

STORAGE NAME: h1011b.go
DATE: March 14, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

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

RELATING TO: Absentee Ballots

SPONSOR(S): Committee on Election Reform, Representative Flanagan and others

TIED BILL(S):

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

- (1) ELECTION REFORM YEAS 7 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
 - (3)
 - (4)
 - (5) .
-

I. SUMMARY:

This bill amends the following sections of the Florida Election Code relating to absentee ballot issues: ss. 97.021, 101.657, 101.64, 101.65, 101.68, 101.647, 101.694, and 104.047, Florida Statutes. These sections include:

- *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 includes his or her signature and address. 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 voter fraud and 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 federal Voting Rights Act of 1965¹, 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). This Act prevents state election laws impacting voting rights to be effective until the USDOJ reviews the election laws to determine whether or not the laws will have a discriminatory effect. Several sections of ch.98-129, Laws of Florida, were not precleared by the USDOJ and therefore are not currently enforced in Florida. These include:

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

Absentee voters are required to provide the last four digits of their Social Security number on the absentee Voter's Certificate. The absentee ballot Voter's Certificate requires a notary, an officer, as defined by the Election Code, or a registered Florida voter to witness the absentee ballot. In addition, the certificate provides that the elector must qualify to be an absentee voter, under the qualifications provided in s. 97.021, F.S., and requires that the witness must attest to witnessing no more than 5 ballots for any particular election.

Instructions to absentee electors to vote by absentee ballot (s. 101.65, F.S.)

To ensure that an absentee ballot will be counted, the voter must follow the correct procedure and the last four digits of the voter's Social Security number must be placed on the ballot accompanied by the voter's signature. The absentee ballot must also be witnessed by either a registered Florida voter or a notary. The witness may witness no more than 5 ballots in the particular election, unless certified as an absentee ballot coordinator, and the witness may not be a candidate.

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

The canvassing board is required to compare the signature of the elector on the Voter's Certificate with the signature of the elector in the registration books to check that the elector

¹42 U.S.C. 1973.

is registered in that county and to ensure the legality of the absentee ballot. An absentee ballot shall be considered illegal if the voter does not include his or her signature and the last four digits of his or her Social Security number. In addition, the ballot will be considered illegal if it is not witnessed by a notary, an officer as defined in the Election Code, or a registered Florida voter.

If the canvassing board determines that a ballot is illegal, a member of the board shall reject and preserve the ballot. The voter may challenge the determination of an illegal ballot by following the procedures outlined in this section.

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

A person is guilty of a third degree felony if he or she:

- provides or offers to provide or accepts a pecuniary (or other benefit) to distribute, order, request, collect, deliver, or otherwise physically possess absentee ballots, except as provided in ss. 101.6105-101.694, F.S.;
- requests an absentee ballot on the behalf of an elector, except as provided in s. 101.62 or s. 101.655. ; or
- marks a choice on the ballot of another person, with limited exceptions.

A person is guilty of a first degree misdemeanor if he or she:

- is not a notary, an officer entitled to administer oaths or an absentee ballot coordinator, and witnesses more than 5 ballots in a single election; or
- returns more than two absentee ballots to the supervisors of elections.

The following are sections of the Election Code which are impacted by this bill even though they were precleared or not subject to preclearance by the USDOJ:

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

The following are the six qualifications to vote by absentee ballot, as defined by "absentee elector." If the elector:

- Is 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 to any particular number of ballots which can be witnessed. This provision was an attempt to regulate persons who witnessed numerous absentee ballots since the Election Code restricts the number of

absentee ballots that an individual may witness to a maximum of 5 [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 precleared by the USDOJ. However, the USDOJ refused to preclear 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.)

The return of absentee ballots is restricted to personal delivery or by mail delivery by the elector to the supervisor of elections. 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 of the designee.

