

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Judiciary Committee

BILL: CS/SB 506

SPONSOR: Judiciary Committee and Senator Hill

SUBJECT: Mail Ballots/Early Voting

DATE: March 24, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Babington</u>	<u>Rubinas</u>	<u>EE</u>	<u>Fav/2 amendments</u>
2.	<u>Brown</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute provides that ballots that are otherwise valid are to be counted in early voting even if the elector dies after casting the ballot but on or before election day.

Regarding votes cast by mail ballot in a local referendum and absentee ballot voting, ballots are to be counted even if the elector dies after mailing the ballot but before election day, as long as the ballot was postmarked, date-stamped with a tracking number by a common carrier, or already in the possession of the supervisor of elections.

The bill substantially amends the following sections of the Florida Statutes: 101.6103, 101.657, and 101.68.

II. Present Situation:

Forms of Voting

Other than voting in-person, at a precinct, on election day, other authorized forms of voting include:

Early Voting

Voters are authorized to vote early in the main or branch office of the supervisor.¹ Early voting begins the 15th day prior to an election and ends the day before an election, and must be provided for at least eight hours per weekday during the period designated.²

¹ s. 101.657(1)(a), F.S.

Mail Ballot Elections

Elections may be conducted by mail ballot if the following conditions are met:

- The election is a referendum election at which all or part of the qualified electors of certain subdivisions of government are the only electors to vote, limited to counties, cities, school districts limited to one county, or special districts;
- The local governing body and supervisor of elections authorize the use of mail ballots; and
- The Secretary of State approves a written plan for the conduct of the election, including a timetable for the conduct of the election, submitted by the local supervisor.³

Absentee Ballots

A supervisor of elections may accept a request for an absentee ballot from a voter, an immediate family member, or a legal guardian, in person, in writing, or by telephone. Regardless of the mode of request, the following information must be provided: the elector's name, address, and date of birth; and the requester's name, address, driver's license number, relationship to elector, and signature.⁴

With any absentee ballot requested, the supervisor is required to record the date requested, the date the ballot was mailed, the date received, and other necessary information.⁵

Background

Approximately 455 voting-age residents die every day in the state of Florida.⁶ Current law requires the Department of Health to furnish to each supervisor of elections monthly lists of the names of all residents 17 years of age and older who died in the supervisor's county the previous month.⁷ Upon receipt of that information, the supervisor is required to remove those names from the voter registration books.⁸ Similarly, nothing prohibits the supervisor from removing the name of a deceased voter if the supervisor verifies the information through other sources.⁹ Some supervisors learn of deceased voters by having staff review daily obituary pages, while others receive notification from the decedent's family.

While this bill addresses mail ballots for local referenda, all absentee ballots are currently handled in the same manner. If a voter votes in a mail ballot election, and subsequently dies before election day, the supervisor must learn of the voter's death prior to the counting of the ballot in order to remove the voter from the registration book and invalidate the ballot. If the

² s. 101.657(1)(b), F.S.

³ s. 101.6102(1), F.S.

⁴ s. 101.62(1), F.S.

⁵ s. 101.62(3), F.S.

⁶ See www.floridacharts.com/charts/DeathQuery.aspx, at Florida Department of Health website.

⁷ s. 98.093(1), F.S.

⁸ s. 98.093(4), F.S.

⁹ s. 98.093(5), F.S.

supervisor is notified or learns of the voter's death, the mail ballot of the deceased voter is not counted. There are no studies showing how successful supervisors have been at removing deceased voters from registration books prior to elections.

There is no procedure, however, for invalidating early voted ballots. Early voted ballots are collected and processed by voting machines at the time they are cast. Unlike mail ballots, early voted ballots contain no identifying information. A supervisor who learns of a voter who died prior to election day after casting an early ballot has no ability to remove that vote from the machine in which the vote was cast.

Therefore, it is questionable that mail ballots cast by voters who die pre-election day are later invalidated, and impossible that early ballots are invalidated based on the voter's death. California, Texas, and Ohio, among others states, have specifically provided that absentee and early voters who die before election day will have their votes counted.

III. Effect of Proposed Changes:

This committee substitute provides that an early voting ballot that is otherwise valid is to be counted even if the elector dies after casting the ballot but on or before election day.

Regarding votes cast by mail ballot in a local referendum and absentee ballot voting, ballots are to be counted even if the elector dies after mailing the ballot but before election day, as long as the ballot was:

- Postmarked by the U.S. Postal Service;
- Date-stamped with a verifiable tracking number by a common carrier; or
- Already in the possession of the supervisor of elections.

Additionally, this committee substitute provides that the name of an elector who dies after voting by absentee ballot remains in the registration books until election results are certified.

This committee substitute takes effect July 1, 2005.

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:

On page 1, line 30, the Legislature may wish to say “on or before” to be consistent throughout the committee substitute.

VII. Related Issues:

The language limiting acceptable ballots to electors who are deceased prior to election day may not include military and other overseas ballots, as it is unclear if they are postmarked by the U.S. Postal Service or transported by common carrier.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
