.

2. Residency

There is no statutory definition of residency for purposes of determining whether a voter is or is not a resident of a particular voting district. However, Florida case law and administrative decisions provide that a person's "residency" for voting purposes is where the person intends to maintain a permanent domicile at the time to the exclusion of any other location. *Herron v. Passailaigue*, 110 So.2d 539 (Fla. 1926); Division of Elections Opinion 78-27 (June 2, 1978). Temporary absences from the domicile will not defeat residency if there is an intention to return. Evidence of intent to establish a permanent residence may include a driver's license, tax receipts, receipt of mail, carrying on of activities normally indicative of home life, etc. Division of Elections Opinion 78-27 (June 2, 1978).

3. Privacy Act/Social Security Number Requirement on Voter Registrations

The issue of requiring mandatory social security numbers on voter registration forms arose at the Select Subcommittee's Miami hearing on January 12, 1998. The Florida Voter Registration Application contains a box for the voter to provide his or her social security number, but failure to provide the number will not invalidate the application under Florida law. ss. 97.052(1)(k) and 97.053(5)(a), F.S. (1997).

The provisions of the Federal Privacy Act of 1974 prohibit requiring voters to provide their social security number on registration forms, unless:

- The disclosure was required by federal statute; or
- The disclosure was required pursuant to a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation prior to such date to verify the identity of an individual.

Pub. L. No. 93-579, s. 7, 88 Stat. 1896, 1909 (codified at 5 U.S.C. s. 552a (note) (1989)). Thus, unless authorized by a federal statute or "grandfathered" in, *mandatory* disclosure of social security numbers cannot be accomplished. The Privacy Act does allow the state or local governmental entity to request that the voter voluntarily provide the social security number on the registration form, which Florida does. *Id.*

A related issue arose as to whether the state could compare social security numbers of voters who voluntarily provided them with social security numbers in other databases to identify voters who had become ineligible to vote because of death, felony conviction, adjudication of mental incompetence, or duplicate registration in more than one county. Provided that the "other databases" do not belong to Federal agencies, or to state, local or private organizations specifically created or substantially altered through grant, contract, or agreement with federal agencies, there does not appear to be any legal prohibition against cross-referencing. However,

access to social security numbers and other identifying information in federal databases would be severely restricted through the Privacy Act.

4. Removal of Voters from the Voting Rolls/ Felons and Deceased Persons

Section 98.093, F.S., requires various agencies to submit lists of persons to the supervisor of elections. The Department of Health furnishes monthly lists of the name, address, date of birth, race and sex of each deceased person who was a resident of the supervisor's county. The Clerk of the Circuit Court, at least once a month, furnishes the supervisor the name, address, date of birth, race and sex of each person convicted of a felony during the preceding month, each person adjudicated mentally incapacitated with respect to voting, and each person whose mental capacity with respect to voting has been restored, who was a resident of the supervisor's county. Finally, the United States Attorney is required to provide to the Department of State a listing of persons convicted of a felony in federal court. The Department forwards this information to the supervisor of elections for the county where the offender resides.

Upon receipt of the various lists, the supervisors of elections compare their registration lists to the lists of deaths, felony convictions, and adjudications of mental incapacity *in their own counties*. These persons may be immediately removed from the voter registration rolls. s. 98.065(3), F.S. (1997).

Until recently, there has not been a mechanism to identify voters who may have died, been convicted of a felony or adjudicated mentally incapacitated *in another county*. Effective January 1, 1998, a central voter file was established. s. 98.097, F.S. (1997). This voter file contains the voter registration information for all counties in the state. The central voter file should make it easier to detect duplicate registrations and to identify persons who are ineligible due to death, conviction of a felony and adjudication as mentally incapacitated. However, it is not expected that the central voter file will help detect or prevent fraudulent registrations (for example fictitious registrations or incorrect addresses). *Final Report of the Central Voter File Study Committee*, September, 1995, pp. 20, 22.

