

By the Committee on Ethics and Elections; and Senators Posey,
Lawson, Bronson and Sebesta

313-1609-01

1 A bill to be entitled
2 An act relating to elections; amending s.
3 97.021, F.S.; providing a definition of
4 provisional ballot; creating s. 101.048, F.S.;
5 providing procedures for voting and counting
6 provisional ballots; amending s. 101.045, F.S.;
7 requiring verification of an elector's
8 eligibility if the elector's name is not on the
9 precinct register; amending s. 101.5614, F.S.;
10 providing for the return of provisional ballots
11 to the supervisor of elections; providing for
12 the canvass of provisional ballots; amending s.
13 101.69, F.S.; allowing a voter who has
14 requested an absentee ballot and who decides to
15 vote at the polls on election day to vote a
16 provisional ballot, if the absentee ballot is
17 not returned; amending s. 102.141, F.S.;
18 requiring the county canvassing board to
19 provide public notice of time and place of the
20 canvass of provisional ballots; providing an
21 effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Present subsections (22) through (30) of
26 section 97.021, Florida Statutes, are redesignated as
27 subsections (23) through (31), respectively, and a new
28 subsection (22) is added to that section to read:

29 97.021 Definitions.--For the purposes of this code,
30 except where the context clearly indicates otherwise, the
31 term:

1 (22) "Provisional ballot" means a ballot issued to a
2 voter by the election board at the polling place on election
3 day for one of the following reasons:

4 (a) The voter's name does not appear on the precinct
5 register and verification of the voter's eligibility cannot be
6 determined; or

7 (b) There is an indication on the precinct register
8 that the voter has requested an absentee ballot and the voter
9 does not return the absentee ballot to the election board at
10 the precinct.

11 Section 2. Section 101.048, Florida Statutes, is
12 created to read:

13 101.048 Provisional ballots.--

14 (1)(a) At all elections, a voter claiming to be
15 properly registered in the county and eligible to vote in the
16 election but whose eligibility cannot be determined shall be
17 entitled to vote a provisional ballot. Once voted, the
18 provisional ballot shall be placed in a secrecy envelope and
19 thereafter sealed in a provisional-ballot envelope. The
20 provisional ballot shall be deposited in a ballot box. All
21 provisional ballots shall remain sealed in their envelopes for
22 return to the supervisor of elections.

23 (b) The county canvassing board shall examine each
24 provisional ballot to determine whether the person voting that
25 ballot was entitled to vote in the election and to assure that
26 the person had not already cast a ballot in the election.

27 1. If it is determined that the person was registered
28 and entitled to vote, the canvassing board shall compare the
29 signature on the provisional-ballot envelope with the
30 signature on the voter's registration and, if it matches,
31 shall count the ballot. The provisional ballot of a voter who

1 is otherwise entitled to vote shall not be rejected because
2 the voter did not cast his or her ballot in the precinct of
3 his or her legal residence. However, if the voter did not
4 vote the ballot to which he or she was entitled, the
5 canvassing board shall duplicate the ballot for the races that
6 the voter was entitled to vote in his or her legal precinct
7 and count the races for which the voter was entitled to vote.

8 2. If it is determined that the person voting the
9 provisional ballot was not registered or entitled to vote, the
10 provisional ballot shall not be counted and the ballot shall
11 remain in the envelope containing the Provisional Ballot
12 Voter's Certificate, and the envelope shall be marked
13 "Rejected as Illegal."

14 (2) The Provisional Ballot Voter's Certificate shall
15 be in substantially the following form:

16 STATE OF FLORIDA

17 COUNTY OF _____

18
19 I do solemnly swear (or affirm) that my name is; that my
20 date of birth is; that I am registered to vote and at the
21 time I registered I resided at, in the municipality of
22, in County, Florida; that I am a qualified voter of
23 the county and have not voted in this election.

24
25 ...(Signature of Voter)...

26 ...(Current Address)...

27
28 Sworn to and subscribed before me this day of,

29 (year).

30 ...(Clerk or Inspector of Election)...

1 You may provide additional information to further assist the
2 supervisor of elections in determining eligibility. If known,
3 please provide the place and date that you registered to vote.

4 (3) In counties where the voting system does not use a
5 paper ballot, the supervisor of elections shall provide the
6 appropriate provisional ballots to each polling place.

