

**STORAGE NAME:** h1011.er

**DATE:** February 9, 2000

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
ELECTION REFORM  
ANALYSIS**

**BILL #:** HB 1011 (PCB ER 00-02a)

**RELATING TO:** Absentee Ballots

**SPONSOR(S):** Committee on Election Reform, Representatives Flanagan & Others

**TIED BILL(S):**

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

(1) ELECTION REFORM (PRC) YEAS 7 NAYS 1

(2)

(3)

(4)

(5)

---

**I. SUMMARY:**

This bill addresses various sections of the Election Code relating to absentee ballot issues including:

- *Absentee Ballots and Witnessing Requirements:* Removes the “for cause” reasons for voting by absentee ballot. Amends the absentee ballot Voter Certificate and corresponding instructions relating to absentee voting and witnessing allowing any person over 18 to witness the ballot, provided the witness include his or her signature. Provides a space for the voter and witness to print his or her name on the Voter’s Certificate.
- *Return of Absentee Ballots:* Deletes the requirement that a designee returning an absentee ballot for an elector provide a written note from the elector; requiring instead that the designee sign an affidavit attesting to certain facts.
- *Canvassing of Absentee Ballots:* Amends requirements to canvassing boards regarding the legality of an absentee ballot to conform.
- *Penalties:* Adds “witnessing” an absentee ballot for compensation to the “vote brokering” provision constituting a third-degree felony. Removes the penalty for witnessing more than 5 absentee ballots.

This bill does not appear to have a significant fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |                             |   |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

In 1998, Ch. 98-129, Laws of Florida, was enacted in response to abuses uncovered during the 1997 City of Miami mayoral race. Several of the provisions enacted included procedural changes and other restrictions with respect to absentee voting. In accordance with Section 5 of the Voting Rights Act, any statutory changes to procedures for voter registration, absentee voting, powers of elections officials, and voting crimes and penalties insofar as these affect voters in five counties -- Collier, Hardee, Hendry, Hillsborough, and Monroe -- are subject to preclearance by the United States Department of Justice (USDOJ). Several sections of Ch.98-129, Laws of Florida, were not pre-cleared by USDOJ and therefore are not being enforced in Florida. These include:

**Absentee ballots and witnessing requirements** (s. 101.64, F.S.)

- Requiring absentee voters to provide the last four digits of their social security number on the absentee ballot certificate.
- Imposing new witnessing requirements which include the witnessing of the voter's signature by either a notary or officer (defined in the Election Code), or by a registered Florida voter.

**Instructions to electors for voting by absentee ballot** (s. 101.65, F.S.)

- States that last four digits of voter's social security number must be included.
- Requires a witness to be either a notary (or other officer as defined in the Election Code) or a Florida voter, who must provide an address and voter identification number.
- Restricting a person from witnessing more than 5 absentee ballots per election, with exceptions.

**Canvassing of absentee ballots** (s. 101.68(2), F.S.)

- Declares an absentee ballot illegal if the ballot did not include the last four digits of the voter's social security number or was not properly witnessed.

**Penalties for absentee voting violations** (s. 104.047, F.S.)

- Provides a first degree misdemeanor for anyone who witnesses more than 5 absentee ballots per election, if not a notary or absentee ballot coordinator as provided by law.

The following are sections of the Election Code which are impacted by this bill even though they were pre-cleared or not subject to pre-clearance by USDOJ:

**Absentee Ballot Definition (s. 97.021, F.S.)**

- Provides six reasons for voting by absentee ballot which include:
  - Unable without another's assistance to attend the polls.
  - 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 to vote.
  - On account of the tenets of his or her religion, cannot attend the polls on the day of the general, special, or primary election.
  - 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.
  - Has changed his or her residency to another county in this state within the time period during which the registration books are closed for the election for which the ballot is requested.
  - Has changed his or her residency to another state and is ineligible under the laws of that state to vote in the general election; however, this pertains only to presidential ballots.

**Absentee Ballot Coordinators (s. 101.685, F.S.)**

- This section provides for the use of absentee ballot coordinators who register with the Division of Elections through a list submitted by the state executive committee of a political party. All persons whose names are submitted to the Division are subject to a criminal background check and, if cleared, certified by the Division as an absentee ballot coordinator. Coordinators are not restricted by the number of ballots which can be witnessed. This provision was an attempt to regulate persons who witnessed multiple numbers of absentee ballots (over 5) since the Election Code restricts to a maximum of 5 the number of absentee ballots that an individual may witness [ss. 101.64, 101.65, and 104.047, F.S.].

The absentee ballot coordinator provision was contained in Ch. 98-129, Laws of Florida, and pre-cleared by the USDOJ. However, the USDOJ refused to pre-clear the first-degree misdemeanor penalty for witnessing more than 5 absentee ballots in any single election on the grounds that it may be more difficult for certain minority voters to locate a witness or notary.