B. Current Florida Absentee Voting Law

1. Absentee Elector Qualifications

Any person who is a registered and qualified Florida voter who is unable to attend the polls on election day may cast an absent ballot. ss. 97.021, 101.62, *et seq.*, F.S. (1997). The absentee voter must sign an oath on the back of the absentee ballot mailing envelope swearing that he or she is a qualified elector, is not able to attend the polls, and that he or she will not vote more than one ballot in the election. s. 101.64(1), F.S. (1997). Failure of the voter to sign the back of the absentee ballot mailing envelope will invalidate the ballot. s. 101.68(1)(c)1., F.S. (1997).

Prior to 1996, a registered and qualified voter had to have a specific reason for voting absentee, including that:

- The voter is unable to vote at the polls without another's assistance;
- The voter is an inspector, poll worker, deputy voting machine custodian, deputy sheriff, supervisor of elections, or deputy supervisor assigned to a different precinct than that in which he or she is registered to vote;
- The voter's religion prevents him or her from attending the polls;
- The voter has changed his or her residency to another county in the state after the election books closed;
- The voter will not be in the precinct of his or her residence on election day; or,
- The voter has changed his or her residency to another state and is ineligible to vote in the general election in that state.

In 1996, the Legislature abandoned the above "for cause" requirements for absentee voting. Ch. 96-327, s. 1, Laws of Fla.

2. Requesting an Absentee Ballot

The supervisor of elections may accept a request for an absentee ballot from an elector or any person designated by the elector. s. 101.62(1), F.S. (1997). The request may be made either in person, by mail, *by telephone*, or by use of the federal postcard application (certain voters only). *Id.* This means that virtually anyone with information about the elector may request an absentee ballot by phone for another elector. One request is sufficient to receive a ballot for all elections within a calendar year.

3. Dissemination/Delivery of Absentee Ballots by Supervisors

Upon receipt of a proper request for an absentee ballot, the supervisor must deliver or mail the ballot to the voter. Delivery may take place in a variety of ways. The voter may pick up the ballot in person. The voter may designate someone in writing to pick up the ballot from the supervisor's office in-person; however, the designee is limited to picking up two ballots for non-family members. s. 101.62(4)(b), F.S. (1997). Otherwise, the supervisor must mail the ballot to the voter. *Id.*

If the voter has not specified a particular address at which to receive the ballot in his or her absentee ballot request, the supervisor will mail the ballot to the voter's mailing address as listed on the registration card. This may or may not be the voter's residence address. If the supervisor receives the mailing back marked "undeliverable," the request is considered canceled. s. 101.62(1), F.S. (1997). However, voters frequently specify in their request that the ballot be sent to an address different from the one on file with the supervisor. The Election Code is silent as to whether the supervisor must honor the voter's request, but most have taken the position that they do not have the authority to refuse the request.

This issue of where to mail the absentee ballot came up in the Lee County elections in 1996. The Lee County Supervisor of Elections reported that a local Housing Authority prepared a form for its tenants to sign requesting that the tenants' ballots be mailed to the Housing Authority

office for distribution to the voter by Housing Authority personnel or volunteers. The supervisor of elections, however, mailed the absentee ballots directly to the voters at the voters' residence addresses and the Housing Authority sued. A circuit court in Lee County sided with the Housing Authority and issued a mandatory injunction ordering the supervisor to mail subsequent ballots to the address requested in writing by the individual voters. *Housing Authority v. Young*, Order (October 30, 1996) (Case No. 96-7084CA-LGJ). The circuit court held that the 1996 law limiting the number of absentee ballots a third person could obtain applies only to absentee ballots which are picked-up in person; there is no limitation on the number of ballots which may be mailed to third party groups as directed by the individual voter. *Id.*

However, and quite unusually, the same court issued a subsequent Order "to provide some guidance for the future," stating that the Lee County Supervisor:

[W]ould be within her discretion to prevent a mass mailing of ballots to a particular office that would in fact create ... (a) so called "precinct in fact" that would not provide the adequate protections of the law that the voting process needs and deserves.

