

STORAGE NAME: h3743s1z.er

****FINAL ACTION****

DATE: May 12, 1998

****SEE FINAL ACTION STATUS SECTION****

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

BILL #: CS/HBs 3743, 3941 (1st Engrossed), (Passed as CS/SB 1402 (2d Engrossed) by Sen. Latvala and others)

RELATING TO: Elections

SPONSOR(S): Committee on Election Reform, Reps. Morse, Meek and others

COMPANION BILL(S): CS/HB 3683(s); HB 3941(c); HB 3945(c); CS/SB 1402(s); SB 1792© & SB 2192(c)

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

- (1) ELECTION REFORM (GRC) YEAS 9 NAYS 0
- (2) CRIME AND PUNISHMENT (JC) YEAS 8 NAYS 0
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

This act became law without the Governor's signature on May 22, 1998. (Chapter 98-129, Laws of Florida)

II. SUMMARY:

CS/HBs 3743, 3941 [Passed as CS/SB 1402 (2d Engrossed)] is an omnibus election bill targeted at reforming Florida's voter registration and absentee voting system by:

- **Strengthening the Voter Registration Process:** requires applicants to provide more identification information and requires the Department of State to cross-reference the State's Central Voter File against other databases to insure voter eligibility.
- **Modifying the Absentee Ballot Voting Process:** narrows the qualifications and procedures for requesting, mailing, witnessing, voting, and returning absentee ballots.
- **Enhancing Criminal Penalties:** increases several existing misdemeanors to third degree felonies, and creates a number of new election law crimes as third degree felonies.

This act does have a significant fiscal impact on both state and local governments.

The act takes effect on July 1, 1998, unless otherwise specified.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Florida law allows any eligible voter who is "unable to attend the polls on election day" to vote by absentee ballot. [§ 97.021 (1), F.S. (1997)]. The voter need not give any reason why he or she is "unable" to attend. Additionally, federal law provides that limited categories of voters, most notably military, overseas, elderly, and handicapped voters, have a legal right to vote by absentee ballot.

Issues of voter fraud, with an emphasis on absentee balloting, arose in the 1997 Miami mayoral race and in a 1997 city commission race in Miami Beach. Similar allegations had arisen as early as 1993 in the Hialeah mayoral election. Specific allegations in the Miami mayor's race included:

- Someone voting on behalf of someone else
- The purchasing or selling of absentee ballots or another's vote
- Non-City-of-Miami residents voting
- Changing the markings on ballots
- False statements or information being provided with regard to address information and changes of address on voter registrations
- Use of certain addresses within the City as the "new address" for persons not residing within the City for the sole purpose of allowing non-residents to vote in the municipal election
- Voting by absentee ballots under the name of deceased persons
- Voting by non-U.S. citizens

Florida Department of Law Enforcement, *Florida Voter Fraud Issues: An FDLE Report and Observations*, at p. 4 (January 5, 1998). On March 3, 1998, a circuit court in Miami threw out the results of the Miami mayoral election and ordered that a new election be held in 60 days. The court found that one of the City's voting districts "was the center of a massive, well conceived and well orchestrated absentee ballot voter fraud scheme," and that the scheme "literally and figuratively, stole the ballot from the hands of every honest voter in the City of Miami." [Final Judgment at 2-3, Case No. 97-25596-CA-09 (March 3, 1998, Fla. 11th Circuit Court)]. On March 11, 1998, the Florida Third District Court of Appeal agreed with the trial court's findings, but overturned the order for a new election. [In re the Matter of the Protest of Election Returns, Case No. 98-507 (Fla. 3rd DCA 1998)]. The appellate court held that because the fraud affected the outcome of the election, precedent and policy dictated that all the absentee ballots be invalidated and the election decided solely on the machine count. Id.

The Senate Select Subcommittee on Election Integrity held hearings in Miami and Tallahassee and received oral and written testimony from a variety of sources, including the Florida Department of Law Enforcement, state attorneys, supervisors of elections, public officials, candidates, and others concerned with the integrity of the voting system. After reviewing all the materials, the Senate Select Subcommittee concluded that the recent changes to voter registration process mandated by Congress in the National Voter Registration Act ("NVRA") coupled with the changes to Florida's absentee voting laws have increased the potential for fraud in the election process. Letter from Senator Latvala to Senator Crist (February 5, 1998). The Senate Select Subcommittee

recommended "significant changes" to the voter registration system and the absentee voting process. Id.

The following is a summary of relevant sections of Florida's voter registration and absentee ballot voting laws:

Voter Registration

The United States Congress passed the 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 Legislature passed the Florida Voter Registration Act, which is codified in §§ 97.032 - 97.105, of the Florida Statutes.

In order to register to vote in Florida, a person must be:

- At least 18 years old;
- A citizen of the United States;
- A legal resident of the State of Florida; and
- A legal resident of the county in which that person seeks to be registered.

