

STORAGE NAME: h3743.er
DATE: March 9, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ELECTION REFORM
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3743
RELATING TO: Elections
SPONSOR(S): Representative Morse
COMPANION BILL(S): HB 3683(c); and SB 1402(c)

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

- (1) ELECTION REFORM
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

HB 3743 provides that holders of a homestead exemption may only be registered to vote in the county and precinct where the homestead property is located. The bill requires termination of a homestead exemption and assessment of back taxes if this provision is violated. An exemption is provided where the homestead is being maintained as the permanent residence of a legal or natural dependent of the owner and the owner resides elsewhere.

HB 3743 requires the last four digits of an applicant's social security number to be included on a voter registration application, as well as on an absentee ballot Voter's Certificate. The bill also revises the uniform statewide voter registration application to conform. Notices of certain penalties are required to be included in the Voter's Certificate.

Changes are also made to the requirements to be a witness to an absentee ballot. Under this bill, absentee ballots must be witnessed by one witness who is either a registered voter in the State of Florida, a notary public, a commissioned officer of the United States military, or a foreign service officer of either the United States Department of State or the United States Information Agency. The bill limits the number of absentee ballots a person can witness per election to two, with exceptions. Witnesses must provide their Florida voter registration number, when applicable, and must print their name. HB 3743 amends the provisions relating to the instructions to absent electors enclosed with each absentee ballot, to conform.

Under this bill, county canvassing boards are required to declare an absentee ballot illegal if it does not include the last four digits of the elector's social security number and the printed name and, when applicable, voter registration number of the attesting witness. The bill provides that an absentee ballot will not be declared illegal if the attesting witness witnesses more than two absentee ballots per election. Provides that witnessing more than two absentee ballots per election, unless exempt, is a misdemeanor of the first degree.

This bill does appear to have a fiscal impact on both state and local governments, although indeterminable at this time.

STORAGE NAME: h3743.er

DATE: March 9, 1998

PAGE 2

HB 3743 would take effect January 1 of the year after the year in which enacted.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Voter Registration

The eligibility requirements for voter registration are prescribed by Article VI, Sections 2, 3 and 4 of the Florida Constitution. Under section 2, Article VI of the State Constitution, “[e]very citizen of the United States who is at least twenty-one years of age and who has been a permanent resident for one year in the state and six months in a county, if registered as provided by law, shall be an elector of that county. Provisions may be made by law for other bona fide residents of the state who are at least twenty-one years of age to vote in the election of presidential electors.” Pursuant to section 3, Article VI of the State Constitution, each eligible citizen shall subscribe to the following oath upon registering: “I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the Constitution of the State of Florida, and that I am qualified to register as an elector under the Constitution and laws of the State of Florida”. Further, no person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until their civil rights have been restored, or their disability has been removed. [Fla. Const. art. VI, § 4(a)].

The United States Congress passed the National Voter Registration Act (NVRA) on April 28, 1993. In order to comply with this law, the State of Florida had to make sweeping changes to its laws regarding voter registration. As a result, the 1994 legislative session passed the Florida Voter Registration Act, which is codified in sections 97.032 - 97.105 of the Florida Statutes. The qualifications to register or vote under the Florida Voter Registration Act are enumerated in section 97.041, F.S.:

- You must be at least 18 years of age;
- You must be a citizen of the United States;
- You must be a legal resident of the State of Florida;
- You must be a legal resident of the county in which you seek to be registered; and
- You must register pursuant to the Florida Election Code.

Regardless of whether they may otherwise be qualified to register or vote, persons who have been adjudicated mentally incapacitated with respect to voting or convicted of a felony by any court of record are not entitled to register or vote, unless their right to vote has been restored pursuant to law. [s. 97.041(2)(a)(b), F.S. (1997)]. Any person who is not registered may not vote. [s. 97.041(3), F.S. (1997)].