Housing Authority v. Young, Order, ¶¶ 2, 10 (May 22, 1997) (Case No. 96-7084CA-LGJ). The circuit court judge expressly acknowledged the fact that the Order was *not binding on the parties* but merely represented the court's current view. *Id.* at ¶ 2. Thus, it is unclear what a circuit court in another jurisdiction would decide if faced with a similar situation. Statutory guidance may be warranted to clarify this situation.

4. Supervised Voting in Assisted Living Facilities and Nursing Homes

In 1996, the Legislature enacted a provision to require supervised absentee voting in certain assisted living and nursing home facilities. s. 101.655, F.S. (1997). The supervisor of elections is required to provide supervised voting upon written request of the facility administrator (provided 5 or more electors at the facility are cited as requesting to vote absentee), or may do so on his or her own upon receiving requests for absentee ballots from voters at the facility.

Under supervised voting, teams of two or more persons designated by the supervisor of elections with representatives of more than one political party (in a general election) deliver ballots to absentee voters and jointly supervise the voting of the ballots. If the elector needs assistance in casting the ballot, the members of the supervising team or another person at the elector's request may assist. The elector must be told that he or she may retain the ballot and vote at a later time outside the presence of the supervisory team.

5. Voting the Absentee Ballot

Enclosed with each absentee ballot mailed or delivered to an elector are two envelopes: a secrecy envelope for the enclosure of the marked ballot and a larger outer mailing envelope bearing the Voter's Certificate. The supervisors are also required to include a separate instructions sheet for voting the ballot. The instructions include statements that the voter's signature and the signature and address of one attesting witness must be included. The attesting

witness must be at least 18 years old, and swear that the elector signed the Voter's Certificate on the absentee ballot mailing envelope in the witnesses' presence. Although the statutes emphasize the importance of all the instructions, only the voter's signature and the signature and address of the attesting witness are mandatory; all other provisions are directory in nature. ss. 101.65 and 101.68(1)(c)1., F.S. (1997); *Boardman v. Esteva*, 323 So.2d 259 (Fla. 1975). The Florida Supreme Court held in *Boardman*:

Unless the absentee voting laws which have been violated in the casting of the vote expressly declare that the particular act is essential to the validity of the ballot ... the statute should be treated as directory, not mandatory, provided such irregularity is not calculated to affect the integrity of the ballot or election.

Id. at 265.

6. Return of Absentee Ballots to Supervisors

An absentee voter may either mail, deliver, or *have delivered* the completed mailing envelope and ballot to the supervisor. s. 101.65, F.S. (1997). This enables third parties, such as vote brokers, to pick-up absentee ballots from voters for delivery to the supervisors and effectively act as an intermediary between the supervisor and the voter.

An elector who has received an absentee ballot but desires to vote in person may return the ballot to the election board in the elector's precinct, whether voted or not. s. 101.69, F.S. (1997). If the elector is unable to return the ballot, he or she may execute an affidavit stating that the absentee ballot has not been voted and then the elector may vote at the precinct. *Id.*

C. Penalties for Election Code Violations

Chapter 104 contains numerous penalties for violations of the Election Code. Some of these penalty provisions can be summarized as follows:

- **s. 104.011 - False swearing; submission of false voter registration information (3rd Degree Felony)**
A person who willfully swears or affirms falsely to any oath or affirmation, or willfully procures another person to swear or affirm falsely to an oath or affirmation, in connection with or arising out of voting or elections, or who willfully submits any false voter registration information is guilty of a 3rd degree felony.
- **s. 104.012(2) - Interference with voter registration (1st Offense: 1st Degree Misdemeanor; Subsequent Offenses: 3rd Degree Felony)**
A person who by bribery, menace, threat, or other corruption, directly or indirectly, influences, deceives or deters any person in the free exercise of that person's right to vote, or attempts to influence, deceive, or deter such person, is guilty of a 1st degree felony for the first offense and a 3rd degree felony for each subsequent offense.
- **s. 104.012(4) - Altering a voter registration**

(1st Degree Misdemeanor)

A person who alters the voter registration application of another person without such person's knowledge and consent is guilty of a 1st degree misdemeanor.

