

**STORAGE NAME:** h3941.er  
**DATE:** March 11, 1998

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

**BILL #:** HB 3941  
**RELATING TO:** Elections  
**SPONSOR(S):** Representative(s) Meek and Garcia  
**COMPANION BILL(S):** HB 3683(c); SB 1402(c)

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

- (1) ELECTION REFORM (GRC)
  - (2)
  - (3)
  - (4)
  - (5)
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I. SUMMARY:

HB 3941 defines the term "legal residence" for purposes of the Florida Election Code. "Legal residence" is defined as the residence for which the elector has filed for a homestead or, if no homestead has been claimed by the elector, the residence where the elector has continuously resided for at least 90 days prior to the last day to register for the election in which the elector will vote.

Under this bill, requests for absentee ballots may only be made by the elector and only by mail or in person. Certain revisions are made to the absentee ballot Voter's Certificate to conform. In order to qualify for voting absentee ballot by mail, an elector must provide documentation that he or she will be unable to physically vote on the scheduled election date for one of six specified reasons. This bill also increases the required number of witnesses to an absentee ballot to two and provides that an absentee ballot will be declared illegal if it does not include the printed name and voter registration number or driver's license number of each attesting witness.

The bill prohibits fraud or misconduct in connection with an absentee ballot, provides examples and a penalty (third degree felony). HB 3941 also provides a presumption with respect to possession of an altered or fraudulent absentee ballot. Under this bill, the penalty for a number of violations under the Florida Election Code is increased to that of a third degree felony, 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.

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

This act shall take effect on January 1 of the year after the year in which enacted.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Residency

The Florida Constitution and statutes specify residency requirements for most elected officials. The residency requirements vary depending on the office, but most require that an officer reside within the territorial jurisdiction of the office during the term. Neither the Constitution nor the statutes provide a definition of resident or residency as applied to candidates and public officers. As stated previously, numerous court cases and Attorney General Opinions have dealt with the issue of residency (for voter registration purposes and candidate qualifying) on a case-by-case basis. Currently, any challenge to a candidate's residency must be made through the courts. Complaints against public officers for failing to maintain the required residence are made to the Governor, or, in the case of a legislator, to the presiding officer of the appropriate House.

Under section 101.045(1), F.S., no person is permitted to vote in an election precinct or district other than the one in which the person has his or her legal residence and in which the person is registered. An exception is made for a person who is temporarily residing outside a county but who intends to remain a resident of Florida and of that particular county. In this instance, the person will be allowed to register in the precinct in which the main office of the supervisor of elections is located.

Under section 101.663(1), F.S., an elector who changes his or her residence from one county to another, in Florida, after the registration books have closed for any general, primary or special election in the county to which the elector has changed his or her residence, shall be permitted to vote absentee in the county of his or her former residence in that election for President and Vice President, United States Senator, statewide offices, and statewide issues. Similarly, if an elector registered in this state moves his or her permanent residence to another state and the laws of that state prohibit the elector from voting for the offices of President and Vice President of the United States, the elector is permitted to vote absentee for those offices in the county of his or her former residence. [s. 101.663(2), F.S. (1997)].

Notwithstanding, no provision of the Florida Election Code actually defines "legal residency". 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 DE 80-27, the Division of Elections was asked to render an opinion regarding candidate residency requirements and qualifying to run for county commission. The Division opined that "[t]he key element of residency is the intent of the individual. Permanent residence is wherever a person intends to make a permanent domicile, which can be factually supported. Such factual support may be voter's registration, driver's licenses, tax receipts, receipt of mail or activities normally indicative of home life".

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.

In section 202 of the Voting Rights Act of 1965, added by the Voting Rights Act Amendments of 1970, Congress abolished state durational residency requirements for presidential and vice-presidential elections, and prohibited the States from closing voter registration more than 30 days before such elections. [42 U.S.C.A. §1973aa-1(b)]. In doing so, it made a specific finding that durational residence requirements and more restrictive registration practices do “not bear a reasonable relationship to any compelling State interest in the conduct of presidential elections”. [42 U.S.C.A. §1973aa-1(a)(6)]. pertinent part, the law states,

No citizen of the United States who is otherwise qualified to vote in any election for President and Vice President shall be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to comply with any durational residency requirement of such State or political subdivision.

[42 U.S.C.A. §1973aa-1(c)]. Additionally, each State is required to provide by law for the registration, or other means of qualification, of all duly qualified residents of such State who apply, **not later than thirty days immediately prior to any presidential election**, for registration or qualification to vote for the choice of electors for President and Vice President, or for President and Vice President in such election. [42 U.S.C.A. §1973aa-1(d)] (emphasis added).

