

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 105 Vote-By-Mail Ballots

**SPONSOR(S):** Oversight, Transparency & Administration Subcommittee; Cruz and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 544, SB 954

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	14 Y, 0 N, As CS	Toliver	Harrington
2) Government Accountability Committee	21 Y, 0 N	Toliver	Williamson

### SUMMARY ANALYSIS

Florida law allows an elector to cast a ballot by mail, called a vote-by-mail ballot. Once the elector has completed his or her ballot, the elector must sign a voter's certificate on the back of the return envelope. The voter's certificate requires the elector to affirm that the elector is a qualified, registered voter of the county and that the elector has not and will not vote more than one ballot in the election. The supervisor of elections (supervisor) and the county canvassing board use this signature to confirm that the person voting is the same elector in the registration records. If the elector omits his or her signature from the voter's certificate or the signature is determined to not match the registration records, the ballot is deemed illegal and will not be counted. However, if an elector omits his or her signature, he or she may, until 5 p.m. the day before the election, submit an affidavit to remedy the defective ballot and have it counted. There is no analogous process to cure a ballot when the signature does not match the signature on the registration records.

The bill requires the supervisor to notify each elector whose vote-by-mail ballot has been rejected of the existence of the process to cure the rejected ballot. It requires the supervisor to make a good faith effort to notify the elector before 5 p.m. the day before an election. The bill provides a cure for an elector who submits a vote-by-mail ballot that is rejected because of a difference between the signature on the voter's certificate or ballot affidavit and the registration books or precinct register. The cure provision allows an elector to cure the defect by submitting an affidavit in the same way as is currently allowed for unsigned vote-by-mail ballots. As such, the bill provides the elector may, until 5:00 p.m. on the day before the election, complete an affidavit to cure the vote-by-mail ballot. The bill also clarifies that when an elector's signature on a vote-by-mail ballot affidavit does not match the elector's signature in the registration books, the elector's identity can be confirmed with a copy of a current and valid photo identification. In addition, the bill expands the list of acceptable forms of identification for purposes of curing a vote-by-mail ballot to include a Florida driver license and a Florida identification card issued by the Department of Highway Safety and Motor Vehicles.

The bill may have an insignificant negative fiscal impact on the state and local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

Florida law allows an elector to cast his or her ballot by mail.<sup>1</sup> Those ballots, termed "vote-by-mail ballots," are subject to specific requirements and procedures set in statute.<sup>2</sup> In brief, an elector may request a vote-by-mail ballot from his or her supervisor of elections (supervisor).<sup>3</sup> Thereafter, the supervisor mails the elector a letter containing a ballot, instructions for completing the ballot,<sup>4</sup> and a secrecy envelope for returning the ballot.<sup>5</sup> Once the elector has completed the ballot and placed it in the secrecy envelope, the elector must complete a voter's certificate affixed to the back of the envelope.<sup>6</sup> The voter's certificate reads as follows:

##### VOTER'S CERTIFICATE

I, \_\_\_\_\_, do solemnly swear or affirm that I am a qualified and registered voter of \_\_\_\_\_ County, Florida, and that I have not and will not vote more than one ballot in this election. I understand that if I commit or attempt to commit any fraud in connection with voting, vote a fraudulent ballot, or vote more than once in an election, I can be convicted of a felony of the third degree and fined up to \$5,000 and/or imprisoned for up to 5 years. I also understand that failure to sign this certificate will invalidate my ballot.

(Date)

(Voter's Signature)<sup>7</sup>

Upon receipt of the vote-by-mail ballot, the supervisor compares the signature on the voter's certificate to the signature of the elector in the registration books or the precinct register "to determine whether the elector is duly registered in the county."<sup>8</sup> A vote-by-mail ballot is considered illegal if the voter's certificate does not include the signature of the elector, as shown by the registration records or the precinct register.<sup>9</sup>

If a vote-by-ballot is rejected as illegal, the supervisor must notify the elector that his or her ballot was rejected and provide the reason for the rejection.<sup>10</sup> If the ballot was rejected due to a difference between the elector's signature on the voter's certificate or vote-by-mail affidavit and the signature in the registration books or precinct register, then the supervisor must mail a voter registration application to that elector for purposes of updating his or her signature.<sup>11</sup>

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<sup>1</sup> Section 101.62, F.S.

