

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 10, 1998 Revised: \_\_\_\_\_

Subject: Absentee Ballots

	<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</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

Senate Bill 354 provides that absentee ballots mailed to voters must be mailed directly to the voter at the address shown on the voter registration books of the Supervisor of Elections. Exceptions are provided when the ballot is being mailed to the voter at an address outside the county, at a hospital, assisted-living facility, nursing home, short-term medical or rehabilitation facility, or a correctional facility, and the supervisor is satisfied that the mailing of the ballot will not compromise the integrity of the election.

This bill amends section 101.62 of the Florida Statutes.

**II. Present Situation:**

Section 101.62, F.S., provides procedures for requesting and delivering absentee ballots. Absentee ballots may be requested in person, by mail, or by telephone.

During the 1996 Session, the Legislature addressed the absentee ballot sections of the Florida Election Code to provide more uniformity between the counties in the dissemination and canvassing of absentee ballots and to address concerns of fraud. Reports of the Senate Committee on Executive Business, Ethics and Elections and the House Committee on Ethics and Elections indicated that changes were needed to the absentee ballot process, especially in the dissemination of unvoted ballots to third parties. [See *A Report on Absentee and Non-Citizen Voting*, Staff of the Senate Committee on Executive Business, Ethics and Elections (December 1991) and *Fraud in Registration and Voting*, Committee on Ethics and Elections (November 1995)] House Bill 233 (1996) placed restrictions on designees picking up ballots for others. The number of ballots that a person may pick up is limited to two ballots, other than the designee's own ballot and ballots for members of the designee's immediate family. In addition to written

authorization from the voter, a designee picking up another's ballot is required to: provide picture identification; and, must complete an affidavit stating that he has been authorized to pick up the ballot and indicating if the voter is a member of the designee's immediate family.

During the 1996 elections, 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' address 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, 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.

### III. Effect of Proposed Changes:

Senate Bill 354 amends s. 101.62, F.S., to clarify that absentee ballots which are being mailed to voters must be mailed directly to the voter at the address shown on the voter registration books. Exceptions are provided when the ballot is being mailed to the voter at an address outside of the county, to a hospital, assisted living facility, nursing home, short-term medical or rehabilitation facility or correctional facility, *provided*, the supervisor is "satisfied" that mailing the absentee ballot will not "compromise the integrity of the election."

Noteworthy is the fact that a supervisor may only mail an absentee ballot to an address other than the address shown on the registration books if the supervisor "is satisfied" that mailing the absentee ballot "*will not* compromise the integrity of the election." If this provision is interpreted to require a supervisor to make an *affirmative factual determination* that mailing the absentee ballot will not result in a fraudulent or coerced vote, or otherwise jeopardize the integrity of the election, *as a prerequisite to mailing the ballot*, this requirement would, at a minimum, be practically difficult to meet and administratively burdensome for supervisors to implement.

**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:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.