- **s. 104.031 - False declaration to secure assistance in voting
(1st Degree Misdemeanor)**

Any person who makes a false declaration for assistance in voting is guilty of a first degree misdemeanor.

- **s. 104.041 - Fraud in connection with casting vote
(3rd Degree Felony)**

A person perpetrating or attempting to perpetrate or aid in the perpetration of any fraud in connection with any vote cast, to be cast, or attempted to be cast is guilty of a 3rd degree felony.

- **s. 104.045 - Vote selling
(1st Degree Misdemeanor)**

A person who corruptly offers to vote for or against, or refrain from voting for or against, any candidate in return for pecuniary or other benefit, or a person who accepts a pecuniary or other benefit in exchange for a promise to vote for or against, or refrain from voting for or against, a candidate is guilty of a 1st degree misdemeanor.

- **s. 104.0515 - Interfering with or depriving voting rights
(1st degree Misdemeanor)**

Any person who intimidates, threatens, or coerces any other person (or attempts to do the same) for the purpose of influencing their vote, or who, under color of law, applies varying standards within a political subdivision in determining whether a person is qualified to vote, is guilty of a 1st degree misdemeanor.

- **s. 104.061(1) - Corruptly influencing voting
(1st Offense: 1st Degree Misdemeanor; Subsequent Offenses: 3rd Degree Felony)**

Whoever by bribery, menace, threat or other corruption, directly or indirectly, attempts to influence, deceive, or deter a voter in voting, or interferes with him in the free exercise of the voter's right to vote, is guilty of a 1st degree misdemeanor for the first conviction and a 3rd degree felony for subsequent convictions.

- **s. 104.061(2) - Corruptly influencing voting (cont.)
(3rd Degree Felony)**

A person who, directly or indirectly, gives or promises anything of value to another intending to buy that person's or another's vote, or to corruptly influence that person or another in casting his or her vote is guilty of a 3rd degree felony.

- **s. 104.081 - Threats of employers to control employees' votes
(1st Degree Misdemeanor)**

Any employer who discharges or threatens to discharge an employee for voting or not voting, or voting a particular way, in any election is guilty of a 1st degree misdemeanor.

- **s. 104.091 Aiding, abetting, or advising violation of the code
(Same penalty as offender)**

Any person who knowingly aids, abets, or advises the violation of the election code shall be punished in the same manner as the principal offender.

- **s. 104.15 Unqualified electors willfully voting
(3rd Degree Felony)**

Any person who knows that he or she is not qualified to vote and who willfully votes at any election is guilty of a 3rd degree felony.

- **s. 104.16 - Voting fraudulent ballot
(3rd Degree Felony)**

A voter who knowingly votes or attempts to vote a fraudulent ballot, or any person who knowingly solicits or attempts to vote a fraudulent ballot is guilty of a 3rd degree felony.

Effective January 1, 1998, the Department of State is authorized to conduct preliminary investigations into any irregularities or fraud involving voter registration or voting and report its findings to the State Attorney. In addition, the Elections Commission Trust Fund may be used by the Division of Elections to provide rewards for information leading to criminal convictions related to voter registration fraud, voter fraud and vote scams.

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 1402 overhauls and tightens the current registration and absentee voting system to address the potential for fraud and abuse. It creates several new felony crimes and elevates a number of existing election law misdemeanors to 3rd degree felonies. Specifically, the bill does the following:

A. Voter Registration

1) Voter Registration Card; mailing.

The supervisor of elections must send the voter registration card, non-forwardable mail, to the legal residence address listed by the voter on the voter registration application, except mailings to military and overseas voters.

If the voter registration card is returned to the supervisor as undeliverable and the voter has listed a different mailing address on his or her application, the supervisor must mail a notice to the mailing address notifying the voter that the card was returned and that the voter may appear in person at the supervisor's office to pickup the registration card. The elector must provide a driver's license, Florida identification card, or other picture identification, to pickup the

registration card in person. If the supervisor has doubts concerning the identity of the elector or if the elector fails to furnish a picture identification, the supervisor must require the elector to swear an oath as to his or her identity prior to releasing the registration card. The supervisor is required to keep returned voter identification cards on file for 45 days.