Although this provision was precleared by USDOJ, the Florida State Association of Supervisors of Elections (FSASE) has indicated that 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 deterrent effect on voter fraud. For example, while the 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 of 1993², the "Motor Voter Act," required states to accept and use a mail-in voter registration developed by the Federal Election Commission. The uniform national federal postcard application, for voter registration purposes, may be used by electors who are currently located outside of their county of residence. The federal postcard registration can be used for initial registration, reporting a name or address change, changing party registration, and requesting an absentee ballot. Section 101.694(3), F.S., requires specific language on the mailing envelope identifying the material as "Official Election Balloting Material-via Air Mail" or other similar language. Further, this provision requires the language to be printed in red ink. The supervisors have indicated that current postal technology allows 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:

Section 1: This section amends s. 97.021, F.S., removing the "for cause" reasons to vote by absentee ballot. This section redefines "absentee elector" as a registered and qualified voter who is unable to attend the polls on election day. This allows more flexibility for a voter who wishes to qualify to vote by absentee ballot.

Section 2: This section amends s. 101.657, F.S., regarding voting absentee ballots in person. This section removes a cross reference to the definition of "absentee elector" and replaces the requirements of an absentee voter being unable to attend the polls

²42 U.S.C. 1973gg.

and being a registered elector with an “absent” elector for the purposes of absentee voting.

Section 3: This section amends s. 101.64, F.S., by removing the requirement that a voter provide the last four digits of their Social Security number on the Voter’s Certificate and removing language referring to the “for cause” reasons for qualifying to vote by absentee vote. This section also removes the restriction that is written into the Voter’s Certificate that a person may not witness more than 5 absentee votes.

This section requires the following on the Voter’s Certificate for the elector:

- Signature
- Printed name

This section requires the following on the Voter’s Certificate for the witness:

- Signature
- Printed name
- Address

This section deletes any reference to notaries or other authorized officers to administer oaths and requires a witness over the age of 18, which is how the law existed prior to ch. 98-129, Laws of Florida. This section also deletes the requirement of the elector including the last four digits of his or her Social Security number on the Voter’s Certificate.

Section 4: This section amends s. 101.65, F.S., regarding the instruction to absent electors and removes the language that the voter place the last four digits of his or her Social Security number on the ballot. This section also provides a new requirement for the witnessing of the ballot by a person, at least 18 years of age, who is not a candidate, who provides his or her signature and address.

Section 5: This section amends s. 101.68(2)(c), F.S., by removing the language making a ballot illegal if it does not contain the last four digits of the voter’s Social Security number or if it is not witnessed by a notary or a registered Florida voter. This section provides for a ballot to be illegal if it does not provide the signature and address of an attesting witness.

Section 6: This section amends s. 101.647, F.S., regarding the return of absentee ballots. This section removes the requirement that the designee, for the return of the ballot for the elector, must provide to the supervisor of elections written authorization by the elector. This bill provides for an affidavit instead and requires that in the affidavit, the designee shall state that he or she is authorized to return the ballot and indicating if the elector is an immediate member of the designee’s immediate family. The designee must also provide, in the affidavit, that he or she will not return more than 2 absentee ballots for the particular election, not including the designee’s own ballot and ballots for the designee’s immediate family. This section provides that the department shall prescribe the form of the affidavit, and upon the supervisor’s satisfaction that the designee is authorized to return the ballot, the supervisor shall accept the ballot.

Section 7: This section amends s. 101.694, F.S., removing the requirement that ballots sent to a federal postcard applicant use red ink on the face of the envelope with “Official Election Balloting Material-via Air Mail” or other similar language. This change does not mandate the use of any particular color ink, but does allow the supervisor of

elections to use a color that provides the most efficient delivery of mail in accordance with the technology available at the time.

Section 8: Effective January 1, 2001, this section amends s. 104.047, F.S., by adding the term “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. This section also removes the language penalizing a witness, other than a notary or other officer entitled to administer oaths, who witnesses more than five ballots in any single election.

Section 9: Effective January 1, 2001, this section repeals s. 101.685, F.S., which sets forth the procedure by which absentee ballot coordinators are approved. The USDOJ refused to preclear the limit imposed on witnesses to five ballots in any single election, which thereby allowed any person over 18 to witness an unlimited number of absentee ballots. This made the authorization for absentee ballot coordinators moot.

Section 10: This section provides an effective date of upon becoming law, except as otherwise provided.

D. SECTION-BY-SECTION ANALYSIS:

Please refer to the section-by-section analysis under C. Effect of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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.

STORAGE NAME: h1011b.go

DATE: March 14, 2000

PAGE 7

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.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

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STORAGE NAME: h1011b.go

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PAGE 8

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