<sup>2</sup> See ss. 101.6105, 101.6106, 101.6107, 101.62, 101.64, 101.65, 101.655, 101.661, 101.662, 101.67, 101.68, 101.69, 101.6921, 101.6923, 101.6925, 101.694, 101.6951, 101.6952, 101.697, and 101.698, F.S.

<sup>3</sup> Section 101.62, F.S.

<sup>4</sup> Section 101.65, F.S.

<sup>5</sup> Section 101.64(1), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> The supervisor must create the secrecy envelope so that the voter's signature portion of the certificate crosses the seal of the envelope. Section 101.64(2), F.S.

<sup>8</sup> Section 101.68(1), F.S. If the supervisor fails to compare the signatures, the county canvassing board will do so. Section 101.68(2)(c)1., F.S.

<sup>9</sup> Section 101.68(2)(c)1., F.S.

<sup>10</sup> Section 101.68(4)(a), F.S.

<sup>11</sup> *Id.*

The Florida Election Code<sup>12</sup> allows an elector voting by mail to update his or her signature for verification purposes at any time before the county canvassing board begins canvassing the ballots. After canvassing begins, an elector may not update his or her signature for this purpose.<sup>13</sup> County canvassing boards may begin canvassing vote-by-ballots 15 days before the election but must begin canvassing those ballots by noon the day after the election.<sup>14</sup>

An elector's vote-by-mail ballot may be invalidated based upon two deficiencies in signing the voter's certificate: signature omission and signature mismatch. If an elector's signature is omitted from the certificate,<sup>15</sup> the elector may cure the illegal ballot.<sup>16</sup> If, by 5 p.m. on the day before the election, the elector completes a vote-by-mail affidavit<sup>17</sup> and provides identification<sup>18</sup> to the supervisor, the ballot will be legitimized and counted.<sup>19</sup> However, no analogous cure process exists when the supervisor or the county canvassing board determines that the signature on the voter's certificate does not match the signature on record for that elector. In that circumstance, the ballot is deemed illegal.<sup>20</sup>

### Recent Litigation

The United States District Court for the Northern District of Florida declared "Florida's statutory scheme as it relates to mismatched-signature [vote-by-mail] ballots" unconstitutional.<sup>21</sup> The plaintiffs in the case, the Florida Democratic Party, sought an injunction enjoining the state "and anyone under their supervision from rejecting mismatch-signature ballots without first affording those voters an opportunity to cure in the same election cycle."<sup>22</sup> The court granted the injunction noting that Florida's statutory scheme threatens the constitutional right of each voter to cast his or her vote and have it counted "by subjecting vote-by-mail voters to an unreasonable risk that their ballot will be tossed without any opportunity to cure, let alone any form of notice."<sup>23</sup> The court therefore ordered "mismatched-signature ballots to be cured in precisely the same fashion as currently provided for non-signature ballots."<sup>24</sup> To that end, the court ordered the Secretary of State to give each supervisor an altered affidavit that includes references to vote-by-mail voters whose ballots have been invalidated because of a signature mismatch. On December 12, 2016, the court issued an order staying the case until May 5, 2017.

### **Effect of the Bill**

The bill provides a cure for an elector who submits a vote-by-mail ballot that is rejected because of a difference between the signature on the voter's certificate or ballot affidavit and the registration books

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<sup>12</sup> Section 97.011, F.S. Chapters 97-106, F.S., inclusive are known and may be cited as "The Florida Election Code."

<sup>13</sup> Section 98.077(4), F.S.; *see also* s. 97.055(1)(b), F.S.

<sup>14</sup> Section 101.68(2)(a), F.S.; *see also* s. 98.077, F.S., requiring each supervisor to publish a notice in each year in which a general election occurs specifying how an elector can update his or her voter registration signature in a newspaper in the county.