A person who has been convicted of a felony and has not had his or her civil rights restored or a person who has been adjudicated mentally incapacitated with respect to voting and who has not had his or her right to vote restored is not eligible to register or to vote. [§ 97.041, 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, Bloomfield v. City of St. Petersburg Beach, 82 So.2d 364 (Fla. 1955); Walker v. Harris, 398 So.2d 955 (Fla. 4th DCA 1981) Op. Div. Elect. Fla. 80-27 (August 27, 1980); and Op. Div. Elect. Fla. 93-05 (June 23, 1993); Op. Atty. Gen. 070-97 (August 3, 1970);]. 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

[§ 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

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

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 § 3, Art. VI of the State Constitution and § 97.051

[§ 97.053(5)(a), 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.

The supervisor of elections is required to notify each applicant of the disposition of the applicant's voter registration application. [42 U.S.C.S. § 1973gg-6(a)(2)(Supp. 1997); § 97.073, F.S. (1997)]. The notice must inform the applicant that the application has been approved, is incomplete, has been denied, or is a duplicate of a current registration. If the application has been approved, the voter's name is added to the voter registration rolls and the voter identification card sent to the applicant's mailing address constitutes notice of approval. The NVRA does not prohibit the supervisor from mailing each applicant a verification mailing to confirm the applicant's address *before* adding the name to the registration records. However, since this would require two mailings, most supervisors of elections do not utilize this option.

Section 98.093, F.S., requires various agencies to submit lists of persons to the supervisor of elections. The Department of Health furnishes monthly lists of the name, address, date of birth, race and sex of each deceased person who was a resident of the supervisor's county. The Clerk of the Circuit Court, at least once a month, furnishes the supervisor the name, address, date of birth, race and sex of each person convicted of a felony during the preceding month, each person adjudicated mentally incapacitated with respect to voting, and each person whose mental capacity with respect to voting has been restored, who was a resident of the supervisor's county. Finally, the United States Attorney is required to provide to the Department of State a listing of persons convicted of a felony in federal court. The Department forwards this information to the supervisor of elections for the county where the offender resides.

Upon receipt of the various lists, the supervisors of elections compare their registration lists to the lists of deaths, felony convictions, and adjudications of mental incapacity *in their own counties*. These persons may be immediately removed from the voter registration rolls. [§ 98.065(3), F.S. (1997)].

Until recently, there has not been a mechanism to identify voters who may have died, been convicted of a felony or adjudicated mentally incapacitated *in another county*. Effective January 1, 1998, a central voter file was established. [§ 98.097, F.S. (1997)]. This voter file contains the voter registration information for all counties in the state. The central voter file should make it easier to detect duplicate registrations and to identify persons who are ineligible due to death, conviction of a felony and adjudication as

mentally incapacitated. However, it is not expected that the central voter file will help detect or prevent fraudulent registrations (for example fictitious registrations or incorrect addresses). [*Final Report of the Central Voter File Study Committee*, September, 1995, pp. 20, 22].

Absentee Ballots

An “absent elector” is defined as “any registered and qualified voter who is unable to attend the polls on election day”. [§ 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. [§ 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. [§ 101.62(4)(b), F.S. (1997)].

Prior to 1996, a registered and qualified voter had to have a specific reason for voting absentee:

- The voter is unable to vote at the polls without another’s assistance;
- The voter is 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;
- The voter’s religion prevents him or her from attending the polls;
- The voter has changed his or her residency to another county in the state after the election books closed;
- The voter will not be in the precinct of his or her residence on election day; or,
- The voter has changed his or her residency to another state and is ineligible to vote in the general election in that state.

In 1996, the Legislature abandoned the above “for cause” requirements for absentee voting. [Ch. 96-327, § 1, Laws of Fla.].

The supervisor of elections may accept a request for an absentee ballot from an elector or any person designated by the elector. [§ 101.62(1), F.S. (1997)]. The request may be made either in person, by mail, *by telephone*, or by use of the federal postcard application (certain voters only). *Id.* This means that virtually anyone with information about the elector may request an absentee ballot by phone for another elector. One request is sufficient to receive a ballot for all elections within a calendar year.

Upon receipt of a proper request for an absentee ballot, the supervisor must deliver or mail the ballot to the voter. Delivery may take place in a variety of ways. The voter may pick up the ballot in person. The voter may designate someone in writing to pick up the ballot from the supervisor’s office in-person; however, the designee is limited to picking up two ballots for non-family members. [§ 101.62(4)(b), F.S. (1997)]. Otherwise, the supervisor must mail the ballot to the voter.

If the voter has not specified a particular address at which to receive the ballot in his or her absentee ballot request, the supervisor will mail the ballot to the voter’s mailing

address as listed on the registration card. This may or may not be the voter's residence address. If the supervisor receives the mailing back marked "undeliverable," the request for an absentee ballot is considered canceled. [§ 101.62(1), F.S. (1997)]. However, voters frequently specify in their request that the ballot be sent to an address different from the one on file with the supervisor. The Election Code is silent as to whether the supervisor must honor the voter's request, but most have taken the position that they do not have the authority to refuse the request.

This issue of where to mail the absentee ballot came up in the Lee County elections in 1996. 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' residence addresses 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, 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.

