

# 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.)

BILL: SB 1782

SPONSOR: Senator Latvala and Senator Dyer

SUBJECT: Elections

DATE: March 15, 1999

REVISED: 03/18/99 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Bradshaw</u>	<u>EE</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>FR</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

Senate Bill 1782 addresses a number of elections issues, including: the presidential preference primary date; campaign finance; the allocation of candidate filing fees; voter fraud; and, absentee balloting. Specifically, the bill:

- **Presidential Preference Primary:** Moves the date for Florida’s presidential preference primary from the second to the first Tuesday in March.
- **Candidate Filing Fees:** Deposits filing fees from minor party candidates, judicial candidates, nonpartisan school board candidates, and candidates with no party affiliation into the Elections Commission Trust Fund.
- **Voter Fraud & Absentee Ballots**
  - Voter Registration Cards: Deletes a requirement that voter registration cards be mailed to the voter’s legal residence address shown on the voter registration form.
  - Criminal Penalties: Adds “witnessing” an absentee ballot for compensation to the “vote brokering” restrictions constituting a third-degree felony.
  - Absentee Ballot Signature and Witness Requirements: Modifies the Voter’s Certificate and corresponding instructions in connection with absentee voting and witnessing, requiring the *elector* to sign the Voter’s Certificate and print his or her name, and allowing any person over 18 to *witness* the ballot, provided the witness includes his or her signature, printed name, and address.
  - Return of Absentee Ballots: Deletes a requirement that a designee returning a ballot for an elector provide a *written note* from the elector; requires instead that the designee sign an affidavit attesting to certain facts.
- **Campaign Finance:** Clarifies several provisions of Chapter 106 relating to the definition of “contribution,” limitations on contributions intended to fund independent expenditures, and prohibitions against the use of state workers for campaign purposes.

This bill substantially amends ss. 97.071, 99.092, 101.64, 101.65, 101.68, 101.647, 103.101, 104.047, 105.031, 106.011, 106.071, 106.15, F.S.

## II. Present Situation:

### Presidential Preference Primary

Under current law, the presidential preference primary is held on the *second* Tuesday in March in each year the number of which is a multiple of four. s. 103.101(1), F.S. (1997). In the year 2000, Florida's presidential preference primary is scheduled to be held on Tuesday, March 14th.

Florida's presidential preference primary date was moved to the second Tuesday in March in 1971. Ch. 71-236, s. 2, p. 1306, Laws of Fla. In 1988, sixteen southern states held their primary on the second Tuesday in March, creating a regional southern primary known as "Super Tuesday."

As a result of legislative changes and jockeying among the states, California and New York, along with a number of other states, will hold their presidential preference primary on March 7, 2000. In addition, several western states are considering creating a western regional primary to give that region a greater voice in the nominating process. The target date for this western regional primary is Friday, March 10, 2000. Thus, by waiting until March 14, 2000, to hold its primary, Florida runs the risk of being a 'day late and a dollar short' --- with upwards of 40 percent of the available delegates already committed to a particular candidate by the time Florida voters go to the polls.

### Candidate Filing Fees

Candidates for circuit or county judge not choosing to qualify by the petition method currently pay a filing fee of 3 percent of the salary of the office sought. s. 105.031, F.S. (1997). The filing fee is deposited into the General Revenue Fund of the state.

Likewise, minor party candidates and candidates with no party affiliation are required to pay a filing fee of 3 percent of the salary of the office sought, with the fee being deposited to the General Revenue Fund of the state. s. 99.092(1), F.S. (1997).

Current *general law* provides for the partisan election of school board members. Several charter counties in Florida provide for nonpartisan school board elections based on their charter or special act. General law provides that partisan school board candidates not qualifying by the petition method must pay a filing fee of 3 percent of the salary of the office sought, which is remitted *in toto* to the candidate's party. s. 99.061(2), 99.092(1), F.S. (1997).

However, an amendment to Article IX, Section 4(a), of the Florida Constitution, effective January 5, 1999, now requires school board members to be elected in nonpartisan elections. Therefore, the remittance of filing fees to the candidate's political party can no longer occur. The Legislature can designate by statute where these filing fees should be deposited.

## **Voter Fraud & Absentee Ballots**

In 1998, the Legislature enacted Ch. 98-129, Laws of Fla., as a comprehensive measure to combat voter fraud and abuses in the absentee balloting process highlighted in the 1997 City of Miami mayor's race. Following the enactment of Ch. 98-129, Laws of Fla., the state of Florida law is as follows:

### *Voter Registration Cards*

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. s. 97.071(2), F.S. (Supp. 1998).

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.

