

STORAGE NAME: h1757.ree.doc
DATE: March 22, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
RULES, ETHICS, & ELECTIONS
ANALYSIS**

BILL #: HB 1757 (PCB REE 01-10)
RELATING TO: Absentee Ballots
SPONSOR(S): Committee on Rules, Ethics, & Elections and Representative Goodlette
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) RULES, ETHICS, & ELECTIONS YEAS 14 NAYS 0
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I. SUMMARY:

This bill clarifies a number of provisions of the Florida Election Code that were amended in the 1998 Voter Fraud Act (Ch. 98-129, Laws of Florida) which were not "precleared" by the United States Department of Justice, or which have proven unnecessary or unworkable in practice. Specifically, the bill:

- Re-defines the term "absent elector" by removing the "for cause" reasons for voting by absentee ballot. This change essentially provides for unrestricted absentee voting.
- Provides that a designee provide the date of birth of an absent elector in lieu of an elector's voter registration number when requesting an absentee ballot for an elector. Removes the requirement that a designee provide the last four digits of an absent elector's social security number and that the designee provide his or her entire social security number when requesting an absentee ballot for an absent elector.
- Modifies the Voter's Certificate and corresponding instructions in connection with absentee voting and witnessing to allow any person over 18 to *witness* an absentee ballot, provided that the witness include his or her signature, printed name and address; to remove the "for cause" reasons for voting by absentee ballot to conform; to provide that the elector affirm that he or she has not and will not vote more than one ballot in that election; to include a space for the elector to indicate the date the certificate was signed; to remove the requirement that an elector provide the last four digits of their social security number; and to remove the requirement that the witness provide a voter identification number and county of registration.
- Modifies the instructions to county canvassing boards regarding the legality of an absentee ballot when canvassing absentee ballots, to conform.
- Removes a misdemeanor criminal penalty for witnessing more than five absentee ballots in any election.
- Repeals provisions of law that limit the means by which an absentee ballot could be returned to the Supervisor of Elections by a designee of an elector.
- Repeals the provision of law that authorizes political parties to appoint certified absentee ballot coordinators for the purpose of witnessing absentee ballots.

This bill does not appear to have a significant fiscal impact on state or local governments.
This act shall take effect January 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

In 1998, the Legislature enacted Ch. 98-129, Laws of Florida, as a comprehensive measure to combat voter fraud and abuses in the absentee balloting process highlighted during the 1997 City of Miami mayoral race. Several of the provisions enacted included procedural changes and other restrictions with respect to absentee voting. The federal Voting Right's 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 law requires the Secretary of State to "maintain uniformity in the application, operation, and interpretation of the election laws." [s. 97.012(1), F.S.] Florida's Secretary of State decided not to enforce any section of Ch. 98-129, Laws of Florida, not precleared by USDOJ in *any* of Florida's counties for the 1998 and 2000 election cycles, in order to maintain uniformity in the application and enforcement of election laws throughout the state.

Following the enactment of Ch. 98-129, Laws of Florida, the state of Florida law is as follows:

Definition of "Absent Elector", (s. 97.021, F.S.)

Prior to the adoption of the Voter Fraud Act in 1998, any person who was "unable to attend the polls on election day" could vote absentee. This law was only about two years old. Until 1997, an elector had to have a statutory reason for voting absentee. Except when mandated by federal law, the ability to vote by absentee ballot, as opposed to the right to vote, is a privilege conferred by statute and not a constitutional right. [*In re Miami Election*, 707 So.2d at 1173] Prior to the change in the law in 1997, Florida's "for cause" statutory reasons for voting absentee were that the elector:

- Was unable without another's assistance to attend the polls on election day;
- Was an inspector, a poll worker, a deputy voting machine custodian, a deputy sheriff, a supervisor of elections, or a deputy supervisor who is assigned to a different precinct than that in which he or she is registered to vote;
- On account of the tenets of his or her religion, cannot attend the polls on the day of the general, special, or primary election;
- **Will 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.

- Had changed his or her residency to another county in this state within the time period during which the registration books had closed for the election for which the ballot was requested.
- Had changed his or her residency to another state and was ineligible under the laws of that state to vote in the general election; however, this pertained only to presidential ballots.

[Ch. 96-57, s. 1, at 45-46, Laws of Florida]. The Voter Fraud Act essentially re-adopted the “for cause” reasons for voting absentee with two exceptions, one of which is notable for purposes of this analysis. Instead of having the elector swear that he or she **will not** be in the precinct during voting hours on election day, the Voter Fraud Act mandates only that the elector swear that he or she **may not** be in the precinct during voting hours.

This change effectively authorizes unlimited absentee voting in Florida. USDOJ precleared the new definition of “absent elector” in s. 97.021, F.S. Unfortunately, the USDOJ refused to preclear the section of the Act amending signature and witnessing requirements to the absentee ballot Voter’s Certificate. The “for cause” reasons for voting absentee which were to be included on the Voter’s Certificate were, therefore, also not precleared. Thus, no elector is currently required to swear that he or she is qualified to vote absentee. And, even if they were, the “for cause” requirements as currently written do not serve any practical purpose since any person can justifiably vote absentee.