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.

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. [§ 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. [§ 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. [§ 101.64(1), F.S. (1997)].

There is no limit on the number of absentee ballots an individual may witness in any given election.

An absentee voter may either mail, deliver, or *have delivered* the completed mailing envelope and ballot to the supervisor. [§ 101.65, F.S. (1997)]. This enables third parties, such as vote brokers, to pick-up absentee ballots from voters for delivery to the supervisors and effectively act as an intermediary between the supervisor and the voter.

An elector who has received an absentee ballot but desires to vote in person may return the ballot to the election board in the elector's precinct, whether voted or not. [§ 101.69, F.S. (1997)]. If the elector is unable to return the ballot, he or she may execute an affidavit stating that the absentee ballot has not been voted and then the elector may vote at the precinct.

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. [§ 101.68(1), 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. [§ 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.

Although the statutes emphasize the importance of all the instructions, only the voter's signature and the signature and address of the attesting witness are mandatory; all other provisions are directory in nature. [§§ 101.65 and 101.68(1)(c)1., F.S. (1997)]; Boardman v. Esteve, 323 So.2d 259 (Fla. 1975). The Florida Supreme Court held in Boardman:

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 ... 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.

Election Code Violations and Penalties

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.

Effective January 1, 1998, the Department of State is authorized to conduct preliminary investigations into any irregularities or fraud involving voter registration or voting and report its findings to the State Attorney. In addition, the Elections Commission Trust Fund may be used by the Division of Elections to provide rewards for information leading to criminal convictions related to voter registration fraud, voter fraud and vote scams.

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.

[§ 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

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

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 section 196.015, F.S. [§ 196.121(2), 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 § 775.082, F.S., or by fine not exceeding \$5,000, or both. [§ 196.131(2), F.S. (1997)].

The property appraiser must examine each claim for exemption filed with or referred to him or her, and shall allow the homestead exemption if it is found to be in accordance with law. [§ 196.141, 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. [§ 196.151, F.S. (1997)].

B. EFFECT OF PROPOSED CHANGES:

Voter Registration

The act requires each supervisor of elections to forward the name and homestead address of any person who registers to vote at an address other than that at which the person claims a homestead exemption to the property appraiser for the county in which the homestead is claimed. In order to implement this requirement, the act 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 act, 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 in order for the application to be considered complete. In addition, the application must be designed to elicit the applicant's Florida Driver's license number or the identification number from a Florida identification card issued under section 322.051, F.S.; providing such information is not mandatory.

With respect to the statements and notices that the uniform statewide voter registration application must contain, this act requires that a statement be provided to notify the applicant that 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, shall have that information forwarded to the appropriate property appraiser, which may result in the homestead exemption being terminated and back taxes assessed, with exception.

The act requires any registered voter who has registered to vote by mail and who has not previously voted in the county in which he or she has registered must vote either in person at the appropriate precinct, or in person at the supervisor's office. This provision does not apply to individuals entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act, the Voting Accessibility for the Elderly and Handicapped Act, or any other federal law, or to an individual who is absent from the county and does not plan to return before the day of the election.

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.

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.

The act requires the Division of Elections to contract with a private entity for the purpose of annually cross-referencing the central voter file against other databases to identify ineligible voters. The Division must forward the names of such voters to the appropriate county supervisors of elections for removal from the registration rolls by August 15 of 1998, and by June 1 of each year thereafter.

Upon receiving the list, the supervisor must attempt to verify the information that is provided. If the supervisor does not determine that the information from the Division is incorrect, the supervisor must remove the name of any person who is deceased, convicted of a felony, or adjudicated mentally incapacitated with respect to voting, by the next subsequent election.

The act requires an elector voting at the polls to present a driver's license, Florida identification card, or other approved picture identification. If the elector fails to furnish the required identification or if the election worker doubts the identity of the elector, the elector is required to swear an oath attesting to his or her name and the fact that he or she is qualified to vote in the county.

Absentee Ballots

The act further defines the definition of "absent elector", narrowing eligibility to voters in the following categories:

- The voter is unable to vote at the polls without another's assistance;
- The voter is 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;
- The voter's religion prevents him or her from attending the polls;
- The voter has changed his or her residency to another county in the state after the election books closed;
- The voter may 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; or,
- The voter has changed his or her residency to another state and is ineligible to vote in the general election in that state.

However, voters who pick up and vote their absentee ballot in person at the office of the supervisor may continue to vote as provided by current law — if “unable to attend the polls on election day.”

The act restricts telephone and written requests for absentee ballots to the elector, the elector’s immediate family, or the elector’s legal guardian. The requester must provide the following elector information: elector’s name; address; last four digits of elector’s social security number; and, the elector’s voter identification number. The requester must also provide the following information about himself or herself: name, address, social security number, driver’s license number (if available), relationship to the elector, and signature (written requests only). All other requests for absentee ballots must be made *by the elector* in person or in writing.