<sup>15</sup> The instructions accompanying the vote-by-mail ballot warn the elector that a signature is required for the ballot to be counted. "In order for your vote-by-mail ballot to be counted, you must sign your name on the line above (Voter's Signature)." Section 101.65, F.S.

<sup>16</sup> Section 101.68(4), F.S.; *see also* s. 98.077(4), F.S., an elector may not update his or her signature for purposes of verifying a vote-by-mail ballot once the canvassing of vote-by mail ballots begins.

<sup>17</sup> The form of the affidavit is prescribed by statute, s. 101.68(4)(c), F.S., and the Department of State, Division of Elections, has created a standardized form for the affidavit, DS-DE-139. The Department of State and each supervisor are required to post the affidavit online and accept the elector's affidavit and identification by mail, fax, or email. Section 101.68(4)(d), F.S.

<sup>18</sup> Section 101.68(4)(c), F.S. Current acceptable forms of identification include the following: United States passport; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; public assistance identification; veteran health identification card issued by the United States Department of Veterans Affairs; a Florida license to carry a concealed weapon or firearm; or an employee identification card issued by any branch, department, agency, or entity of the Federal Government, the state, a county, or a municipality; or identification that shows your name and current residence address: current utility bill, bank statement, government check, paycheck, or government document (excluding voter identification card).

<sup>19</sup> Section 101.68(4)(b), F.S.

<sup>20</sup> Section 101.68(2)(c)1., F.S.

<sup>21</sup> *Fla. Democratic Party v. Detzner*, 4:16cv607-MW/CAS (N.D. Fla. 2016).

<sup>22</sup> *Id.* at 9.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 29.

or precinct register. The cure provision allows an elector to cure the defect by submitting an affidavit in the same way as is currently allowed for unsigned vote-by-mail ballots. As such, the elector may, until 5 p.m. on the day before the election, complete an affidavit to cure the vote-by-mail ballot. The bill also requires the supervisor to notify each elector whose vote-by-mail ballot has been rejected of the process to cure the rejected ballot. The bill requires the supervisor to make a good faith effort to notify the elector that his or her ballot has been rejected before 5 p.m. on the day before an election.

The bill provides that when an elector's signature on a vote-by-mail ballot affidavit does not match the elector's signature in the registration books, the elector's identity can be confirmed with a copy of a current and valid photo identification. In addition, the bill expands the types of photo identification cards that may be used to cure a vote-by-mail ballot to include a Florida driver license and a Florida identification card issued by the Department of Highway Safety and Motor Vehicles.

**B. SECTION DIRECTORY:**

Section 1 amends s. 101.68, F.S., relating to vote-by-mail ballots.

Section 2 provides an effective date of July 1, 2017.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

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

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

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

None.

**D. FISCAL COMMENTS:**

The bill may cause a minimal fiscal impact to the Department of State, Division of Elections, because the division may need to alter form DS-DE-139, the Omitted Signature Affidavit for Vote-By-Mail Ballots, or the division may need to create a second affidavit. In addition, each supervisor and the Division of Elections are required to place the affidavit online; as such, there might be a minimal fiscal impact associated with replacing the current affidavit with the updated affidavit.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

The bill appears to be exempt from the requirements of Art. VII, s. 18 of the State Constitution because it is an election law.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 16, 2017, the Oversight, Transparency & Administration Subcommittee adopted a strike-all amendment and reported the bill favorably with a committee substitute. The strike-all amendment requires the supervisor to notify each elector whose vote-by-mail ballot has been rejected of the process to cure the rejected ballot. It requires the supervisor to make a good faith effort to notify the elector before 5 p.m. on the day before an election. It provides a procedure for when a signature on an affidavit does not match the elector's signature in the registration books to allow the supervisor to verify the voter's identity with current and valid photo identification. In addition, the amendment specifies that a Florida driver license or Florida identification card are acceptable forms of identification for purposes of curing a vote-by-mail ballot.

This analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Administration Subcommittee.