This procedure was intended to discourage a person from fraudulently registering to vote at an address different from his or her residence address, in order to qualify as an elector in a certain precinct or election contest. However, the procedure has proven extremely burdensome in some cases. For example, several areas in Florida's more rural counties do not have home mail delivery service, which means the only way for these residents to obtain a voter registration card is to *personally travel to the supervisor's office*. In some areas of Monroe county, this may require an elector to travel over *30 miles* to obtain a voter registration card. This can pose a major obstacle, particularly for the infirm and the elderly.

### *Criminal Penalties*

Chapter 98-129, Laws of Fla., increased several existing criminal penalties for election violations from misdemeanors to third-degree felonies. It also created a criminal penalty for absentee ballot "vote brokering" activities. Except as specifically authorized by law, any person who receives or offers compensation in exchange for "distributing, ordering, requesting, collecting, delivering, or otherwise physically possessing absentee ballots" is guilty of a third-degree felony. s. 104.047(1), F.S. (Supp. 1998). However, the activities proscribed do not include *witnessing* an absentee ballot for compensation.

### *Absentee Ballot Signature & Witness Requirements*

Chapter 98-129, Laws of Fla., made significant changes to the elector and witness requirements on the absentee ballot Voter's Certificate. Under Florida law, an elector voting absentee must include his or her signature and last 4 digits of the voter's social security number on the Voter's

Certificate. s. 101.64, 101.65, F.S. (Supp. 1998). The ballot must be witnessed by a notary or other officer authorized to administer oaths, or a registered Florida voter 18 years of age or older. If the ballot is being witnessed by a registered Florida voter, the witness must include his or her signature, printed name, voter identification number and county of registration, and address.

The federal Voting Rights Act of 1965 prevents state election laws which impact voting rights from going into effect until the United States Department of Justice (“USDOJ”) reviews the law and determines that it will not have a discriminatory effect. Five counties in Florida --- Collier, Hardee, Hendry, Hillsborough, and Monroe --- are subject to this federal “preclearance” requirement under section 5 of the Act. Florida’s former Secretary of State decided not to enforce any section of Chapter 98-129, Laws of Fla., not precleared by USDOJ in *any* of Florida’s counties, in order to maintain uniform election laws throughout the state for the 1998 election cycle.

Focusing on the registered Florida voter witness requirement, the USDOJ refused to preclear Florida’s new ballot signature and witnessing requirements. Thus, the absentee ballots in the 1998 election cycle utilized the old law, requiring the elector’s signature and the signature and address of one witness 18 years of age or older.

### *Return of Absentee Ballots*

Florida law 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 and ballots for members of the designee’s immediate family. Each designee must present the supervisor with a written authorization from the elector and a picture identification. s. 101.647, F.S. (Supp.1998).

In the 1998 election cycle, the requirement that a designee produce a written note from the elector in order to personally return a ballot to the supervisor of elections did not have any practical voter fraud deterrent effect. While supervisors could not accept ballots presented to them by designees without a written authorization from the voter, nothing prevented the designee from simply mailing the ballot for the voter.

## **Campaign Finance**

### *Definitions*

Section 106.011(3), F.S., defines the term “contribution.” The last sentence of the definition exempts “editorial endorsements.” Section 106.011(17), F.S., defines the term “political advertisement.” The last sentence of this definition exempts “editorial endorsements by any newspaper, radio, or television station, or other recognized news medium.

In a recent case at the Division of Administrative Hearings, an administrative law judge (“ALJ”) held in a recommended order that *all* editorial endorsements were exempt from the definition of “contribution,” and that the exemption was not limited by the language “newspaper, radio or television station, or other recognized news medium.” *Florida Elections Commission v.*

*Pasquale*, Case Nos. 98-1543, 98-1544 (DOAH August 25, 1998). Under the ALJ's reasoning, any statement of endorsement representing a person's or entity's support of a candidate or issue could be considered an "editorial endorsement" exempt from the term "contribution," even if done in concert with a candidate. Although the Florida Elections Commission has rejected the recommended order, the term "editorial endorsement" in the definition of contribution should be qualified in statute to avoid creating unintended exemptions to the campaign finance laws.

#### *Contributions Funding Independent Expenditures*

There is an ambiguity in Florida Statutes concerning the amount which a person may contribute to certain political committees supporting or opposing candidates through independent expenditures. Section 106.071(3), F.S., provides that "no person may make a contribution in excess of \$1,000 to any other person, to be used by such other person to make an independent expenditure." Section 106.08(1), F.S., prevents any person from contributing more than \$500 to a political committee which supports or opposes candidates. Thus, it can be argued that a person may contribute \$1,000 to a political committee supporting or opposing candidates through independent expenditures. The ambiguity should be clarified to insure that the \$500 contribution limit in s. 106.08(1), F.S., is not circumvented.

#### *Use of State Workers for Campaign Purposes*

Florida law prevents a candidate for public office from using the services of any officer or employee *of the state* during working hours to further his or her candidacy. s. 106.15(3), F.S. (1997). However, Florida Statutes is silent with regard to the use of other *non-state* governmental employees for such purposes.