If a citizen of the United States, who is otherwise qualified to vote in a State or political subdivision in any election for President and Vice President, has begun their residence in a State or political subdivision after the 30th day next preceding such election and, for that reason, does not satisfy the registration requirements of such State or political subdivision, shall be allowed to vote in the Presidential election as follows:

- In person in the State or political subdivision in which he or she resided immediately prior to his or her removal if as of the date of his or her change of residence, the requirements to vote in such State or political subdivision had been satisfied, or
- By absentee ballot in the State or political subdivision in which the elector resided immediately prior to the elector’s removal, if the elector satisfies, but for the elector’s nonresident status and the reason for his or her absence, the requirements for absentee voting in that State or political subdivision.

[42 U.S.C.A. §1973aa-1(e)].

The United States Supreme Court has held that durational residence laws must be measured by a strict equal protection test: they are unconstitutional unless the State can demonstrate that such laws are necessary to promote a compelling state interest. Dunn v. Blumstein, 405 U.S. 330, 341, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972). In Dunn, the Court held that a Tennessee statute requiring a would-be voter to have been a resident for one year in the state and three months in a county did not further any compelling state interest and therefore, was violative of the Equal Protection Clause of the Fourteenth Amendment.

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)]. 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 section 775.082 or by fine not exceeding \$5,000, or both. [s. 196.131(2), 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.

### **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.

## **B. EFFECT OF PROPOSED CHANGES:**

### **Residency**

HB 3941 defines "legal residence" for purposes of the Florida Election Code, except where the context clearly indicates otherwise. "Legal residence" is defined as the residence for which the elector has filed for a homestead or, if no homestead has been claimed by the elector, the residence where the elector has continuously resided for at least 90 days prior to the last day to register for the election in which the elector will vote. To the extent that legal residence is determined by where an elector has continuously resided during the 90 days immediately preceding the last day to register for a particular election, this bill imposes a durational residency requirement. Under federal law, duly qualified residents of Florida must be allowed to vote in a Presidential election if they apply for registration or qualification in such election not later than 30 days prior to the election. According to the United States Supreme Court's decision in Dunn, if this provision were properly challenged in court, the State would have to show a substantial and compelling reason for imposing durational residence requirements on its voters.

Current law provides that voter registration books must be closed on the 29th day before each election and must remain closed until after that election. If an election is called and there are fewer than 29 days before the election, the registration books must be closed immediately. When the registration books are closed, voter registration and party changes will be accepted but only for the purpose of subsequent elections. [s. 97.055(1), F.S. (1997)]. Under this bill, any elector who has not filed for a homestead exemption would have to continuously reside at a particular residence for 90 days prior to the 29th day before an election in order to register to vote in that particular election. To illustrate:

### **1998 Election Dates**

First Primary - September 1, 1998

Registration Books close on August 3, 1998

Residency will either be determined as of March 1, 1998 (last day to file for a homestead exemption) or May 5, 1998 (90 days prior to the close of the voter registration books)

Second Primary - October 1, 1998

Registration Books close on August 31, 1998

Residency will either be determined as of March 1, 1998 (last day to file for a homestead exemption) or June 2, 1998 (90 days prior to the close of the voter registration books)

General Election - November 3, 1998

Registration Books close on October 5, 1998

Residence will either be determined as of March 1, 1998 (last day to file for a homestead exemption) or July 7, 1998 (90 days prior to the close of the voter registration books).

The local supervisors of elections would have the responsibility of procuring information from a potential elector to enable a determination of legal residency, as it is defined under HB 3941. The bill does not specify what information should be requested in making this determination, nor does it recommend any changes to the uniform statewide voter application form to conform.

As this bill is defining the term "legal residence" for purposes of the entire Florida Election Code this definition would also apply to those instances where a candidate or public officer's residency is called into question, unless the context clearly indicated otherwise.

### **Absentee Ballots**

Under this bill, requests for absentee ballots may only be accepted from the elector and only by mail or in person. Electors would no longer have the option of designating another person to either request an absentee ballot or pick up an absentee ballot on his or her behalf. In addition, electors would no longer have the option of requesting an absentee ballot by telephone.

Presently, absentee voters do not have to give a reason for why they are requesting to vote absentee. Under HB 3941, requests for absentee ballots by mail would only be honored if the elector provides documentation establishing that he or she will be unable to physically vote on the scheduled date because of one of the following reasons:

- Due to infirmity, illness, or advanced age, the elector is physically unable to attend the polls;
- It is necessary that the elector be absent from the precinct of his or her residence during the hours the polls are open for voting on election day;
- The elector is an inspector, a poll worker, a deputy voting machine custodian, a deputy sheriff, a supervisor of elections, or a deputy supervisor who is assigned to a different precinct than that in which he or she is registered;
- Because of the tenets of the elector's religion, he or she cannot attend the polls on the date of the general, special, or primary election;
- The elector has changed his or her permanent residency to another county in Florida within the time period during which the registration books are closed for the election. Such an elector may only vote for national and statewide offices and statewide issues.