No provision of the Florida Election Code defines “legal residency”. However, the Division of Elections, the Attorney General’s office and Florida courts have consistently construed legal residence to mean a permanent residence, domicile, or permanent abode, rather than a residence that is temporary. [See generally, Op. Div. Elect. Fla. 80-27 (August 27, 1980); Opt. Div. Elect. Fla. 93-05 (June 23, 1993); Op. Atty. Gen. 070-97 (August 3, 1970); Bloomfield v. City of St. Petersburg Beach, 82 So.2d 364 (Fla. 1955); and Walker v. Harris, 398 So.2d 955 (Fla. 4th DCA 1981)]. In Bloomfield v. City of St. Petersburg Beach, the Florida Supreme Court held that the “establishment of one’s residence will usually depend on a variety of acts or declarations all of which must

be weighed in the particular case as evidence would be weighed upon any other subject". 82 So.2d at 369 (Fla. 1955). The Bloomfield court stated:

[W]here a good faith intention is coupled with an actual removal evidenced by positive overt acts, then the change of residence is accomplished and becomes effective. This is so because legal residence consists of the concurrence of both fact and intention. The bona fides of the intention is a highly significant factor.

Id. at 368. Therefore, legal residence will be determined on a case-by-case basis by looking to where a person intends to make a home permanent and to whether factual evidence exists to corroborate the intent.

The Department of State is responsible for prescribing a uniform statewide voter registration application which must be accepted for any of the following purposes:

- Initial registration
- Change of address
- Change of party affiliation
- Change of name
- Replacement of voter registration identification card

[s. 97.052(1)(a), F.S. (1997)]. The uniform statewide voter registration application must be designed to elicit the following information from the applicant:

- Full name
- Date of birth
- Address of legal residence
- Mailing address, if different
- County of legal residence
- Race or ethnicity that best describes the applicant
- Sex
- Party affiliation
- Whether the applicant needs assistance in voting
- Name and address where last registered
- Social security number (optional)
- Telephone number (optional)
- Signature of applicant under penalty for false swearing
- Whether the application is being used for initial registration, to update a voter registration record, or to request a replacement registration identification card
- Whether the applicant is a citizen of the United States
- That the applicant has not been convicted of a felony or, if convicted, has had his or her civil rights restored
- That the applicant has not been adjudicated mentally incapacitated with respect to voting or, if so adjudicated, has had his or her right to vote restored

[s. 97.052(2), F.S. (1997)]. The uniform statewide voter registration application must also contain certain statements and notices. [s. 97.052(3), F.S. (1997)].

Federal law does not allow states to require social security numbers on applications. The Privacy Act of 1974 (Public Law 93-579) states that it is unlawful for any federal,

state or local government agency to deny to any individual any right or benefit because such individual refuses to disclose his or her social security number. There is an exception for governmental agencies that were requiring social security numbers prior to the enactment of this law.

Social security numbers have been mentioned as being ideal voter registration identification numbers for the following reasons: (1) essentially everybody has a social security number; (2) each social security number is unique, as the first three numbers are based on the location of the person when the number was first requested and can only be followed by certain numbers or sequences of numbers; (3) social security numbers are difficult to make up, as they are not simply randomly assigned but are based on certain criteria; and (4) using a number that already exists is more advantageous than making up a registration number at the time of registration. [See, Florida House of Representatives, Committee on Ethics and Elections, *Fraud in Registration and Voting*, (November, 1995)]. Nonetheless, since the social security number cannot be required, it cannot be uniformly used as a voter registration number.

Under current law, a voter registration application is considered complete if it contains:

- The applicant's name
- The applicant's legal residence address
- The applicant's date of birth
- An indication that the applicant is a citizen of the United States
- An indication that the applicant has not been convicted of a felony or that, if convicted, has had his or her civil rights restored
- An indication that the applicant has not been adjudicated mentally incapacitated with respect to voting or that, if so adjudicated, has had his or her right to vote restored
- The signature of the applicant swearing or affirming under the penalty for false swearing that the information contained in the registration application is true and subscribing to the oath required by s. 3, Art. VI of the State Constitution and s. 97.051

[s. 97.053(5)(a), F.S. (1997)].