The act authorizes the following four delivery methods for supervisors to deliver absentee ballots to electors:

- Mail absentee ballots non-forwardable, return-if-undeliverable mail to the elector’s mailing address on file with the supervisor, unless the elector is:
 - a) Absent from county and not planning to return before election;
 - b) Temporarily unable to occupy the residence due to natural disaster or emergency;
 - c) In a hospital, assisted living facility, nursing home, short-term medical or rehabilitation facility, or correctional facility,in which case the supervisor shall mail the ballot to any other address designated by the voter.
- Mail absentee ballots forwardable mail to overseas and military voters.
- By personal delivery to the elector.
- By delivery to a third-party designee beginning on the fourth day before the date of the election. Designees are limited to picking up two ballots for electors other than themselves and immediate family members, and are otherwise subject to the requirements prescribed by current law.

This act 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 the act, 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 must also acknowledge that he or she is entitled to vote an absentee ballot for one of the reasons specified above. 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 under the act involve witness requirements. Under this act, a voter still only has to have one witness attest to his or her signature. However, the witness must be either a notary public, or other officer entitled to administer oaths, or a registered Florida voter. Witnesses other than notary publics, or other officers entitled to administer oaths, must provide their voter identification number. Additionally, witnesses are restricted to witnessing no more than five absentee ballots per election, unless they are a notary public, other person entitled to administer oaths, or an absentee ballot coordinator. 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.

The act provides for changes to the instructions to absent electors which are included with an absentee ballot, to conform. The act 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 either the subscription of a notary, or other officer entitled to administer oaths, or the signature, printed name, address, voter identification number, and county of registration of one attesting witness, who is a registered voter in the state. The act directs the supervisor of elections to notify each elector whose ballot is rejected as illegal because of a difference between the elector's signature on the ballot and their signature on their voter registration record. The supervisor is directed to mail a voter registration application to the voter to be completed with the elector's current signature.

The act 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 or ballots for the designee's immediate family. Each designee must present the supervisor with a written authorization from the elector and a picture identification.

The act provides that any qualified elector who is unable to attend the polls on election day may pick up and vote an absentee ballot in person at the office of the supervisor, under the supervisor's supervision. Before receiving the ballot, the elector must present a Florida driver's license, a Florida identification card, or another form of approved picture identification. If the elector fails to furnish such identification, or if the supervisor is in doubt as to the elector's identity, the elector must fill out an affidavit attesting to his or her identity and eligibility to vote.

The act requires electors to personally vote the absentee ballot, except electors requiring assistance due to blindness, disability, or inability to read or write. The elector may choose the person to assist them, however, the individual may not be the elector's employer, agent of their employer, or an officer or agent of the elector's union.

The act creates a procedure by which persons may become absentee ballot coordinators. Under this provision, each state executive committee of a political party with a candidate running in a general or special election may submit a list of persons designated as absentee ballot coordinators to the Division of Elections. Each state executive committee may designate a number of absentee ballot coordinators equal to the number of state Senate districts (40). However, for a special election for state Senator or Member of the House of Representatives, each state executive committee is limited to designating 10 absentee ballot coordinators. Absentee ballot coordinators may not be designated for primary elections, or for elections involving only municipal or nonpartisan candidates.

The list must contain certain information: the individual's full name, address and Florida voter registration number. The individual must also submit an affidavit that they have read and understand Chapter 104, F.S. Furthermore, the Division is directed to investigate the criminal background of each designee. Any designee who has been convicted of a crime relating to elections may not be certified. The certification is valid until the polls close on the day of the election for which the coordinator is designated. Each state executive committee is required to maintain the records on coordinators for two years.

An absentee ballot coordinator may witness an unlimited number of absentee ballots in the general or special election for which he or she is designated.

Election Code Violations and Penalties

Under the act, the following first degree misdemeanors are enhanced to third degree felonies, punishable by a term of imprisonment not to exceed 5 years, and/or a fine of up to \$5,000. In addition, these acts could also be punishable under the habitual offender statute:

- consideration for registration; interference with registration (subsequent violations would be second degree felonies) ; soliciting registrations for compensation; and/or alteration of registration application;
- unauthorized use, possession, or destruction of a voter registration card;
- false declaration to secure assistance in preparing a ballot;
- vote selling;
- violations; neglect of duty; corrupt practices on the part of any supervisor, deputy supervisor, or election employee;
- deprivation of, or interference with, an individuals voting rights;
- corruptly influencing voting (subsequent violations would be second degree felonies);
- threats of employers to control the votes of their employees; and
- the fraudulent use of an assumed name in the electoral process.

The act provides for new penalties for crimes related to the absentee voting process:

- vote brokering (third degree felony);
- requesting an absentee ballot on behalf of another without permission (third degree felony);
- marking the ballot of another, except as provided for under law (third degree felony);
- witnessing more than 5 absentee ballots in an election (notary publics, other officers entitled to administer oaths, and absentee ballot coordinators are exempted) (first degree misdemeanor); and
- returning more than 2 voted absentee ballots in an election (other than for themselves or immediate family members) (first degree misdemeanor).