- The elector changed his or her permanent residency to another state and is unable under the laws of such state to vote in the general election. Such an elector may only vote for President and Vice President.

In contrast, if an individual requests an absentee ballot in person no explanation is necessary other than the fact that the elector will be absent from the precinct of his or her residency during the hours the polls are open however, the elector must agree to vote in person prior to the election.

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 3941, the voter must swear or affirm that in addition to being a qualified elector in the particular election, that the elector is unable to attend the polls for one of the reasons set forth under Florida statutes.

The bill requires two witnesses to an absentee voter's signature. In addition, the witnesses must print their names next to their signatures and must provide either a voter registration number or a driver's license number for identification purposes. The bill makes it clear that the failure to provide the foregoing information will invalidate an absentee ballot. The bill requires changes to the instructions to absent electors which are enclosed with each absentee ballot to conform. Also, the instructions must provide a notice that any person perpetrating or attempting to perpetrate or aid in the perpetration of any fraud in connection with an absentee ballot is guilty of a felony and can be imprisoned for up to 5 years.

HB 3941 requires the county canvassing boards to declare an absentee ballot illegal if it does not include the signature, address, printed name, and voter registration or driver's license number of each attesting witness.

### **Penalties**

HB 3941 creates a new potential violation of the Florida Election Code - fraud or misconduct in connection with an absentee ballot. Under this provision, any person perpetrating or attempting to perpetrate or aid in the perpetration of any fraud or misconduct in connection with an absentee ballot commits a third degree felony, punishable by a term of imprisonment not to exceed 5 years, and/or a fine of up to \$5,000. In addition, an act prohibited under this section may also be punishable under the habitual offender statute. Conduct prohibited by this section includes, but is not limited to:

- false witnessing of an absentee ballot;
- obtaining an absentee ballot from election authorities through misrepresentation or false promise;
- unlawful possession of an unopened envelope containing an absentee ballot;
- willful interference without authority in the deliver by election officials of an absentee ballot to a voter; and
- using a false address to allow registration or voting in an election in which that person would not otherwise be eligible to vote.

This bill also creates a presumption or inference of knowledge of alteration or fraud on the part of an individual in possession of an altered or fraudulent absentee ballot, if proof of possession is presented, unless satisfactorily explained.

Sections 8 through 17 of HB 3941 simply increase the penalty for the following violations to that of a third degree felony, 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;
- knowingly signing a petition more than once; signing another person's name or fictitious name; and
- assuming a name for voting purposes.

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?

The local supervisors of elections will have the added responsibility to make determinations of "legal residency", as defined under this bill. The local state attorneys will have the responsibility to investigate and prosecute any new offenses created by this bill.

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

No.

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?

No.

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?

Not applicable.

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

Yes. To the extent that the bill imposes a durational residency requirement with respect to voting. In addition, the bill requires an absentee voter to be able to document that he or she is unable to physically vote on the scheduled election date for one of six specified reasons if they are requesting an absentee ballot by mail and absentee electors requesting to vote absentee in person must agree to vote in person prior to the election. Absentee voters will no longer be allowed to designate someone to either request an absentee ballot or pick up an absentee ballot for the elector. Absentee ballot requests may only be made in person or by mail.

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. 97.021, 101.62, 101.64, 101.65, 101.68, 104.012, 104.013, 104.031, 104.45, 104.051, 104.0515, 104.061, 104.081, 104.185 and 104.24, F.S.; creating ss. 104.042 and 104.043, F.S.

**E. SECTION-BY-SECTION RESEARCH:**

Section 1. Amends s. 97.021, F.S., adding a definition for the term "legal residence" for purposes of the Florida Election Code. "Legal residence" is defined as the residence for which an elector has filed for a homestead or, if no homestead has been claimed, the residence where the elector has continuously resided for at least 90 days prior to the last day to register to vote for a particular election.

Section 2. Amends s. 101.62, F.S., relating to requests for absentee ballots. Restricts requests for absentee ballots to electors only and requests may only be made by mail or "in person". Provides that electors requesting absentee ballots by mail must provide documentation establishing that he or she will be unable to physically vote on the scheduled election date for one of the statutorily specified reasons. Provides that an elector requesting an absentee ballot in person must agree to vote in person prior to the

election. Eliminates those provisions which currently allow for a designate to pick up an absentee ballot for an elector.