Request for Absentee Ballots (s. 101.62, F.S.)

A Supervisor of Elections may accept a written or telephonic request for an absentee ballot from the elector, or, if directly instructed by the elector, a member of the elector’s immediate family, or the elector’s legal guardian. The person making the request must provide certain information including the registration number on the elector’s registration identification card; the last four digits of the elector’s social security number; and his or her entire social security number.

Absentee Ballot Signature & Witnessing Requirements, [ss. 101.64, 101.65, and 101.68(2), F.S.]

Ch. 98-129, Laws of Florida, made significant changes to the elector and witness requirements on the absentee ballot Voter’s Certificate. Florida Statutes now provides that an elector voting absentee must include his or her signature and the last 4 digits of the voter’s social security number on the Voter’s Certificate. [ss. 101.64, 101.65, F.S.] 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 a registered Florida voter is witnessing the ballot, the witness must include his or her signature, printed name, voter identification number and county of registration, and address.

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 and 2000 election cycles 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, [s. 101.647, F.S.]

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 the ballot for the elector. A person who is designated to return an absentee ballot may not return more than two absentee ballots per election, other than his or her own ballot or a ballot of an immediate family member. Each designee must present the supervisor with a written authorization from the elector and picture identification.

In the 1998 and 2000 election cycles, 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.

5-Ballot Witnessing Limit, [s. 104.047(3), F.S.]

Chapter 98-129, Laws of Florida, made it a first-degree misdemeanor for any person other than a notary, other officer authorized to administer oaths, or an absentee ballot coordinator to witness more than five ballots in any single election. The purpose of the 5-ballot witnessing limit was to discourage persons from fraudulently witnessing dozens and, in at least one documented case, hundreds of ballots.

The USDOJ refused to preclear the 5-ballot witnessing limit, citing concerns that minority voters in certain geographic areas might have a more difficult time finding absentee ballot witnesses who were registered voters or notaries.

Absentee Ballot Coordinators, [s. 101.685, F.S.]

Chapter 98-129, Laws of Florida, created an exemption to the 5-ballot witnessing limit. Political parties were authorized to appoint specific numbers of persons as "absentee ballot coordinators," who were then certified by the Division of Elections. Absentee ballot coordinators were entitled to witness an unlimited number of ballots per election. However, this provision is moot since USDOJ's decision not to preclear the 5-ballot witnessing limit effectively means that anyone over 18 can witness an unlimited number of absentee ballots, without having to register as an absentee ballot coordinator.

C. EFFECT OF PROPOSED CHANGES:

Definition of "Absent Elector", (s. 97.021, F.S.)

The bill re-defines "absent elector" to mean any registered and qualified voter who "casts an absentee ballot." This change will clearly allow any registered and qualified Florida voter 18 years of age or older to cast an absentee ballot if it would be inconvenient for the voter to go to the polls. Simplifying the definition will also alleviate space problems on the absentee ballot envelope in bilingual counties.

Request for Absentee Ballots (s. 101.62, F.S.)

The bill allows a designee to provide the date of birth of an elector in lieu of an elector's voter registration number when requesting an absentee ballot for an elector. The Florida State Association of Supervisors of Elections has requested that this change be made, as experience as shown that the majority of people impacted by this provision do not know their registration number. Additionally, the bill removes any reference to social security numbers for purposes of requesting an absentee ballot.

Absentee Ballot Signature & Witnessing Requirements, [ss. 101.64,101.65, and 101.68(2), F.S.]

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

For the elector - - -

- Signature
- Date

Witnesses - - -

- One witness, 18 years or older
- Signature
- Printed name
- Address

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

Return of Absentee Ballots, [s. 101.647, F.S.]

The bill repeals s. 101.647, F.S. Absentee ballots may be returned to the supervisor's office either by mail, or in person. There is no prohibition on the number of absentee ballots that may be returned by any one individual.

5-Ballot Witnessing Limit, [s. 104.047(3), F.S.]

This bill eliminates the first-degree misdemeanor penalty for witnessing more than five ballots in any single election, effectively allowing any person over 18 years of age to witness an unlimited number of absentee ballots.

Absentee Ballot Coordinators, [s. 101.685, F.S.]

The bill repeals the provision of Florida law authorizing absentee ballot coordinators. The purpose of the absentee ballot coordinator provision was to allow political parties to appoint a limited number of persons to witness in excess of five ballots per election, the limit imposed in Ch. 98-129, Laws of Florida. The refusal of USDOJ to preclear the 5-ballot witnessing limit has rendered the absentee ballot coordinator provision moot.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Supervisors will be required to have new absentee ballot envelopes printed incorporating the changes to the Voter's Certificate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Election laws are exempt from the mandates of Art. VII, s. 18, of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Election laws are exempt from the mandates of Art. VII, s. 18, of the Florida Constitution.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

Election laws are exempt from the mandates of Art. VII, s. 18, of the Florida Constitution.

STORAGE NAME: h1757.ree.doc

DATE: March 22, 2001

PAGE: 7

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON RULES, ETHICS, & ELECTIONS:

Prepared by:

Staff Director:

Dawn K. Roberts, Esq.

R. Philip Twogood