Homestead Exemptions

Under this act, local property appraisers would be required to examine referrals from supervisors of elections of persons registering to vote at an address that is different from the address of their homestead exemption. In turn, the property appraisers are directed to terminate a person's homestead exemption and assess back taxes, if appropriate under current law. In effect, the act is simply providing an additional source of information for the local property appraisers in determining the "permanent residency" of those individuals claiming a homestead exemption.

Miscellaneous Provisions

The act requires the Secretary of State to maintain a voter fraud hotline and provide election-fraud education to the public (i.e. public service announcements; voter fraud handbooks).

The act allows the governing board of a charter county by ordinance, approved by referendum, to prescribe the date for the commencement of the terms of its members.

The act requires the supervisors of elections to post a notice at each polling place that sets forth the penalty for committing or attempting to commit any fraud in connection with voting; voting a fraudulent ballot; or voting more than once in an election.

The act would allow supervisors of elections, deputy supervisors of elections, or any employee of a supervisor of elections when designated by the supervisor, to administer and attest to any oath under the Florida Election Code.

The act provides that persons who have preregistered to vote pursuant to section 97.041(1)(b), F.S., (17 years of age) would be able to be appointed to an election board in the county in which they are appointed.

The act provides supervisors of elections with specific statutory authority to investigate election fraud (fraudulent registrations and illegal voting) and to report findings to the local state attorney and the Florida Elections Commission. Currently, state prosecutors and the Division of Elections have the authority to investigate election fraud.

The act provides that a notary public may not charge a fee for witnessing an absentee ballot in an election, and must witness an absentee ballot upon the request of an elector, provided the notarial act is in accordance with law.

The act expands the jurisdiction of the Florida Elections Commission to investigate violations of Chapter 104, F.S. The act provides that all sworn complaints alleging violations of the Florida Election Code must be filed with the Commission within 2 years of the alleged violation. This period of limitations is tolled on the day a sworn violation is filed with the Commission. The Commission is authorized to impose civil penalties upon the finding of a violation of Chapter 104, F.S. The act also transfers responsibility for collecting fines assessed by the Commission from the State Comptroller to the Department of Revenue.

The act provides for the appropriation of \$4 million from the General Revenue Fund to the Division of Elections for the purpose of meeting its obligations under the act.

Except as otherwise provided, the act has an effective date of July 1, 1998.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

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

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

Yes. Under the act, the jurisdiction of the Florida Elections Commission is expanded to include violations of Chapter 104, F.S.

- (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 act.

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

Yes. Individuals requesting an absentee ballot must fall under the revised definition of "absent elector".

- 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 act increase anyone's taxes?

No.

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

No.

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

No.

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

No.

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

No.

3. Personal Responsibility:

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

Not applicable.

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

Yes. Certain individuals are prohibited from witnessing more than five absentee ballots per election, which is currently a lawful activity. In addition, the act imposes requirements as to who can witness an absentee ballot. Changes are also made with respect to the manner by which an absentee ballot may be requested and by whom. Certain individuals will be required to vote in person at the polls or at the supervisor's office for the first time.

5. Family Empowerment:

a. If the act 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 act directly affect the legal rights and obligations between family members?

No.

c. If the act creates or changes a program providing services to families or children, in which of the following does the act 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 §§ 97.052, 97.053, 98.015, 101.5611, 101.64, 101.65, 101.665, 101.68, 102.012, 104.012, 104.013, 104.031, 104.045, 104.051, 104.0515, 104.061, 104.081, 104.185, 104.24, 196.141, F.S.; creating §§ 101.667 and 104.125, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends § 97.012, F.S., relating to duties of Secretary of State. Adds a new subsection to require the Secretary of State to maintain a voter fraud hotline and provide election-fraud education to the public.

Section 2: Amends § 98.015, F.S., relating to duties of supervisors of elections. Adds a new subsection to provide that supervisors of elections must forward the name and homestead address of any person who registers to vote at an address other than the address at which the person claims a homestead exemption to the local property appraiser for the county in which the homestead is claimed.

Section 3: Amends § 97.021, F.S., relating to definitions. Further defines "absent elector". Eligibility to vote absentee would be narrowed to the following categories:

- The voter is unable to attend the polls without assistance;
- The voter is 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;
- The voter's religion prevents him or her from attending the polls;
- The voter has changed his or her residency to another county in the state after the election books closed;
- The voter may 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; or
- The voter has changed his or her residency to another state and is ineligible to vote in the general election in that state.

Voters who pick up and vote their absentee ballot in person at the office of the supervisor may continue to vote as provided by current law - if "unable to attend the polls on election day."