Section 3. 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 a statement that the elector swears or affirms that he or she is unable to attend the polls on election day for one of the reasons set forth in the statutes. Provides that an absentee voter's signature must be witnessed by two witnesses and that the witnesses must print their names next to their signatures and must provide either a voter registration number or driver's license number for identification purposes. Failure to provide this information shall invalidate the absentee ballot.

Section 4. Amends s. 101.65, F.S., relating to instructions to absent electors. Requires that the instructions must include notice that witnesses must include their printed names and either a voter registration number or a driver's license number. Requires the instructions to include notice that any person perpetrating or attempting to perpetrate or aid in the perpetration of any fraud in connection with an absentee ballot is guilty of a felony and can be imprisoned for up to 5 years.

Section 5. Amends s. 101.68, F.S., relating to canvassing of absentee ballots. Provides that canvassing boards declare an absentee ballot illegal if it does not contain the signature, address, printed name and voter registration or driver's license number of each attesting witness.

Section 6. Creates s. 104.042, F.S., relating to fraud or misconduct in connection with an absentee ballot. Creates a penalty for perpetrating or attempting to perpetrate or aid in the perpetration of any fraud or misconduct in connection with an absentee ballot - third degree felony. Certain conduct is expressly forbidden including, but not limited to, false witnessing of an absentee ballot; obtaining an absentee ballot through misrepresentation or false promise; unlawful possession of an unopened envelope containing an absentee ballot; willful interference without authority in the delivery of an absentee ballot; and using a false address to allow registration or voting in an election in which that person would not otherwise be eligible to vote.

Section 7. Creates s. 104.043, F.S., relating to altered or fraudulent absentee ballots. Creates a presumption of knowledge with proof of possession of an altered or fraudulent ballot, unless satisfactorily explained.

Section 8. Amends s. 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 9. Amends s. 104.013, F.S., relating to penalties. Increases 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 10. Amends s. 104.031, F.S., relating to penalties. Increases the penalty for false declaration to secure assistance in preparing ballot or for assistance in voting from

a first degree misdemeanor to a third degree felony. Includes a reference to the habitual offender statute.

Section 11. Amends s. 104.045, F.S., relating to penalties. Increases the penalty for vote selling from a first degree misdemeanor to a third degree felony. Includes a reference to the habitual offender statute.

Section 12. Amends s. 104.051, F.S., relating to penalties. Increases the penalty for attempts to influence or interfere with an elector voting a ballot by any election official from a first degree misdemeanor to a third degree felony. Includes a reference to the habitual offender statute.

Section 13. Amends s. 104.0515, F.S., relating to penalties. Increases 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 14. Amends s. 104.061, F.S., relating to penalties. Increases 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 15. Amends s. 104.081, F.S., relating to penalties. Increases 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 16. Amends s. 104.185, F.S., relating to penalties. Increases the penalty for knowingly signing more than one petition or signing another person's name or fictitious name to a petition from a first degree misdemeanor to a third degree felony. Includes a reference to the habitual offender statute.

Section 17. Amends s. 104.24, F.S., relating to penalties. Increases 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 18. Provides an effective date. This act shall take effect on January 1 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:

Minimal. Can be handled by current staff.

2. Recurring Effects:

None.

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:

Any changes to Voter's Certificates and absentee ballot instructions would have to be made at the local level. There will be costs associated with making these changes, likely to depend upon the particular jurisdiction. Therefore, the costs are indeterminable at this time.

2. Recurring Effects:

Indeterminable at this time.

Local jurisdictions may realize increased revenues with the prosecution of added offenses under this bill, as well as increased penalties under this bill for existing offenses. The amount is indeterminable at this time.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

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

Not applicable.



D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

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

Not applicable.

V. COMMENTS:

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. The law also required that an absentee voter sign the Voter's Certificate which stated that the elector was entitled to vote absentee for one of the following reasons:

- I am unable without another's assistance to attend the polls.
- I will not be in the precinct of my residence during the hours the polls are open for voting on election day.
- I am an inspector, a poll worker, a deputy voting machine custodian, a deputy sheriff, a supervisor of elections, or a deputy supervisor who is assigned to a different precinct than that in which I am registered.
- On account of the tenets of my religion, I cannot attend the polls on the day of the general, special or primary election.
- I have changed my permanent residency to another county in Florida within the time period during which the registration books are closed for the election. I understand that I am allowed to vote only for national and statewide offices and statewide issues.
- I have changed my permanent residency to another state and am unable under the laws of such state to vote in the general election. I understand that I am allowed to vote only for President and Vice President.

HB 233 (Chapter 96-57, Laws of Florida) changed these requirement to what is now current law - the elector does not have to state a reason for why they are unable to attend the polls on election day and 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.

**STORAGE NAME:** h3941.er

**DATE:** March 11, 1998

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

Prepared by:

Legislative Research Director:

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Dawn Roberts

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Clay Roberts