### **III. Effect of Proposed Changes:**

#### **Presidential Preference Primary**

The bill moves Florida's presidential preference primary date from the *second* to the *first* Tuesday in March. This would place Florida's primary on March 7, 2000, to coincide with the primaries in New York, California, and several other states. The advantage in moving up the primary date is that it will give Florida voters a greater voice in the nominating process, eliminating the possibility that the nomination will be a foregone conclusion by the time Florida voters go to the polls. The disadvantage is that it may reduce the number and duration of personal visits by the candidates to the Sunshine State, because they would be required to allocate time, effort, and resources between several large prizes --- including California and New York.

#### **Candidate Filing Fees**

Senate Bill 1782 designates that the filing fees from minor party candidates, candidates with no party affiliation, nonpartisan school board candidates, and judicial candidates be deposited into the Elections Commission Trust Fund. This should help alleviate a portion of the budget shortfall the Elections Commission has experienced for the past few years.

## **Voter Fraud & Absentee Ballots**

### *Voter Registration Cards*

The bill repeals the procedure requiring each supervisor of elections to mail a voter registration card to the voter's legal residence address listed on the voter registration form. This should alleviate concerns of supervisors in rural areas and rural voters where home mail delivery service is not available.

### *Criminal Penalties*

Senate Bill 1782 adds "witnessing" an absentee ballot for compensation, or paying somebody else to witness a ballot, to the list of "vote brokering" activities constituting a third-degree felony, except where otherwise provided by law.

### *Absentee Ballot Signature & Witness Requirements*

The bill modifies the current absentee ballot signature and witnessing requirements which were not precleared by USDOJ. The Voter's Certificate and corresponding instructions are amended to require the following:

For the elector ---

- Signature
- Printed name

One Witness, 18 Years or Older ---

- Signature
- Printed Name (must be legible if signature is illegible)
- Address

The requirements that the witness be a Florida registered voter and that the elector include the last 4 digits of his or her social security number have been deleted. Because the bill goes back to the "one witness over 18" requirement which existed prior to the adoption of Ch. 98-129, Laws of Fla., all references to notaries or other officers authorized to administer oaths have been removed.

### *Return of Absentee Ballots*

The bill deletes the requirement that designees returning absentee ballots for electors to the supervisor's office provide a written note from the elector. Instead, the bill adopts a procedure currently in law with regard to *picking up* absentee ballots for electors. The designee is still limited to returning 2 ballots other than the designee's own ballot and ballots for members of the designee's immediate family. But instead of providing a written note from the elector, the designee must provide a picture identification and sign an oath attesting to the fact that:

- the designee is authorized to return the ballot; and,
- the designee has not and will not return more than 2 ballots in the election, except for his own ballot and those of members of his or her immediate family.

## **Campaign Finance**

### *Definitions*

Senate Bill 1782 clarifies the “editorial endorsement” exemption to the term “contribution,” specifically limiting the exemption to “editorial endorsements by any newspaper, radio or television station, or other recognized news medium.” This modification adopts the language from the “editorial endorsement” exemption already embodied in the definition of “political advertisement” in s. 106.011(17)(b), F.S. This modification will pre-empt any argument that groups other than recognized news media can endorse candidates outside the scope of Florida’s campaign finance laws.

### *Contributions Funding Independent Expenditures*

The bill reduces from \$1,000 to \$500 the amount which may be contributed to another person for the purpose of making an independent expenditure. This change insures that contributions to political committees making independent expenditures in support of or opposition to candidates are limited to \$500.

### *Use of State Workers for Campaign Purposes*

Senate Bill 1782 extends the current prohibition against using state workers and officers during working hours for campaign-related purposes, to county, city, and special district officers and employees.

## **IV. Constitutional Issues:**

### A. Municipality/County Mandates Restrictions:

None.

### 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:**

None.

**C. Government Sector Impact:**

Filing fees from judicial candidates which are currently deposited into the General Revenue Fund will be re-directed to the Elections Commission Trust Fund. The filing fees realized from judicial candidates in 1998 were approximately \$754,000. (Filing fee revenue is realized every two years, corresponding with each general election cycle.) The Elections Commission's 1998 budget shortfall was approximately \$553,000, and it has a projected 1999 shortfall as well.

Similarly, filing fees from minor party candidates and no party affiliation candidates currently deposited into the General Revenue Fund will be re-directed to the Elections Commission Trust Fund. The total filing fees from these sources were negligible in 1998, but may increase due to a constitutional amendment which allows minor party candidates and candidates with no party affiliation to gain access to the ballot simply by paying a filing fee.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Ethics and Elections:

Prohibiting a candidate for federal office who withdraws from the race to pursue election to certain state or local offices from "rolling down" those federal funds for use in the state or local election contest.