Section 4: Amends § 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; the last four digits of his or her social security number; and a Florida Driver's License number or the identification number from a Florida identification card. Provides that the uniform statewide voter registration application contain a statement informing the applicant that any person who has been granted a homestead exemption in this state and who registers to vote in a precinct other than the one in which the homestead property is located, shall have that information forwarded to the appropriate property appraiser, which may result in the homestead exemption being terminated and back taxes assessed, provides an exception. **Effective July 1, 1999.**

Section 5: Amends § 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. **Effective July 1, 1999.**

Section 6: Creates § 97.056, F.S., relating to registration by mail. Mandates that a person who registers by mail and has not previously voted in the county must vote in

person at the polls or the office of the supervisor for the first time, except for military and overseas voters, the elderly and handicapped or voters who are out-of-county and do not plan to return before the day of the election. **Effective July 1, 1999.**

Section 7: Amends § 97.071, F.S., relating to registration identification card. Provides that the supervisor of elections must send a 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. Provides that the supervisor must notify any voter whose card is returned as undeliverable, and the voter has listed a different mailing address on their application, that the voter may appear in person at the supervisor's address to pickup the registration card. Provides that the elector must present a driver's license, Florida identification card, or other picture identification approved by the Department of State, to pickup a registration card in person. Provides that 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. Provides that supervisors must keep returned voter identification cards on file for 45 days.

Section 8: Creates § 98.0975, F.S., relating to the central voter file. Requires the Division of Elections to contract with a private entity for the purpose of annually cross-referencing the Central Voter File against other databases to identify ineligible voters. The Division must forward the names of such voters to the appropriate county supervisors of election for removal from the registration rolls by August 15, 1998, and by June 1 of each year thereafter. **Effective upon this act becoming a law.**

Section 9: Amends § 98.461, F.S., relating to precinct registers. Provides that the precinct register may contain a list of the forms of identification which must include, but is not limited to, a Florida driver's license, a Florida identification card issued under section 322.051, F.S. or another form of picture identification approved by the Department of State. **Effective upon this act becoming a law.**

Section 10: Amends § 98.471, F.S., relating to use of precinct register at polls. Provides that the clerk or inspector at the polling place must require each elector to present a Florida driver's license, a Florida identification card issued under § 322.051, F.S., or another form of picture identification. **Effective upon this act becoming a law.**

Section 11: Amends § 100.041, F.S., relating to officers chosen at general election. Provides that the governing board of a charter county may prescribe by local ordinance, to be approved by referendum, the date for commencement of the terms of its members, with the latest date for assuming office designated being the first Tuesday following the first Monday in January. **Effective upon this act becoming a law.**

Section 12: Amends § 101.5611, F.S., relating to instructions to voters on election day. Adds a new subsection to require the supervisors of elections to post a notice at each polling place that sets forth the penalty for committing or attempting to commit any fraud in connection with voting; voting a fraudulent ballot; or voting more than once in an election.

Section 13: Amends § 101.62, F.S., relating to requests for absentee ballots. Provides that the supervisor may accept a request for an absentee ballot by an elector in person or in writing. Restricts telephone and written requests for absentee ballots to the elector, the elector's immediate family, or the elector's legal guardian. The requester must provide the elector's name; address; last four digits of the elector's social security number; and, the elector's voter identification number. The requester must provide their name; address, social security number; driver's license number (if available); relationship to the elector; and signature (written requests only). Authorizes the following four delivery methods for supervisors to deliver absentee ballots to electors:

- Mail absentee ballots non-forwardable, return-if-undeliverable mail to the elector's mailing address on file with the supervisor, unless the elector is: a) absent from county and not planning to return before election; b) temporarily unable to occupy the residence due to natural disaster or emergency; c) in a hospital, assisted living facility, nursing home, short-term medical or rehabilitation facility, or correctional facility;
- Mail absentee ballots forwardable mail to overseas and military voters;
- By personal delivery to the elector; or
- By delivery to a third-party designee beginning on the fourth day before the date of the election.

Designees are limited to picking up 2 ballots for electors other than themselves and immediate family members, and are otherwise subject to the requirements prescribed by current law. **Effective upon this act becoming a law.**

Section 14: Amends § 101.64, F.S., relating to absentee ballot envelopes and voter's certificates. Requires the voter's certificate on the absentee ballot envelope to include notice of the penalty for fraud in connection with voting. Requires the elector to acknowledge that he or she is entitled to vote an absentee ballot for one of the reasons set forth under Section 3 of this act. Requires the elector to include the last four digits of his or her social security number. Requires witnessing of an absentee ballot by either a notary, supervisor of elections, deputy supervisor, or other officer entitled to administer oaths or, one registered Florida voter who is limited to witnessing 5 ballots per election and who must provide their signature, printed name, address, registration I.D. number, and county of registration.

Section 15: Creates § 101.647, F.S., relating to return of absentee ballots. Restricts the return of absentee ballots to personal delivery by the elector or mail delivery. 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 2 ballots per election, other than the designee's own ballot or ballots for the designee's immediate family. Provides that a designee must present the supervisor with a written authorization from the elector and a picture identification.

Section 16: Amends § 101.65, F.S., relating to instructions to absent electors. Requires electors to personally vote the absentee ballot, except electors requiring assistance due to blindness, disability, or inability to read or write. Requires the instructions to provide notice that witnesses, other than notaries public, other officers entitled to administer oaths, supervisors of elections and deputy supervisors, must affix their signature, printed name, address, voter identification number, and county of registration in order for an absentee ballot to be counted and that the witness is limited

to witnessing 5 ballots per election unless the witness is certified as an absentee ballot coordinator. Requires the instructions to provide notice that certain acts constitute a felony.