7 Section 3. Subsections (2) and (3) of section 101.045,
8 Florida Statutes, are amended to read:

9 101.045 Electors must be registered in precinct;
10 provisions for residence or name change.--

11 (2)(a) An elector who moves from the precinct within
12 the county in which the elector is registered may be permitted
13 to vote in the precinct to which he or she has moved his or
14 her legal residence, provided such elector completes an
15 affirmation in substantially the following form:

16
17 Change of Legal Residence of Registered
18 Voter
19

20 Under penalties for false swearing, I, ...(Name of voter)...,
21 swear (or affirm) that the former address of my legal
22 residence was ...(Address of legal residence)... in the
23 municipality of, in County, Florida, and I was
24 registered to vote in the precinct of County,
25 Florida; that I have not voted in the precinct of my former
26 registration in this election; that I now reside at
27 ...(Address of legal residence)... in the Municipality of
28, in County, Florida, and am therefore eligible to
29 vote in the precinct of County, Florida; and I
30 further swear (or affirm) that I am otherwise legally
31 registered and entitled to vote.

1
2 ...(Signature of voter whose address of legal residence has
3 changed)...

4
5 (b) An elector whose name changes because of marriage
6 or other legal process may be permitted to vote, provided such
7 elector completes an affirmation in substantially the
8 following form:

9
10 Change of Name of Registered
11 Voter

12
13 Under penalties for false swearing, I, ...(New name of
14 voter)..., swear (or affirm) that my name has been changed
15 because of marriage or other legal process. My former name and
16 address of legal residence appear on the registration books of
17 precinct as follows:

18 Name.....
19 Address.....
20 Municipality.....
21 County.....
22 Florida, Zip.....

23 My present name and address of legal residence are as follows:
24 Name.....
25 Address.....
26 Municipality.....
27 County.....
28 Florida, Zip.....

29 and I further swear (or affirm) that I am otherwise legally
30 registered and entitled to vote.

31

1 ...(Signature of voter whose name has changed)...

2
3 (c) Such affirmation, when completed and presented at
4 the precinct in which such elector is entitled to vote, and
5 upon verification of the elector's registration, shall entitle
6 such elector to vote as provided in this subsection. If the
7 elector's eligibility to vote cannot be determined, he or she
8 shall be entitled to vote a provisional ballot, subject to the
9 requirements and procedures in s. 101.048. Upon receipt of an
10 affirmation certifying a change in address of legal residence
11 or name, the supervisor shall as soon as practicable make the
12 necessary changes in the registration records of the county to
13 indicate the change in address of legal residence or name of
14 such elector.

15 (d) Instead of the affirmation contained in paragraph
16 (a) or paragraph (b), an elector may complete a voter
17 registration application that indicates the change of name or
18 change of address of legal residence.

19 (e) A request for an absentee ballot pursuant to s.
20 101.62 which indicates that the elector has had a change of
21 address of legal residence from that in the supervisor's
22 records shall be sufficient as the notice to the supervisor of
23 change of address of legal residence required by this section.
24 Upon receipt of such request for an absentee ballot from an
25 elector who has changed his or her address of legal residence,
26 the supervisor shall provide the elector with the proper
27 ballot for the precinct in which the elector then has his or
28 her legal residence.

29 (3) When an elector's name does not appear on the
30 registration books of the election precinct in which the
31 elector is registered ~~and when the elector cannot present a~~

1 ~~valid registration identification card~~, the elector may have
2 his or her name restored if the supervisor is otherwise
3 satisfied that the elector is validly registered, that the
4 elector's name has been erroneously omitted from the books,
5 and that the elector is entitled to have his or her name
6 restored. The supervisor, if he or she is satisfied as to the
7 elector's previous registration, shall allow such person to
8 vote and shall thereafter issue a duplicate registration
9 identification card.

10 Section 4. Subsections (1), (2), and (8) of section
11 101.5614, Florida Statutes, are amended to read:

12 101.5614 Canvass of returns.--

13 (1)(a) In precincts in which an electronic or
14 electromechanical voting system is used, as soon as the polls
15 are closed, the election board shall secure the voting devices
16 against further voting. The election board shall thereafter
17 open the ballot box in the presence of members of the public
18 desiring to witness the proceedings and count the number of
19 voted ballots, unused ballots, provisional ballots, and
20 spoiled ballots to ascertain whether such number corresponds
21 with the number of ballots issued by the supervisor. If there
22 is a difference, this fact shall be reported in writing to the
23 county canvassing board with the reasons therefor if known.
24 The total number of voted ballots shall be entered on the
25 forms provided. The proceedings of the election board at the
26 precinct after the polls have closed shall be open to the
27 public; however, no person except a member of the election
28 board shall touch any ballot or ballot container or interfere
29 with or obstruct the orderly count of the ballots.

30 (b) In lieu of opening the ballot box at the precinct,
31 the supervisor may direct the election board to keep the

1 ballot box sealed and deliver it to a central or regional
2 counting location. In this case, the election board shall
3 count the stubs removed from the ballots to determine the
4 number of voted ballots.