**Return of absentee ballots (s. 101.647, F.S.)**

- Restricts the return of absentee ballots to personal or mail delivery by the elector, or by an absentee ballot coordinator as provided in s. 101.685, F.S. Electors who are unable to return the ballot in person or by mail may designate in writing a person to return the elector's ballot. Designees are restricted from returning any more than two absentee ballots per election, other than the designee's own ballot or ballots for the designee's immediate family as defined. The designee must present the Supervisor of Elections with both the absent elector's written authorization and a picture identification. Although this provision was pre-cleared by USDOJ, the Florida State Association of Supervisors of Elections (FSASE) has indicated during 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. For example, while Supervisors of Elections 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.

**Mailing of ballots for federal postcard applications (s. 101.694, F.S.)**

- The National Voter Registration Act required states to accept a uniform national federal postcard application for electors who are currently located outside of their county of residence for voter registration purposes. The federal postcard could be used for initial registration, reporting a name or address change, change in party registration, and request for absentee ballot. Section 101.694(3), F.S., requires specific language on the mailing envelop identifying the material as "Official Election Balloting Material-via Air Mail." Further, this provision requires the language to be printed in red ink. The Supervisors have indicated that current postal technology allow for more efficient delivery of parcels printed in black ink and have requested this requirement be removed to allow for flexibility as technology and efficiency change.

**C. EFFECT OF PROPOSED CHANGES:**

Due to the objections of the USDOJ, this bill amends the following provisions:

**Absentee ballots and witnessing requirements (s. 101.64 F.S.)**

- Removes the requirement that a voter provide the last four digits of their social security on the absentee ballot mailing envelope.
- Removes the requirement that an absentee ballot be witnessed by either a notary or a Florida registered voter. Under this bill, witnessing of a ballot may be performed by any person who is at least 18 years of age or older so long as they are not a candidate, provide his or her signature, printed name, and address.
- Removes the restriction that a person may not witness more than 5 absentee ballots.

**Instructions to electors for voting by absentee ballot (s. 101.65, F.S.)**

- Amends the absentee voter's instructions to conform to the changes noted above.

**Canvassing of absentee ballots (s. 101.68(2), F.S.)**

- Amends the instructions to the canvassing board with respect to absentee ballots to conform.
- Provides that an absentee ballot be considered illegal if the signature of the attesting witness is not included on the ballot envelope.

**Penalties for absentee voting violations (s. 104.047, F.S.)**

- Removes the penalty for witnessing more than 5 absentee ballots.
- Adds "witnessing" an absentee ballot for money or other compensation, or paying someone else to witness a ballot, to the list of "vote-brokering" activities constituting a third-degree felony, except where otherwise provided by law.

The following sections of the Election Code are being amended even though they were pre-cleared or not subject to pre-clearance by USDOJ:

**Absentee Ballot Definitions** (s. 97.021, F.S.)

- Removes the "for cause" reasons for voting by absentee ballot. This allows more flexibility to a voter who wishes to vote by absentee ballot.

**Absentee Ballot Coordinators** (s. 101.685, F.S.)

- Due to the objection by USDOJ and refusal to pre-clear the 5-ballot limit on witnessing absentee ballots, this bill deletes provisions which sets forth the process by which absentee ballot coordinators are approved.

**Return of absentee ballots** (s. 101.647, F.S.)

- This bill deletes the requirement that designees returning absentee ballots on behalf of an elector to the office of the Supervisor of Elections provide a written note from the elector. Instead, the bill adopts a procedure whereby the designee returning a ballot on behalf of an absent elector, must attest by affidavit that he or she is authorized by the absent elector to return the ballot.
- Designees continue to be limited to two, the number of ballots which can be returned, with the exception of the designee's immediate family.

**Mailing of ballots for federal postcard applications** (s. 101.694, F.S.)

- Removes the requirement that ballots sent to an applicant using the federal postcard use red ink to post the words "Official Election Balloting Material-via Air Mail" and other inscriptions. This change in this requirement will not mandate the use of black ink but will allow Supervisors to use whatever color ink provides the most efficient delivery of mail in accordance with the technology available at the time.

**D. SECTION-BY-SECTION ANALYSIS:**

This section need be completed only in the discretion of the Committee.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**STORAGE NAME:** h1011.er

**DATE:** February 9, 2000

**PAGE 6**

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

Minimal cost involved in making changes to absentee ballot voter certificate, absentee ballot instructions, and mailing envelopes as provided by this bill.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

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

**A. APPLICABILITY OF THE MANDATES PROVISION:**

Election laws are exempt from the requirements of Art. VII, section 18, of the Florida Constitution.

**B. REDUCTION OF REVENUE RAISING AUTHORITY:**

None.

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

None.

**V. COMMENTS:**

**A. CONSTITUTIONAL ISSUES:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. OTHER COMMENTS:**

None.

**STORAGE NAME:** h1011.er

**DATE:** February 9, 2000

**PAGE 7**

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

A “strike everything” amendment was adopted in committee and the bill analysis is written to reflect the changes adopted.

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

Prepared by:

Staff Director:

---

R. Michael Paredes

---

Dawn K. Roberts