Section 17: Creates § 101.657, F.S., relating to voting absentee ballots in person. Provides that any qualified elector unable to attend the polls on election day may pick up and vote an absentee ballot in person at the office of the supervisor of elections, after presenting a Florida driver's license, a Florida identification card, or another form of picture identification approved by the Department of State.

Section 18: Creates § 101.66, F.S., relating to voting absentee ballots. Provides that all electors must personally mark or designate their choices on absentee ballots except for electors requiring assistance due to blindness, disability, or inability to read or write, or as otherwise provided in §§ 101.051 or 101.655, F.S. Assistance may be given by the person of the elector's choice, other than the voter's employer, an agent of the employer, or an officer or agent of the voter's union. **Effective upon this act becoming a law.**

Section 19: Amends § 101.665, F.S., relating to administration of oaths. Allows supervisors of elections, deputy supervisors of elections, or any employee of a supervisor of elections when designated by a supervisor, to administer and attest to any oath under the Florida Election Code.

Section 20: Amends § 101.68, F.S., relating to 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, and either the subscription of a notary or officer defined in the instruction sheet, or the signature, printed name, address, voter identification number, and county of registration of one attesting witness who is a registered voter in the state. Requires the supervisor of elections to notify each elector whose ballot was rejected because of a difference between the elector's signature on the ballot and the signature on the voter registration record, and to provide a registration application to be completed indicating the elector's current signature.

Section 21: Creates § 101.685, F.S., relating to absentee ballot coordinators. Provides that at least 28 days before a general or special election, each political party may designate in writing to the division of elections the names of persons serving as absentee ballot coordinators. Provides that each political party may designate coordinators equal to the number of state Senate districts (40). For a special election for state Senator or member of the House of Representatives, a party may designate only 10 absentee ballot coordinators. Absentee ballot coordinators may not be designated for primary elections or for elections involving only municipal or nonpartisan candidates. The Division of Elections must investigate the criminal background of each designee and any designee who has been convicted of a crime relating to elections shall not be certified. Absentee ballot coordinators must be registered electors in the state of Florida, sign an affidavit attesting that they have read and understand Chapter 104, F.S., provide address and voter registration ID number. Parties are required to maintain these records for two years. Absentee ballot coordinators may witness an unlimited number of absentee ballots.

Section 22: Amends § 102.012, F.S., to allow a person who has preregistered to vote in the county in which the person is appointed to be a member of an election board.

Section 23: Amends § 104.012, F.S., relating to penalties. Increases the penalty for engaging in consideration for registration; interference with registration; soliciting registrations for compensation; and alteration of registration applications from a first degree misdemeanor to a third degree felony. Includes a reference to the habitual offender statute.

Section 24: Amends § 104.013, F.S., to increase the penalty for the unauthorized use, possession, or destruction of a voter registration identification card from a first degree misdemeanor to a third degree felony. Includes a reference to the habitual offender statute.

Section 25: Amends § 104.045, F.S., to increase the penalty for vote selling from a first degree misdemeanor to a third degree felony. Includes a reference to the habitual offender statute.

Section 26: Creates § 104.047, F.S., relating to absentee voting and penalties. Creates new penalties related to absentee voting:

- Vote brokering (third degree felony)
- Requesting an absentee ballot on behalf of another without permission, except as provided in §§ 101.62 or 101.655, F.S., (third degree felony)
- Witnessing more than 5 ballots in an election, with exceptions (first degree misdemeanor)
- Marking the ballot of another, with exceptions (third degree felony)
- Returning more than 2 voted absentee ballots to supervisors, with exceptions (first degree misdemeanor)

Section 27: Amends § 104.051, F.S., to increase the penalty for attempts to influence or interfere with an elector voting a ballot by any election official or employee from a first degree misdemeanor to a third degree felony. Includes a reference to the habitual offender statute.

Section 28: Amends § 104.0515, F.S., to increase the penalty for the deprivation of or interference with voting rights from a first degree misdemeanor to a third degree felony. Includes a reference to the habitual offender statute.

Section 29: Amends § 104.061, F.S., to increase the penalty for corruptly influencing voting from a first degree misdemeanor to a third degree felony for the first conviction and a second degree felony for subsequent convictions. Includes a reference to the habitual offender statute.

Section 30: Amends § 104.081, F.S., to increase the penalty for threats by employers to control votes of employees from a first degree misdemeanor to a third degree felony. Includes a reference to the habitual offender statute.

Section 31: Amends § 104.24, F.S., to increase the penalty for assuming a name in connection with the election process from a first degree misdemeanor to a third degree felony. Includes a reference to the habitual offender statute.

Section 32: Amends § 104.42, F.S., relating to investigation of fraudulent registration and voting. Authorizes the supervisors of elections to investigate fraudulent registrations and illegal voting and to report findings to the local state attorney and the Florida Elections Commission. Authorizes the board of county commissioners to appropriate necessary funds.

