

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2132

SPONSOR: Senator Saunders

SUBJECT: Elections; voter fraud

DATE: April 12, 1999                      REVISED: 4/15/99                      \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Bradshaw</u>	<u>EE</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

Senate Bill 2132 addresses a number of voter registration and absentee balloting issues. Specifically, the bill:

- *Voter Registration Cards*: Deletes a requirement that voter registration cards be mailed to the voter’s legal residence address shown on the voter registration form.
- *Criminal Penalties*: Adds “witnessing” an absentee ballot for compensation to the “vote brokering” restrictions constituting a third-degree felony.
- *Absentee Ballot Signature and Witness Requirements*: Modifies the Voter’s Certificate and corresponding instructions in connection with absentee voting and witnessing, requiring the *elector* to sign the Voter’s Certificate and print his or her name, and allowing any person over 18 to *witness* the ballot, provided the witness includes his or her signature, printed name, and address.
- *Return of Absentee Ballots*: Deletes a requirement that a designee returning a ballot for an elector provide a *written note* from the elector; requires instead that the designee sign an affidavit attesting to certain facts.

This bill substantially amends ss. 97.071, 101.64, 101.65, 101.68, 101.647, and 104.047, F.S.

## II. Present Situation:

In 1998, the Legislature enacted Ch. 98-129, Laws of Fla., as a comprehensive measure to combat voter fraud and abuses in the absentee balloting process highlighted in the 1997 City of Miami mayor’s race. Following the enactment of Ch. 98-129, Laws of Fla., the state of Florida law is as follows:

### *Voter Registration Cards*

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. s. 97.071(2), F.S. (Supp. 1998).

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.

This procedure was intended to discourage a person from fraudulently registering to vote at an address different from his or her residence address, in order to qualify as an elector in a certain precinct or election contests. However, the procedure has proven extremely burdensome in some cases. For example, several areas in Florida's more rural counties do not have home mail delivery service, which means the only way for these residents to obtain a voter registration card is to *personally travel to the supervisor's office*. In some areas of Monroe county, this may require an elector to travel over *30 miles* to obtain a voter registration card. This can pose a major obstacle, particularly for the infirm and the elderly.

### *Criminal Penalties*

Chapter 98-129, Laws of Fla., increased several existing criminal penalties for election violations from misdemeanors to third-degree felonies. It also created a criminal penalty for absentee ballot "vote brokering" activities. Except as specifically authorized by law, any person who receives or offers compensation in exchange for "distributing, ordering, requesting, collecting, delivering, or otherwise physically possessing absentee ballots" is guilty of a third-degree felony. s. 104.047(1), F.S. (Supp. 1998). However, the activities proscribed do not include *witnessing* an absentee ballot for compensation.

### *Absentee Ballot Signature & Witness Requirements*

Chapter 98-129, Laws of Fla., made significant changes to the elector and witness requirements on the absentee ballot Voter's Certificate. Under Florida law, an elector voting absentee must include his or her signature and last 4 digits of the voter's social security number on the Voter's Certificate. s. 101.64, 101.65, F.S. (Supp. 1998). The ballot must be witnessed by a notary or other officer authorized to administer oaths, or a registered Florida voter 18 years of age or older. If the ballot is being witnessed by a registered Florida voter, the witness must include his or her signature, printed name, voter identification number and county of registration, and address.

The federal Voting Rights Act of 1965 prevents state election laws which impact voting rights from going into effect until the United States Department of Justice ("USDOJ") reviews the law

and determines that it will not have a discriminatory effect. Five counties in Florida --- Collier, Hardee, Hendry, Hillsborough, and Monroe --- are subject to this federal “preclearance” requirement under section 5 of the Act. Florida’s former Secretary of State decided not to enforce any section of Chapter 98-129, Laws of Fla., not precleared by USDOJ in *any* of Florida’s counties, in order to maintain uniform election laws throughout the state for the 1998 election cycle.

Focusing on the registered Florida voter witness requirement, the USDOJ refused to preclear Florida’s new ballot signature and witnessing requirements. Thus, the absentee ballots in the 1998 election cycle utilized the old law, requiring the elector’s signature and the signature and address of one witness 18 years of age or older.

#### *Return of Absentee Ballots*

Florida law restricts the return of absentee ballots to personal delivery by the elector or mail delivery, except that electors unable to return the ballot in person or by mail may designate someone in writing to return their ballot. Designees are limited to returning two ballots per election, other than the designee’s own ballot and ballots for members of the designee’s immediate family. Each designee must present the supervisor with a written authorization from the elector and a picture identification. s. 101.647, F.S. (Supp.1998).

In the 1998 election cycle, the requirement that a designee produce a written note from the elector in order to personally return a ballot to the supervisor of elections did not have any practical voter fraud deterrent effect. While supervisors could not accept ballots presented to them by designees without a written authorization from the voter, nothing prevented the designee from simply mailing the ballot for the voter.

### **III. Effect of Proposed Changes:**

#### *Voter Registration Cards*

The bill repeals the procedure for requiring each supervisor of elections to mail a voter registration card to the voter’s legal residence address listed on the voter registration form. This should alleviate concerns of supervisors in rural areas and rural voters where home mail delivery service is not available.

#### *Criminal Penalties*

Senate Bill 2132 adds “witnessing” an absentee ballot for compensation, or paying somebody else to witness a ballot, to the list of “vote brokering” activities constituting a third-degree felony, except where otherwise provided by law.

#### *Absentee Ballot Signature & Witness Requirements*

The bill modifies the current absentee ballot signature and witnessing requirements which were not precleared by USDOJ. The Voter’s Certificate and corresponding instructions are amended to require the following:

For the elector ---

- Signature
- Printed name

One Witness, 18 Years or Older ---

- Signature
- Printed Name (must be legible if signature is illegible)
- Address

The requirements that the witness be a Florida registered voter and that the elector include the last 4 digits of his or her social security number have been deleted. Because the bill goes back to the "one witness over 18" requirement which existed prior to the adoption of Ch. 98-129, Laws of Fla., all references to notaries or other officers authorized to administer oaths have been removed.

#### *Return of Absentee Ballots*

The bill deletes the requirement that designees returning absentee ballots for electors to the supervisor's office provide a written note from the elector. Instead, the bill adopts a procedure currently in law with regard to *picking up* absentee ballots for electors. The designee is still limited to returning 2 ballots other than the designee's own ballot and ballots for members of the designee's immediate family. But instead of providing a written note from the elector, the designee must provide a picture identification and sign an oath attesting to the fact that:

- the designee is authorized to return the ballot; and,
- the designee has not and will not return more than 2 ballots in the election, except for his own ballot and those of members of his or her immediate family.

#### **IV. Constitutional Issues:**

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Ethics and Elections

Extends current provisions for in-person absentee ballot voting upon presentment of a picture identification and the swearing of an oath; provides for ballots to be deposited into a voting device instead of absentee ballot envelopes.