

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 448

SPONSOR: Committee on Ethics and Elections

SUBJECT: Absentee ballots

DATE: March 14, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Bradshaw	EE	Favorable/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 448 clarifies or repeals a number of provisions of Florida law amended in the 1998 Voter Fraud Act (Ch. 98-129, Laws of Fla.) which were not “precleared” by the U.S. Attorney General, or which have proven unnecessary or unworkable in practice. Specifically, the bill:

- Re-Defines “Absent Elector”: Provides for unrestricted absentee voting.
- 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 and date the Voter’s Certificate, and allowing any person over 18 to *witness* the ballot provided the witness includes his or her signature and address.
- 5-Ballot Witnessing Limit: Removes a misdemeanor criminal penalty for witnessing more than 5 ballots in any election.
- Absentee Ballot Coordinators: Repeals the provision of law that authorizes political parties to appoint certified absentee ballot coordinators for the purpose of witnessing absentee ballots.
- Requests for Absentee Ballots: Modifies the information required to request an absentee ballot, replacing a requirement that the requestor provide the voter’s registration number with the voter’s date of birth.
- Return of Absentee Ballots: Repeals a provision of law limiting third parties to returning no more than 2 ballots per election, and the corresponding criminal penalty.

This bill substantially amends the following sections of the Florida Statutes: 97.021, 101.62, 101.64, 101.65, 101.657, 101.68, and 104.047. The bill repeals ss. 101.647 and 101.685, Florida Statutes.

I. 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 in the 1997 City of Miami mayoral race. As a result of problems with a few of the Act's provisions, staff was directed to draft an interim report recommending changes. Following the enactment of Ch. 98-129, Laws of Florida, the state of Florida law is as follows:

Absentee Ballot Signature & Witness Requirements

Chapter 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 last 4 digits of the voter's social security number on the Voter's Certificate. s. 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.

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 (USD@) 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 Chapter 98-129, Laws of Florida, not precleared by USD@ in any of Florida's counties for the 1998 and 2000 election cycles, in order to maintain uniform election laws throughout the state.

Focusing on the registered Florida voter witness requirement, the USD@ 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.

Another issue relating to absentee ballot signature requirements but not addressed by the preclearance decision involves overseas and military voters. Pursuant to a federal court order and state rule, the supervisors of elections must accept and count ballots from overseas and military voters received up to 10 days after the general election, provided they are postmarked or signed and dated by the date of the election. However, the absentee ballot Voter's Certificate does not provide a designated space for the voter to fill in the date. In the 2000 election, this led to litigation over a number of military ballots which were invalidated because they did not contain a postmark (military mail is often sent without a postmark) or the date the ballot was voted.

5-Ballot Witnessing Limit

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

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.

Requests for Absentee Ballots

In order to request an absentee ballot, a Florida voter or eligible third party must provide the supervisor of elections with the voter's registration number. When a voter registers to vote, he or she is issued a voter identification card containing a voter registration number. The number and the card serve no practical purpose in Florida law.

This requirement was adopted as part of the Voter Fraud Act of 1998. It has proven problematic since many voters do not keep their voter I.D. cards and do not know their registration number. This may result in voters not being able to obtain absentee ballots.

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 ballots. 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.

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.

Definition of “Absent Elector”

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. Until the law changed 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, 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;
- On account of the tenets of his or her religion, cannot attend the polls on election day;
- Had changed residency to another county in the state after the books are closed for the election;
- For presidential ballots, had changed residency to another state and is ineligible under the laws of that state to vote in the general election; or,
- ***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.

Ch. 96-57, s. 1, at 45-46, Laws of Fla. 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 (assuming none of the other reasons apply), 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. *Any person* who fills out an absentee ballot and Voter’s Certificate in advance of an election can justifiably claim that he or she “may” not be in the precinct on election day, even if he or she has no present intention of being absent at the time he or she fills out the Certificate. It is always possible that someone “may” not be in their precinct on election day --- unexpectedly called out of town on business, need to visit a relative who is suddenly hospitalized in Atlanta, hurricane evacuation, etc. However, there is no judicial or administrative opinion on this point.

USDOJ precleared the new definition of “absent elector” in section 97.021, Florida Statutes. Unfortunately, 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.

II. Effect of Proposed Changes:

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
- Date Signed

One Witness, 18 Years or Older ---

- Signature
- Address

The requirements that the witness be a Florida registered voter or notary 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 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.

Although the Voter's Certificate is amended to direct the voter to indicate the date that he or she signed the Certificate, ballots received prior to the polls closing on election day will not be invalidated if the date is not filled in.

Absentee Ballot Coordinators

CS/SB 448 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 5 ballots per election, the limit imposed in Chapter 98-129, Laws of Florida. However, the USDOJ refused to preclear the 5-ballot witnessing limit, which in effect allows every person to witness an unlimited number of absentee ballots. The USDOJ's actions have rendered the absentee ballot coordinator provision moot.

5-Ballot Witnessing Limit

CS/SB 448 eliminates the first-degree misdemeanor penalty for witnessing more than 5 ballots in any single election, effectively allowing any person over 18 years of age to witness an unlimited number of absentee ballots.

Requests for Absentee Ballots

The bill replaces a requirement that persons requesting absentee ballots provide the voter's registration number with the voter's date of birth.

Return of Absentee Ballots

The bill deletes the provision of law limiting third parties to returning no more than 2 absentee ballots per election for persons other than themselves or members of their immediate family. The limit is essentially unenforceable, since anyone can drop an unlimited number of absentee ballots into a mailbox without anyone else knowing about it. The bill also deletes the corresponding misdemeanor penalty for returning more than 2 absentee ballots.

Definition of Absent Elector

CS/SB 448 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 bi-lingual counties.

III. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

IV. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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

V. Technical Deficiencies:

None.

VI. Related Issues:

None.

VII. Amendments:

None.

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