Absentee Ballots

An "absent elector" is defined as "any registered and qualified voter who is unable to attend the polls on election day". [s. 97.021(1), F.S. (1997)]. A voter may request an absentee ballot from the supervisor of elections in the county where he or she is registered to vote. The request may be made by the voter, or a person designated by the voter, and may be made in person, by mail, or by telephone. [s. 101.62(1), F.S. (1997)]. Most absentee ballots are mailed directly to the voters who have requested them. However, some voters go to the supervisor's office to pick up their ballots. In addition, voters can have a designated individual pick up their ballot, with certain limitations. [s. 101.62(4)(b), F.S. (1997)].

After a voter has received and voted the absentee ballot, the voted ballot is inserted into a secrecy envelope. The voter then places the secrecy envelope inside a mailing envelope which is addressed to the supervisor of elections. [s. 101.64(1), F.S. (1997)]. Section 101.64, F.S., prescribes the form of the Voter's Certificate which appears on the

back of the mailing envelope. The voter completes this certificate by swearing or affirming that the voter is a qualified elector in the particular election and that the voter is unable to attend the polls on election day. The voter must also swear or affirm that he or she has not and will not vote more than one ballot in the particular election. The voter affixes his or her signature to the Voter's Certificate. [s. 101.64(1), F.S. (1997)]. Following the space for the voter's signature is a space for a witness to attest to the voter's signature. The witness must be 18 years of age or older and must swear or affirm that the elector signed the Voter's Certificate in his or her presence. In addition to a signature, the witness must also provide their address. [s. 101.64(1), F.S. (1997)]. There is no limit on the number of absentee ballots an individual may witness in any given election.

Section 101.64(2), F.S., requires the Voter's Certificate to be arranged on the envelope so that the signatures of the voter and the witness will be across the seal of the envelope.

Under section 101.65, F.S., the supervisor of elections is charged with enclosing certain instructions with each absentee ballot. The instructions must clearly state that in order for an absentee ballot to be counted, it must include the signature and address of a witness, 18 years of age or older, affixed to the Voter's Certificate and that no candidate may serve as an attesting witness.

When the voted ballot is returned to the supervisor of elections, the supervisor may compare the signature of the elector on the Voter's Certificate with the signature of the elector in the registration books to determine whether the elector is duly registered in the county. [s. 101.68(1), F.S. (1997)]. Signatures of witnesses are not verified by comparing them to signatures in the registration books because their signatures are not necessarily on the books, since witnesses are not required to be registered voters.

The county canvassing board may begin the canvassing of absentee ballots at 7:00 a.m. on the fourth day before the election, but not later than noon on the day following the election. [s. 101.68(2)(a), F.S. (1997)]. To ensure that all ballots are accounted for, the county canvassing board compares the number of ballots in its possession with the number of requests for ballots received to be counted according to the supervisor's file or list. [s. 101.68(2)(b), F.S. (1997)]. If the supervisor has not already done so, the canvassing board must compare the signature of the elector on the Voter's Certificate with the signature of the elector in the registration books to determine the legality of the absentee ballot. [s. 101.68(2)(c)1., F.S. (1997)].

An absentee ballot is considered illegal if it does not include the signature of the elector, as shown by the registration records, and the signature and address of an attesting witness. An absentee ballot is not considered illegal if the signature of the elector or attesting witness does not cross the seal of the mailing envelope. [s. 101.68(2)(c)1., F.S. (1997)]. If the canvassing board determines that a ballot is illegal, it is so noted on the envelope and the ballot is not counted.