Section 33: Amends § 117.05, F.S., relating to use of notary commission. Prohibits a notary public from charging a fee for witnessing an absentee ballot and provides that a notary public must witness such a ballot upon the request of an elector, provided the act is in accordance with law.

Section 34: Amends § 106.25, F.S., relating to reports of alleged violations to Florida Elections Commission. Expands the jurisdiction of the Florida Elections Commission to investigate and determine violations of Chapter 104, F.S. Provides that all sworn complaints alleging violations of the Florida Election Code, over which the Commission has jurisdiction, shall be filed with the Commission within 2 years of the alleged violation. Provides that this statute of limitations is tolled on the day a sworn complaint is filed with the Commission.

Section 35: Amends § 106.26, F.S., relating to powers of the Florida Elections Commission. Conforms to expansion of jurisdiction set forth in Section 34 of the act.

Section 36: Amends § 106.265, F.S., relating to civil penalties. Expands jurisdiction of the Florida Elections Commission to impose civil penalties for violations of Chapter 104, F.S. Transfers responsibility for collecting fines assessed by the Commission from the State Comptroller to the Department of Revenue.

Section 37: Amends § 106.27, F.S., relating to determinations by the Commission. Provides that criminal proceedings for violations of Chapter 104, F.S., may be brought in the appropriate court and shall be advanced on the court docket. Provides that a civil action may be brought to temporarily enjoin the certificate of election of a candidate alleged to have violated the provisions of Chapter 104, F.S.

Section 38: Amends § 196.141, F.S., relating to homestead exemptions. Requires the local property appraiser to examine referrals of persons registering to vote at an address that is different from the address of their homestead exemption. Directs property appraisers to initiate procedures to terminate a person's homestead exemption and assess back taxes, if the person is not entitled to the exemption under current law.

Section 39: Provides a \$4 million appropriation from General Revenue to the Division of Elections to implement the provisions of this act.

Section 40: Provides an effective date of July 1, 1998 unless expressly provided otherwise.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Minimal. Can be handled with current staff.

2. Recurring Effects:

Division of Elections. The Division estimates that it will cost between \$4.3 million and \$4.5 million to cross-reference the Central Voter File against other existing databases to identify ineligible voters (felons; deceased; adjudicated mentally incompetent). It estimates roughly an additional \$100,000 to implement and maintain a voter fraud hotline, create a Voter Fraud pamphlet, and provide voter fraud education. The Division estimates specific costs as follows:

TYPE	FY 98-99	FY 99-00	FY 00-01
Salaries & Benefits	\$ 35,682	\$ 35,682	\$ 35,682
Other Personnel Services	4,500,000	4,500,000	4,500,000
Expenses	60,864	60,864	60,864
Operating Capital Outlay	3,215	0	0
Total Estimated Costs	\$4,599,761	\$4,596,546	\$4,596,546

Florida Elections Commission. The Florida Elections Commission estimates that handling the additional Chapter 104, F.S. violation cases will double its workload, and consequently necessitate a doubling of its budget, which is currently \$774,927 for 1997-98 and estimated at \$868,458 for 1998-99.

Florida Department of Law Enforcement and State Prosecutors. Establishing additional felonies may result in an increase in workload for the FDLE and state attorneys' offices. However, since it is unclear how many additional cases may be prosecuted as a result of creating these new crimes, the precise fiscal impact is indeterminate.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See below.

2. Recurring Effects:

County Supervisors of Elections. The act will require the supervisors of elections to incur additional expenses to develop software to incorporate the additional information required on the voter registration application and to track first time applicants who have registered by mail. Also, supervisors who have ordered absentee ballot envelopes prior to the effective date of the act will be required to re-design and order modified ballot envelopes incorporating the additional requirements of the act. The costs for these items is indeterminate.

County Property Appraisers. The act will require the property appraiser to examine referrals from the local supervisor of elections office regarding voter registration applications and homestead exemptions. Any additional cost associated with this provision is indeterminate.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The act increases the potential fine for several election law violations from \$1,000 (maximum first degree misdemeanor fine) to \$5,000 (maximum third degree felony fine). The act also creates a number of new third degree felony crimes for which a violator would be subject to up to \$5,000 in fines. Finally, the act also authorizes the Florida Elections Commission to assess a \$1,000 per violation administrative fine where it finds a Chapter 104, F.S. violation. However, since it is unclear how many additional convictions or administrative fines may result from these crimes and violations, the precise fiscal impact is indeterminate.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

None.

V. 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.

VI. 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. Esteva, 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. Esteva, 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.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The House took up CS/SB 1402 in lieu of CS/HB 3743 and a strike-everything amendment to CS/HB 1402 was offered by Representative Morse. The House adopted the strike-everything amendment and the Senate refused to concur. A conference committee was convened to work out the differences between the House and Senate positions on CS/SB

STORAGE NAME: h3743s1z.er

DATE: May 12, 1998

PAGE 29

1402. A conference committee amendment to CS/SB 1402 was offered and subsequently adopted by the Legislature.

This final act research document analyzes the conference committee amendment to CS/SB 1402.

VIII. SIGNATURES:

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