2) Residency; homestead.

Committee Substitute for Senate Bill 1402 requires a person to register where he or she claims homestead exemption. If the person does not claim a homestead exemption, the current judicially-created definition of residency will apply. The bill modifies the statewide voter registration application form to include a space for the site of the applicant's homestead, if any. In addition, the bill terminates the homestead of any person who registers to vote other than in the county and precinct where the homestead property is located, and renders such person ineligible to claim a homestead exemption in that location in the subsequent year.

Generally, a person is eligible to register to vote where he or she claims a homestead exemption, although there have been situations where the courts have found that a person with homestead property in one county resided in another for voting purposes. *See, e.g., Rosenthal v. Esquinaldo*, 443 So.2d 281 (3rd Fla DCA 1983) (person was qualified elector of Monroe County notwithstanding fact that he had applied for and received homestead exemption in Dade County); *Op. Att'y Gen. Fla. 58-125 (1958)* (there may be, under unusual circumstances, a separate voting residence and residence for the purpose of homestead tax exemption; ordinarily, they are the same). Although there does not appear to be a legal impediment to defining residency as the place where a person claims their homestead (provided the requirement were appropriately drafted and applied uniformly) it may present some significant practical problems in terms of administration.

3) Photo Identification.

The bill requires an elector voting at the polls to present a driver's license, Florida identification card, or other approved picture identification. If the elector fails to furnish the required identification or if the election worker doubts the identity of the elector, the elector is required to swear an oath attesting to his or her name and the fact that he or she is qualified to vote in the county.

4) Central Voter File; database comparison.

The bill requires the Division of Elections to contract with a private entity for the purpose of annually cross-referencing the Central Voter File against other databases to identify ineligible voters. The Division must forward the names of such voters to the appropriate county supervisors of elections for removal from the registration rolls by August 15 of 1998, and by June 1 of each year thereafter.

5) Voter Registration Form; Florida drivers license or Florida identification card number.

The bill modifies the uniform state voter registration application to *request* the voter's Florida driver's license number or an identification number from a Florida identification card issued under s. 322.051, F.S.

6) Voter Registration Form; Social Security Number.

Committee Substitute for Senate Bill 1402 modifies the uniform state voter registration application to *require* the last 4-digits of the voter's social security number. Currently, the voter's *complete* social security number is *requested* but cannot be *required* because of the Federal Privacy Act. Pub. L. No. 93-579, s. 7, 88 Stat. 1896, 1909 (codified at 5 U.S.C. s. 552a (note)) (1989).

B. Absentee Voting Procedures

7) Absentee Voter Qualifications.

The bill returns to prior Florida law for most absentee voters, narrowing eligibility to voters in the following categories:

- The voter is unable to vote at the polls without another's assistance;
- The voter is an inspector, poll worker, deputy voting machine custodian, deputy sheriff, supervisor of elections, or deputy supervisor assigned to a different precinct than that in which he or she is registered to vote;
- The voter's religion prevents him or her from attending the polls;
- The voter has changed his or her residency to another county in the state after the election books closed;
- The voter may not be in the precinct of his or her residence during the hours the polls are open for voting on the day of the election; or,
- The voter has changed his or her residency to another state and is ineligible to vote in the general election in that state.

However, voters who pick up and vote their absentee ballot in person at the office of the supervisor may continue to vote as provided by current law — if “unable to attend the polls on election day.”

8) Third Party Ballot Requests; telephone requests.

The bill restricts telephone and written requests for absentee ballots to the elector, the elector's immediate family, or the elector's legal guardian.

- (a) ***Identification of Elector*** -- The requester must provide the following elector information: elector's name; address; last four digits of elector's social security number; and, the elector's voter identification number.

- (b) **Identification of Requester** -- The requester must also provide the following information about himself or herself: name, address, social security number, driver's license number (if available), relationship to the elector, and signature (written requests only).

All other requests for absentee ballots must be made *by the elector* in person or in writing.