In 1975, the Florida Supreme Court retreated from earlier, contradictory opinions relating to absentee ballots. The Court in Boardman v. Esteve determined that insignificant omissions or irregularities appearing on absentee ballots do not void the ballots if the information is sufficient to show that the voter is qualified and registered and that there was no fraud. 323 So.2d 259 (Fla. 1975), cert. denied 425 U.S. 967, 96

S.Ct. 2162, 48 L.Ed.2d 791. In developing the rule regarding how far irregularities in absentee ballots will affect the result of the election, the Court held that “the fundamental inquiry should be whether or not the irregularity complained of has prevented a full, fair and free expression of the public will”. The Court went on to state that 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, or that its omission will cause the ballot not to be counted, 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. The Court cited three factors to be considered by a canvassing board in measuring the effect of irregularities on the validity of absentee ballots:

- The presence or absence of fraud, gross negligence, or intentional wrongdoing;
- Whether there has been substantial compliance with the essential requirements of the absentee voting law; and
- Whether the irregularities complained of adversely affect the sanctity of the ballot and the integrity of the election.

Id. at 269. Therefore, after the Boardman decision strict technical compliance with absentee voting laws is not a requirement for a ballot to be counted by a canvassing board.

The Florida Election Code specifies various penalties for corrupt or fraudulent practices relating to voting. Chapter 104, F.S. sets forth these penalties, which range from first degree misdemeanors to third degree felonies.

Homestead Exemptions

Under Article VII, section 6 of the State Constitution, “[e]very person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law”. The phrase “legally or naturally dependent on the owner” refers to persons to whom the owner is under a legal duty to support, and to persons related by blood to the owner who are, by reason of disability of age, or non-age, physical or mental incapacity, coupled with lack of property means, dependent in fact for support and who have a reasonable expectation of support or some reasonable claim to support. [1939 Op. Atty. Gen. 438].

The term “permanent residence” is defined by statute:

Permanent residence” means that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning. A person may have only one permanent residence at a time; and, once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred.

[s. 196.012(18), F.S. (1997)].

Pursuant to section 196.015, F.S., intention to establish a permanent residence in this state is a factual determination to be made by the property appraiser. The following factors are considered by the property appraiser in making a determination as to the intent of the person claiming a homestead exemption to establish a permanent residence in this state:

- Formal declarations of the applicant
- Informal statements of the applicant
- The place of employment of the applicant
- The previous permanent residency by the applicant in a state other than Florida or in another country and the date non-Florida residency was terminated
- The place where the applicant is registered to vote
- The place of issuance of a license tag on any motor vehicle owned by the applicant
- The address as listed on federal income tax returns filed by the applicant
- The previous filing of Florida intangible tax returns by the applicant
- The place of issuance of a driver's license to the applicant

[s. 196.015, F.S. (1997)]. No one factor is considered conclusive of the establishment or nonestablishment of permanent residence.

An application for homestead exemption must be filed on or before March 1st of each year with the county property appraiser, listing and describing the property for which exemption is claimed and certifying its ownership and use. Ownership of property is established as of January 1st of each year. [s. 196.011(1)(a), F.S. (1997)].

Once an original application for tax exemption has been granted, in each succeeding year on or before February 1st, the property appraiser shall accept from such applicant a renewal application. [s. 196.011(6), F.S. (1997)]. A county may, at the request of the property appraiser and by majority vote of its governing body, waive the requirement that an annual application be made for exemption of property within the county after an initial application is made and the exemption granted. [s. 196.011(9)(a), F.S. (1997)]. Notwithstanding such waiver, refiling of an application will be required when any exempted property is sold or otherwise disposed of, when the ownership changes in any manner, when the applicant for homestead exemption ceases to use the property as his or her homestead, or if the status of the owner changes so as to change the exempt status of the property. [s. 196.011(9)(a), F.S. (1997)].

As soon as practicable after February 5th of each current year, the property appraiser mails to each person to whom a homestead exemption was granted for the preceding year and whose application for exemption for the current year has not been filed as of February 1st, an application and a notice of entitlement to homestead exemption. [s. 196.111(1), F.S. (1997)].