5 (2)(a) If the ballots are to be tallied at a central
6 location or at no more than three regional locations, the
7 election board shall place all ballots that have been cast and
8 the unused, void, provisional, and defective ballots in the
9 container or containers provided for this purpose, which shall
10 be sealed and delivered forthwith to the central or regional
11 counting location or other designated location by two
12 inspectors who shall not, whenever possible, be of the same
13 political party. The election board shall certify that the
14 ballots were placed in such container or containers and each
15 container was sealed in its presence and under its
16 supervision, and it shall further certify to the number of
17 ballots of each type placed in the container or containers.

18 (b) If ballots are to be counted at the precincts,
19 such ballots shall be counted pursuant to rules adopted by the
20 Department of State, which rules shall provide safeguards
21 which conform as nearly as practicable to the safeguards
22 provided in the procedures for the counting of votes at a
23 central location.

24 (8) The return printed by the automatic tabulating
25 equipment, to which has been added the return of write-in,
26 absentee, and manually counted votes, and votes from
27 provisional ballots, shall constitute the official return of
28 the election. Upon completion of the count, the returns shall
29 be open to the public. A copy of the returns may be posted at
30 the central counting place or at the office of the supervisor
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1 of elections in lieu of the posting of returns at individual
2 precincts.

3 Section 5. Section 101.69, Florida Statutes, is
4 amended to read:

5 101.69 Voting in person; return of absentee
6 ballot.--The provisions of this code shall not be construed to
7 prohibit any elector from voting in person at the elector's
8 precinct on the day of an election notwithstanding that the
9 elector has requested an absentee ballot for that election.
10 An elector who has received an absentee ballot, but desires to
11 vote in person, shall return the ballot, whether voted or not,
12 to the election board in the elector's precinct. The returned
13 ballot shall be marked "canceled" by the board and placed with
14 other canceled ballots. However, if the elector is unable to
15 return the ballot, the elector may vote a provisional ballot
16 as provided in s. 101.048 ~~execute an affidavit stating that~~
17 ~~the absentee ballot has not been voted and the elector may~~
18 ~~then vote at the precinct.~~

19 Section 6. Subsections (2) and (3) of section 102.141,
20 Florida Statutes, are amended to read:

21 102.141 County canvassing board; duties.--

22 (2) The county canvassing board shall meet in a
23 building accessible to the public in the county where the
24 election occurred at a time and place to be designated by the
25 supervisor of elections to publicly canvass the absentee
26 electors' ballots as provided for in s. 101.68 and provisional
27 ballots as provided by s. 101.048. Public notice of the time
28 and place at which the county canvassing board shall meet to
29 canvass the absentee electors' ballots and provisional ballots
30 shall be given at least 48 hours prior thereto by publication
31 once in one or more newspapers of general circulation in the

1 county or, if there is no newspaper of general circulation in
2 the county, by posting such notice in at least four
3 conspicuous places in the county. As soon as the absentee
4 electors' ballots and the provisional ballots are canvassed,
5 the board shall proceed to publicly canvass the vote given
6 each candidate, nominee, constitutional amendment, or other
7 measure submitted to the electorate of the county, as shown by
8 the returns then on file in the office of the supervisor of
9 elections and the office of the county court judge.

10 (3) The canvass, except the canvass of absentee
11 electors' returns and the canvas of provisional ballots, shall
12 be made from the returns and certificates of the inspectors as
13 signed and filed by them with the county court judge and
14 supervisor, respectively, and the county canvassing board
15 shall not change the number of votes cast for a candidate,
16 nominee, constitutional amendment, or other measure submitted
17 to the electorate of the county, respectively, in any polling
18 place, as shown by the returns. All returns shall be made to
19 the board on or before noon of the day following any primary,
20 general, special, or other election. If the returns from any
21 precinct are missing, if there are any omissions on the
22 returns from any precinct, or if there is an obvious error on
23 any such returns, the canvassing board shall order a recount
24 of the returns from such precinct. Before canvassing such
25 returns, the canvassing board shall examine the counters on
26 the machines or the tabulation of the ballots cast in such
27 precinct and determine whether the returns correctly reflect
28 the votes cast. If there is a discrepancy between the returns
29 and the counters of the machines or the tabulation of the
30 ballots cast, the counters of such machines or the tabulation

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1 of the ballots cast shall be presumed correct and such votes
2 shall be canvassed accordingly.

3 Section 7. This act shall take effect on January 1,
4 2002.

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6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 SB 1118

8

9 The committee substitute provides a procedure in law for
10 voting a provisional ballot. The language in the bill will
11 allow a person who goes to the polls and whose eligibility
12 cannot be determined or person who has requested an absentee
13 ballot but does not return it to the pollworkers, to vote a
14 provisional ballot. The provisional ballot will not be
15 counted unless the canvassing board determines that the person
16 voting the provisional ballot was registered and entitled to
17 vote.

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