9) **Ballots; delivery to electors.**

The bill authorizes the following four delivery methods for supervisors to deliver absentee ballots to electors:

- Mail absentee ballots non-forwardable, return-if-undeliverable mail to the elector's mailing address on file with the supervisor, unless the elector is:
 - a) Absent from county and not planning to return before election;
 - b) Temporarily unable to occupy the residence due to natural disaster or emergency;
 - c) In a hospital, assisted living facility, nursing home, short-term medical or rehabilitation facility, or correctional facility,in which case the supervisor shall mail the ballot to any other address designated by the voter.
- Mail absentee ballots forwardable mail to overseas and military voters.
- By personal delivery to the elector.
- By delivery to a third-party designee beginning on the fourth day before the date of the election. Designees are limited to picking up two ballots for electors other than themselves and immediate family members, and are otherwise subject to the requirements prescribed by current law.

10) **Ballot Requests; validity.**

The bill requires the elector's ballot request to specify which elections within the next year for which the elector will be eligible to receive an absentee ballot. Currently, no designation is necessary, with a single request considered valid for all elections within a calendar year.

11) **Ballots; marking.**

Committee Substitute for Senate Bill 1402 requires electors to personally vote the absentee ballot, except electors requiring assistance due to blindness, disability, or inability to read or write.

12) **Ballots; witnessing requirements.**

The bill requires witnessing of absentee ballots by either:

- One notary, supervisor of elections, deputy supervisor, or other officer entitled to administer oaths; or,

- Two registered Florida voters, who are:
 - ▶ limited to witnessing 5 ballots per election; and,
 - ▶ required to include signature, printed name, address, registration ID number, and county of registration on the ballot envelope.

Currently, any person over 18 years of age who provides his or her signature and address may serve as an absentee ballot witness.

13) Ballot Envelope; voter's certificate; instructions.

The bill amends the Voter's Certificate on the absentee ballot envelope and the Instructions to Absentee Electors to provide notice that certain acts constitute a felony and may subject the violator to criminal prosecution and/or monetary penalties.

14) Ballots; return.

The bill restricts the return of absentee ballots to personal delivery by the elector or mail delivery, except that electors unable to return the ballot in person or by mail may designate someone in writing to return their ballot. Designees are limited to returning two ballots per election, other than the designee's own ballot or ballots for the designee's immediate family. Each designee must present the supervisor with a written authorization from the elector and a picture identification.

C. Crimes/Penalties

15) Penalties; enhanced penalties for existing crimes.

The bill increases the misdemeanor penalties for the following existing crimes to 3rd degree felonies:

- Interference with voter registration (s. 104.012(2), F.S.)
- Unauthorized use, possession, or destruction of voter ID card (s. 104.013, F.S.)
- Alteration of registration application (s. 104.012(4), F.S.)
- False declaration to secure voting assistance (s. 104.031, F.S.)
- Vote selling (s. 104.045, F.S.)
- Interfering with or deprivation of voting rights (s. 104.0515, F.S.)
- Corruptly influencing voting (s. 104.061(1), F.S.)
- Threats of employers to control votes of employees (s. 104.081, F.S.)
- Fraudulent use of assumed name in electoral process (s. 104.24, F.S.)

16) Penalties; new crimes.

Committee Substitute for Senate Bill 1402 creates the following as new 3rd degree felonies:

- *Vote brokering (s. 104.047(1))*
- *Requesting ballot on behalf of another without permission (s. 104.047(2))*
- *Persons witnessing more than 5 ballots in an election (s. 104.047(3))*
- *Marking the ballot of another (s. 104.047(4))*
- *Persons returning more than 2 voted absentee ballots to supervisors (other than for themselves or members of their immediate family) (s. 104.047(5))*

17) Penalties; administrative fines.

In addition to criminal penalties for election law violations, CS/SB 1402 extends Chapter 104 jurisdiction to the Florida Elections Commission. Currently, the state prosecutor must bring criminal proceedings in circuit court to enforce most Chapter 104 election violations. The bill also transfers responsibility for collecting fines assessed by the Commission from the State Comptroller to the Department of Revenue.