The application forms for homestead exemption require the taxpayer to furnish certain information to the property appraiser for the purpose of determining that the taxpayer is a permanent resident. Such information may include, but need not be limited to, the factors enumerated in s. 196.015, F.S. [s. 196.121(2), F.S. (1997)]. Certain notices are also required to be included in the form. [s. 196.121(3), F.S. (1997)]. Any person who knowingly and willfully gives false information for the purpose of claiming homestead

exemption is guilty of a first degree misdemeanor, punishable as provided in s. 775.082 or by fine not exceeding \$5,000, or both. [s. 196.131(2), F.S. (1997)].

On or before July 1st of each year, the property appraisers must consider all applications for tax exemptions. If the property appraiser determines that the applicant is not entitled under the law to the exemption, a notice of disapproval, with the reasons therefor, must be served upon the applicant. The applicant may appeal to the county value adjustment board. The action of the value adjustment board is final unless the applicant files a proceeding for declaratory judgment in circuit court within 15 days from the date of refusal of the application by the board. [s. 196.151, F.S. (1997)].

B. EFFECT OF PROPOSED CHANGES:

Voter Registration

HB 3743 requires that, for purposes of the residency requirements in registering to vote, holders of a homestead exemption may only register to vote in the county and precinct where their homestead property is located. The bill does provide an exception in those instances where the homestead is being maintained as the permanent residence of a legal or natural dependent of the owner and the owner resides elsewhere. It should be noted that this exception mirrors the exception articulated in s. 6, Art. VII of the Florida Constitution, dealing with homestead exemptions. In order to implement this requirement, the bill requires that the uniform statewide voter registration application be designed to elicit the address of any property for which a homestead exemption has been granted.

Under this bill, providing one's social security number would no longer be an optional feature of the uniform statewide voter registration application but rather, the applicant would be required to provide the last four digits of his or her social security number. Therefore, under HB 3743 the last four digits of an applicant's social security number is required in order for a voter registration application to be considered complete.

With respect to the statements and notices that the uniform statewide voter registration application must contain, this bill requires that a statement be provided to notify the applicant of the requirement with respect to registration and homestead exemption. A statement must also be provided that informs the applicant that a person's homestead exemption will be terminated and back taxes may be assessed, with exception, if a person registers to vote in any precinct other than the one where their homestead property is located.

Absentee Ballots

This bill changes what information is required to be included in the Voter's Certificate which appears on the back of the mailing envelope of an absentee ballot. Under HB 3743, an actual notice of the penalty for committing fraud in connection with voting (a third degree felony) would be added to the Voter's Certificate. The voter would also be required to provide the last four digits of their Social security number in order for their absentee ballot to be counted.

One of the more significant changes that this bill makes deals with witness requirements. Under this bill, a voter still only has to have one witness attest to his or her signature. However, the witness must be either a registered voter in this State, a notary public, a commissioned officer of the United States military, or a foreign service officer of either the United States Department of State or the United States Information Agency. Additionally, witnesses are restricted to witnessing no more than two absentee ballots per election, unless they are a notary public, commissioned officer of the United States military, or a foreign service officer of either the United States Department of State or the United States Information Agency. Presumably, it will be the responsibility of the local supervisors of elections to set up some type of mechanism, such as additional data bases, to keep track of how many ballots an individual witnesses.

To help ensure compliance with this measure, the bill requires the witness to swear or affirm that he or she has not witnessed more than two absentee ballots per election. Further, the bill requires a notice of the penalty for false swearing in connection with voting or elections (third degree felony) to be included in the Voter's Certificate where the witness affixes his or her signature. The bill also requires a notice of the penalty for witnessing more than two ballots per election (a first degree misdemeanor under the bill) to be included in the Voter's Certificate.

This bill provides that a witness to an absentee ballot print their name, along with their signature. This bill also makes it clear that a witness must include their printed name on the Voter's Certificate in order for an absentee ballot to be counted. In addition, witnesses other than notaries public, commissioned officers of the United States military, or foreign service officers of either the United States Department of State or the United States Information Agency would also be required to provide their Florida voter registration number in order for an absentee ballot to be counted. Presently, Florida voter registration numbers are determined and assigned by the local supervisors of elections.

