

# 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: CS/SB 334

SPONSOR: Committee on Ethics and Elections and Senator Saunders

SUBJECT: Voter registration; absentee voting

DATE: December 8, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Bradshaw</u>	<u>EE</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

Committee Substitute for Senate Bill 334 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.
- Voting in Person: Removes a requirement that registered voters who registered by mail and have not previously voted in their county of registration must vote in person.
- 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 allowing any person over 18 to *witness* the ballot, provided the witness includes his or her signature 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.
- Criminal Penalties: Eliminates a misdemeanor criminal penalty for witnessing more than 5 ballots in any election.
- Absentee Ballot Coordinators: Repeals the provision of law which authorizes political parties to appoint certified absentee ballot coordinators for the purpose of witnessing absentee ballots.

This bill substantially amends ss. 97.071, 101.64, 101.65, 101.68, 101.647, 101.694, and 104.047, F.S., and repeals ss. 97.056 and 101.685, F.S.

## II. Present Situation:

In 1998, the Legislature enacted Ch. 98-129, Laws of Florida, 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 Florida, 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. (1999).

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 contest. 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.

### *Voting in Person*

Pursuant to specific authorization in the National Voter Registration Act, Chapter 98-129, Laws of Florida, established a requirement that any person who registered to vote by mail and who had not previously voted in the county of their registration must vote *in person* the first time. Exceptions from the in-person voting requirement were made for persons 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 electors who were absent from the county and did not plan to return by election day.

The idea behind this provision was to require persons to physically present themselves before an election official at some point prior to their ballot being counted, in the hope that this would deter fraudulent registration and voting. However, the in-person voting requirement applies only to persons who register by mail. It can be easily circumvented by someone who gives his or her registration card to a third party to deliver to the supervisor.

In addition, the in-person voting requirement is a practical nightmare for supervisors to administer. The supervisors do not have the resources, information, or legal skills to be able to determine who is entitled to an exemption from the in-person voting requirement and who is not.

Therefore, a supervisor who receives a request for an absentee ballot will have no way to determine whether the requesting elector is entitled to cast that ballot. Since the elector likely doesn't know whether he is exempt from the in-person voting requirement under one of several federal law exemptions and neither does the supervisor, the in-person voting requirement will likely be unenforceable.

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

Chapter 98-129, Laws of Florida, 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. (1999). 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 Florida, 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 ballots. 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. (1999).

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.

### *Criminal Penalties*

Chapter 98-129, Laws of Florida, made it a first-degree misdemeanor for any person other than a notary, other officer authorized to administer oaths, or an absentee ballot coordinator to witness more than five ballots in any single election. The purpose of the 5-ballot witnessing limit was to discourage persons from fraudulently witnessing dozens and, in at least one documented case, hundreds of ballots.

The USDOJ refused to preclear the 5-ballot witnessing limit, citing concerns that minority voters in certain geographic areas might have a more difficult time finding absentee ballot witnesses who were registered voters or notaries.

### *Absentee Ballot Coordinators*

Chapter 98-129, Laws of Florida, created an exemption to the 5-ballot witnessing limit. Political parties were authorized to appoint specific numbers of persons as “absentee ballot coordinators,” who were then certified by the Division of Elections. Absentee ballot coordinators were entitled to witness an *unlimited number of ballots* per election.

## **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.

### *Voting in Person*

Committee Substitute for Senate Bill 334 eliminates the requirement that registered voters who registered by mail and have not previously voted in their county of registration must vote in person.

### *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 (requested, not mandatory)

One Witness, 18 Years or Older ---

- Signature
- Printed Name (requested, not mandatory)
- 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 Florida, 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.

#### *Criminal Penalties*

Committee Substitute for Senate Bill 334 eliminates the first-degree misdemeanor penalty for witnessing more than 5 ballots in any single election, effectively allowing any person over 18 years of age to witness an unlimited number of absentee ballots.

#### *Absentee Ballot Coordinators*

Committee Substitute for Senate Bill 334 repeals the provision of Florida law authorizing absentee ballot coordinators. The purpose of the absentee ballot coordinator provision was to allow political parties to appoint a limited number of persons to witness in excess of 5 ballots per election, the limit imposed in Chapter 98-129, Laws of Florida. However, the USDOJ refused to preclear the 5-ballot witnessing limit, which in effect allows every person to witness an unlimited number of absentee ballots. The USDOJ’s actions have rendered the absentee ballot coordinator provision moot.

**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:**

None.