D. Miscellaneous Provisions

18) Voter Fraud Hotline; provide election fraud education.

The bill requires the Secretary of State to maintain a voter fraud hotline and provide election-fraud education to the public (i.e. public service announcements; voter fraud handbooks).

19) Supervisors; expanded authority.

The bill provides supervisors of elections with specific statutory authority to investigate election fraud (fraudulent registrations and illegal voting) and to report findings to the local state attorney and the Florida Elections Commission. Currently, state prosecutors and the Division of Elections have the authority to investigate election fraud.

20) Signature deterioration; updating old signatures; procedure.

Committee Substitute for Senate Bill 1402 requires supervisors to notify by mail any elector whose ballot is rejected due to a signature variance, and include a voter registration form to be completed and returned by the elector. This procedure will allow the supervisor to update the elector's signature. The elector's failure to return the application will not adversely affect the voter's registration status.

21) Electors; mandatory personal appearance before election officials.

The bill mandates that a person who registers by mail and has not previously voted in the county must vote in person at the polls or the office of the supervisor for the first time, except:

- Military & overseas voters;
- Elderly and handicapped voters; or,

- Voters who are out-of-county and do not plan to return before the day of the election.

22) Charter County Commissioners; terms of office; commencement.

Committee Substitute for Senate Bill 1402 allows the governing board of a charter county to prescribe by local ordinance the date for commencement of the terms of its members, with the latest date for assuming office designated being the first Tuesday following the first Monday in January. Current law requires commissioners to take office within about two weeks of the election. This will provide new commissioners elected at a November general election some time to become familiar with their new duties as a commissioner prior to taking office.

23) Effective Date.

The bill's effective date is July 1, 1998, with a number of exceptions.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Although the bill may result in increased costs to counties, the bill is an election law and is exempt from the requirements of Art. VII, section 18, Fla. Const.

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:

The bill increases the potential fine for several election law violations from \$1,000 (maximum 1st degree misdemeanor fine) to \$5,000 (maximum 3rd degree felony fine). The bill also creates a number of new 3rd degree felony crimes for which a violator would be subject to up to \$5,000 in fines. Finally, the bill also authorizes the Florida Elections Commission to assess a \$1,000 per violation administrative fine where it finds a Chapter 104 violation. However,

since it is unclear how many additional convictions or administrative fines may result from these crimes and violations, the precise fiscal impact is indeterminate.

C. Government Sector Impact:

Recurring

Division of Elections. The division estimates that it will cost between \$4.3 million and \$4.5 million to cross-reference the Central Voter File against other existing databases to identify ineligible voters (felons; deceased; adjudicated mentally incompetent). It estimates roughly an additional \$100,000 to implement and maintain a voter fraud hotline, create a Voter Fraud pamphlet, and provide voter fraud education. The division estimates specific costs as follows:

TYPE	FY 98-99	FY 99-00	FY 00-01
Salaries & Benefits	\$ 35,682	\$ 35,682	\$ 35,682
Other Personnel Services	4,500,000	4,500,000	4,500,000
Expenses	60,864	60,864	60,864
Operating Capital Outlay	3,215	0	0
Total Estimated Costs	\$ 4,599,761	\$ 4,596,546	\$ 4,596,546

Florida Elections Commission. The Florida Elections Commission estimates that handling the additional Chapter 104 violation cases will double its workload, and consequently necessitate a doubling of its budget, which is currently \$774,927 for 1997-98 and estimated at \$868,458 for 1998-99.

Florida Department of Law Enforcement and State Prosecutors. Establishing additional felonies may result in an increase in workload for the FDLE and state attorneys' offices. However, since it is unclear how many additional cases may be prosecuted as a result of creating these new crimes, the precise fiscal impact is indeterminate.

County Supervisors of Elections. The bill will require the supervisors of elections to incur additional expenses to develop software to incorporate the additional information required on the voter registration application and to track first time applicants who have registered by mail. Also, supervisors who have ordered absentee ballot envelopes prior to the effective date of the bill will be required to re-design and order modified ballot envelopes incorporating the additional requirements of the Act. The costs for these items is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