HB 3743 also directs the county canvassing boards to declare an absentee ballot illegal if it does not include the last four digits of the social security number of the elector, as shown by the registration records, and the printed name of an attesting witness and his or her Florida voter registration number, if applicable. The bill makes it clear that an absentee ballot will not be considered illegal if the attesting witness has witnessed more than two absentee ballots in the election.

As stated previously, this bill provides a penalty for witnessing more than two ballots in an election. Any person who knowingly witnesses more than two ballots per election would commit a first degree misdemeanor under this bill, which is punishable by up to one year in prison and/or a \$1000 fine. Again, notaries public, commissioned officers of the United States military, and foreign service officers of either the United States Department of State or the United States Information Agency would be exempt.

Homestead Exemptions

Under this bill, any person who has been granted a homestead exemption in this state who registers to vote in a precinct other than the one in which the homestead property is located, in violation of the voter registration laws, shall have their homestead exemption terminated and shall be subject to assessment of back taxes. An exception is provided if the exemption is maintained as the permanent residence of a legal or natural dependent

of the owner and the owner resides elsewhere. It would be the responsibility of the local property appraisers to provide notice of this provision to those taxpayers that are entitled to a homestead exemption. Taxpayers would be required to provide information regarding voter registration to the local property appraiser.

It will be necessary for the local property appraisers and supervisors of elections to coordinate data bases in order to effectuate the provisions of this bill which deal with voter registration and homestead exemption. While the provision allowing for the assessment of back taxes will arguably take care of those instances where a taxpayer changes their address for voter registration purposes after homestead exemption status has been determined by the property appraiser for the current year and then changes back to their homestead address for voting purposes before January 1st of the next year, it is important to note that the individual could still manage to vote in precincts other than where they actually reside. Unless this bill is interpreted to provide the supervisor of elections the right to deny a voter registration application when the voting precinct does not match with the homestead address, the ability to vote is unaffected and the only penalty is the potential loss of homestead exemption and possible assessment of back taxes.

This bill may present problems for married individuals who own homestead property that is titled in both names and one spouse leaves the marital home, moving to another county or precinct. In this case, prior to any legal dissolution of the marriage and division of property, there may be a question as to the status of the homestead exemption if the spouse registers to vote in the precinct or county of their new home. Under this bill, it will be responsibility of the local property appraiser to make such determinations.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. Local supervisors of elections and property appraisers will have the responsibility to implement the provisions of this bill.

- (3) any entitlement to a government service or benefit?

Yes. Homestead exemption will be terminated if the owner registers to vote in a precinct other than where the homestead property is located, unless they are specifically exempted under the bill.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

- (2) what is the cost of such responsibility at the new level/agency?

Not applicable.

- (3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

Potentially. An individual's property taxes would go up if their homestead exemption was terminated under the provisions of this bill.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not applicable.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. Individuals are prohibited from witnessing more than two absentee ballots per election, which is currently a lawful activity.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. STATUTE(S) AFFECTED:

Amending ss. 97.041, 97.052, 97.053, 101.64, 101.65, 101.68, 196.111, and 196.121, F.S.; creating ss. 104.125, and 196.115, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 97.041, F.S., relating to qualifications to register or vote. Provides that holders of a homestead exemption in this state may only register to vote in the county and precinct in which the homestead property is located. An exception is provided in those instances where the homestead is being maintained as the permanent residence of a legal or natural dependent of the owner and the owner resides elsewhere.

Section 2. Amends s. 97.052, F.S., revising the uniform statewide voter registration application. Requires an applicant to include the address of any property for which the applicant has been granted a homestead exemption and the last four digits of his or her social security number. Provides that the uniform statewide voter registration application contain a statement specifying the eligibility requirement with respect to voter

registration and homestead exemption and a statement informing the applicant that a homestead exemption may be terminated and back taxes assessed, if an applicant registers to vote in any precinct other than the one in which the homestead property is located.

Section 3. Amends s. 97.053, F.S., relating to the acceptance of a voter registration application. Requires the last four digits of an applicant's social security number to be included in their voter registration application in order for the application to be considered complete.

Section 4. Amends s. 101.64, F.S., revising absentee ballot requirements as they relate to the voter's certificate and witnesses. Requires the voter's certificate to include notice of the penalty for fraud in connection with voting and provides for inclusion of the last four digits of the voter's social security number. Provides that a voter's certificate must be witnessed by one witness who is either a registered voter in the State of Florida, a notary public, a commissioned officer of the United States military, or a foreign service officer of either the United States Department of State or the United States Information Agency. Limits the number of absentee ballots a person can witness per election to two, unless the witness is a notary public, a commissioned officer of the United States military, or a foreign service officer of either the United States Department of State or the United States Information Agency.

Section 5. Amends s. 101.65, F.S., relating to instructions to absent electors. Requires that the instructions must include notice that the elector must provide their printed name, last four digits of their social security number and the Florida voter registration number of their witness, when applicable, in order for their absentee ballot to be counted. The instructions must also include notice of the restriction on the number of absentee ballots that may be witnessed per election.

Section 6. Amends s. 101.68, F.S., relating to the canvassing of absentee ballots. Requires county canvassing boards to declare an absentee ballot illegal if it does not include the last four digits of the elector's social security number, the printed name of the attesting witness, and the Florida voter registration number of the attesting witness, when applicable. Provides that an absentee ballot will not be declared illegal if the attesting witness witnesses more than two absentee ballots per election.

Section 7. Creates s. 104.125, F.S., relating to witnessing absentee ballots. Provides that any person who knowingly witnesses more than two absentee ballots per election commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S. Provides that this penalty does not apply to witnesses who are notaries public, commissioned officers of the United States military, or foreign service officers of either the United States Department of State or the United States Information Agency.

Section 8. Amends s. 196.111, F.S., relating to homestead exemptions. Requires property appraisers to notify persons who are entitled to homestead exemptions of the requirement relating to voter registration and the potential loss of homestead exemption.

Section 9. Creates s. 196.115, F.S., relating to the termination of homestead exemptions. Provides that any person granted a homestead exemption in this state who registers to vote in a precinct other than where the homestead property is located shall have their homestead exemption terminated. Further, the elector may be subject to the

assessment of back taxes. Provides an exception if the homestead property is being maintained as the permanent residence of a legal or natural dependent of the owner and the owner resides elsewhere.

Section 10. Amends s. 196.121, F.S., relating to homestead exemptions. Requires homestead exemption forms to elicit certain information from the taxpayer for the purpose of determining residency as that term is defined by statute. Requires homestead exemption forms to provide notice of the requirements relating to voter registration and the potential loss of homestead exemption.

Section 11. Provides an effective date of January 1st of the year after the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

There will be costs associated with revising the uniform statewide voter registration application; absentee ballot Voter's Certificates; instructions to voters that go out with absentee ballots; notifications to property owners regarding homestead exemptions; and homestead exemption application forms. These costs are indeterminate at this time.

2. Recurring Effects:

Florida Department of State: Minimal; can be handled with current staff.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Indeterminate at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

The local supervisors of elections and property appraisers may have to implement new data bases or merge existing ones to implement the provisions of this bill. The cost is indeterminate at this time.

2. Recurring Effects:

Any costs associated with increased responsibilities of local supervisors of elections and property appraisers is indeterminate at this time.

The potential impact of the provision in this bill which would allow for the termination of homestead exemption and assessment of back taxes, with respect to revenues realized, is indeterminate at this time.

Any fines collected under the penalty provision with respect to the witnessing of absentee ballots is potential revenue for the local jurisdiction, although indeterminate at this time.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Potential fine for witnessing more than two absentee ballots per election of up to \$1000. Potential loss of homestead exemption for registering to vote in another precinct other than where the homestead property is located.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This act is exempt from the mandates provision of the Florida Constitution because it is an elections law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None.

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

None.

V. COMMENTS:

In 1997, the Federal Elections Commission (FEC) issued a report on the impacts of the National Voter Registration Act. In this report, the FEC recommended to Congress that the states should require the last four digits of an elector's social security number on voter registration applications. Presently, only the state of Illinois requires the last four digits of an elector's social security number on their voter registration application. Two states request this information: Arizona and West Virginia.

By and large, absentee balloting had its post-revolutionary origin in the need to provide men under arms with some vehicle for voting. In the absence of federal law, states are not required to permit either registration or voting while the voter is absent from his or her residence. Therefore, absentee voting is generally considered to be a privilege granted by a state and not an absolute right. Notwithstanding, the Florida Supreme Court has recognized that times have changed since the absentee voting laws were first enacted in Florida in 1917 and regardless of the original reasons for the enactment of these laws, they must be interpreted in light of modern conditions. Boardman v. Esteve, 323 So.2d 259, 264 (Fla. 1975), cert. denied 425 U.S. 967, 96 S.Ct. 2162, 48 L.Ed.2d 791. As the Court stated in Boardman, "it would be naive of us to fail to recognize that the accommodation of the public has become the primary basis for the privilege of voting absentee". Id.

In light of the foregoing, there has been a trend toward easing requirements for obtaining and casting an absentee ballot. Indeed, organized absentee voter outreach programs have become a major element of many political campaigns. This increase in absentee voting does pose several problems for election officials. The most important of which is maintaining the integrity of the voting process. Unlike with polling place elections, absentee voting does not readily lend itself to public scrutiny. As a result of this "invisibility", the process occasionally gives rise to suspicions that absentee ballots are somehow being used to manipulate election results. These suspicions are all the more likely if the absentee ballot count ends up deciding the election.

In deciding absentee voting procedures the question then becomes, whether to open up the absentee voting process in order to promote greater participation or whether to tightly restrict it in an effort to minimize opportunities for fraud. Historically, the answer to this question has been based on the voter participation rates and the risks of fraud within a particular jurisdiction.

Prior to the 1996 legislative session, Florida law required that an absentee ballot be witnessed by either a notary public or two witnesses 18 years of age or older. There was no requirement that the witness swear or affirm that the voter signed the absentee ballot in his or her presence. HB 233 (Chapter 96-57, Laws of Florida) changed this requirement to what is now current law - one witness who swears or affirms that the elector signed the Voter's

Certificate in his or her presence. According to the staff analysis on HB 233, after the Florida Supreme Court's decision in Boardman v. Esteve, 323 So.2d 259, 264 (Fla. 1975), cert. denied 425 U.S. 967, 96 S.Ct. 2162, 48 L.Ed.2d 791, there was a great deal of disparity in the way the local county canvassing boards canvassed absentee ballots. In some counties, the canvassing boards followed the letter of the law and required absentee ballots to be properly witnessed, while other counties, relying on Boardman, counted absentee ballots which were not properly witnessed. Accordingly, HB 233 (Chapter 96-57, Laws of Florida) was drafted to provide more uniformity between the counties in the dissemination and canvassing of absentee ballots and to address concerns of fraud.

Because the Boardman court did not feel that the laws relating to absentee ballots expressed a clear legislative mandate, HB 233 clarified that an absentee ballot must be signed by the voter and witnessed by one person 18 years of age or older. In addition, the law made it clear that an absentee ballot must contain the signature and address of a witness to be valid. Apparently, requiring a witness to swear or affirm that the voter signed the ballot in his or her presence was considered as sufficient as requiring an absentee ballot to be witnessed by either a notary or two witnesses.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:
Prepared by:

Legislative Research Director:

Dawn Roberts

Clay Roberts