

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 954

INTRODUCER: Senators Passidomo and Braynon

SUBJECT: Canvassing of Vote-by-mail Ballots

DATE: March 28, 2017

REVISED: \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Ulrich</u>	<u>EE</u>	<b>Favorable</b>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
3.	<u>Fox</u>	<u>Phelps</u>	<u>RC</u>	<b>Pre-meeting</b>

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## I. Summary:

SB 954 creates a statutory affidavit “cure” process to remedy and count a vote-by-mail ballot where the ballot signature submitted by the voter does not match the signature on file in the registration book or precinct register. This new process is similar to the process for curing a vote-by-mail ballot with *no signature*, adopted by the Legislature in 2013.

In order to count a *mismatched* signature ballot, the bill requires the voter to submit:

- A signed affidavit attesting to his or her eligibility along with the fact that he or she requested and returned a vote-by-mail ballot, and acknowledging that committing voter fraud or voting multiple ballots is a third degree felony; and
- A copy of the same type of current and valid picture identification required at the polls.

The bill more effectively implements an *ad hoc* procedure that a federal district court judge recently mandated for counting mismatched-signature ballots during the 2016 election cycle. That same court stayed proceedings on a permanent injunction until May of 2017, ostensibly to give the Legislature an opportunity to address this issue during the upcoming legislative session.

The bill takes effect upon becoming a law.

## II. Present Situation:

In 2013, at the urging of the state supervisors of elections, the Legislature changed the law to allow a voter who returned a vote-by-mail ballot *without a signature* on the Voter’s Certificate (on the back of the mailing envelope) to correct or “cure” the defect by submitting a sworn affidavit along with corroborating identification.<sup>1</sup>

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<sup>1</sup> Ch. 2013-57, § 15, Laws of Fla. (codified at § 101.68, F.S.) Previously, the practice had been that a ballot was deemed “cast” when a voter took the final step that enabled the ballot to be counted.

For the 2014 election cycle, county canvassing boards cured *missing* vote-by-mail ballot signatures by confirming the validity of the voter identification submitted and comparing the voter's signature on the cure affidavit with the registration signature on file in the registration books or precinct register. If the voter ID was valid and the signatures matched, the canvassing board counted the ballot; otherwise, the board rejected the ballot and notified the voter of the reason, *post-election*.<sup>2</sup> The notification included a card for the voter to update his or her signature for the next election. It is important to note that a matching voter signature was an essential component of the cure process for determining the validity of the ballot.<sup>3</sup>

In 2016, shortly before the general election, U.S. District Judge Mark Walker ruled that the state's failure to provide a process for curing vote-by-mail ballots with *mismatched* signatures was unconstitutional in light of the State's statutory procedure for correcting *missing* signatures.<sup>4</sup> The federal court issued a temporary injunction directing the state to offer the same process for curing both types of signature deficiencies, notwithstanding that Florida law *requires a matching signature on the cure affidavit* in order for a ballot to count.<sup>5</sup>

As a result, the only mismatched-signature ballots that canvassing boards should have remedied under the judge's order were those where the voter returned an affidavit with a *matching* signature, perhaps because the voter:

- Hurriedly wrote his or her signature on the original Voter's Certificate or signed on an uneven surface, but was more precise in signing the cure affidavit; or
- Recalled using a different signature in the past, and signed the cure affidavit with that prior signature.<sup>6</sup>

The judge's order did not provide relief to voters who submitted the *same* mismatched signature on both the Voter's Certificate *and* cure affidavit, perhaps resulting from:

- The voter forgetting that he or she had registered using a different signature; or
- The voter's signature deteriorating or changing *over time* as the result of the natural aging process or a specific health-related event (i.e., stroke, blindness, paralysis, and dementia).

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<sup>2</sup> There was and is no statutory requirement that the supervisors notify voters who submit missing ballot signatures. The idea was that third parties (political parties and other groups) who follow vote-by-mail ballot returns on a daily basis would handle that responsibility.

<sup>3</sup> "The canvassing board shall, if the supervisor has not already done so, compare the signature of the elector on the voter's certificate **or on the absentee ballot affidavit as provided in subsection (4)** [the cure affidavit] with the signature of the elector in the registration books or the precinct register to see that the elector is duly registered in the county and to determine the legality of that absentee ballot." (emphasis added) Section 101.68(1)(c)1., F.S. (2014).

<sup>4</sup> *Fla. Democratic Party v. Detzner*, 2016 U.S. Dist. LEXIS 143620, Case No. 4:16cv607-MW/CAS (N.D. Fla., Oct. 16, 2016). The court opined, "It is illogical, irrational, and patently bizarre for the State of Florida to withhold the opportunity to cure from mismatched-signature voters while providing that same opportunity to no-signature voters. And in doing so, the State of Florida has categorically disenfranchised thousands of voters arguably for no reason other than they have poor handwriting or their handwriting has changed over time." *Id.* at 22.

<sup>5</sup> The State chose not to defend the statute on substantive grounds, leaving the judge only the one-sided Petitioner's brief/argument and Florida statutory law as sources of information from which to construct the opinion.

<sup>6</sup> A person may use different signatures at various stages of life, especially at a younger age when the person is seeking to establish his or her own identity.

The federal court stayed the case with a permanent injunction until Friday, May 5, 2017, the last day of the regular session and scheduled a status conference for the week of May 15, 2017.<sup>7</sup>

### III. Effect of Proposed Changes:

SB 954 creates a process for a voter to cure a vote-by-mail ballot with a *non-matching* signature. The voter must submit a signed “cure” affidavit along with a copy of a valid picture ID. This is similar to the process the Legislature authorized in 2013 for fixing vote-by-mail ballots that contained *no signature*, a process which is maintained and expanded upon in the current bill.

The cure process for both types of defective ballots begins when a Supervisor of Elections receives a vote-by-mail ballot that contains *no signature* or that contains a signature that *does not match* the voter’s signature in the registration book or precinct register. The supervisor must immediately notify the voter<sup>8</sup> and provide an opportunity to cure the defect by submission of a signed cure affidavit and a copy of a proper ID no later than 5:00 p.m. on the day before the election — the current deadline for correcting a ballot with no signature.<sup>9</sup>

The decision tree in Section VII, Related Issues graphically details the process for canvassing vote-by-mail ballots with missing or mismatched signatures. Key points from the diagram are discussed below.

#### Mismatched-Signature Ballots

A voter may cure a mismatched signature on a vote-by mail ballot by submitting:

- A *signed affidavit* attesting to his or her eligibility to vote and attesting to the fact that he or she requested and returned a vote-by-mail ballot; and
- The same type of current and valid picture identification required at the polls, which is now categorized as Tier 1 identification, such as a Florida driver’s license or passport,<sup>10</sup> if the signature on the cure affidavit does not match the voter’s signature on file; or
- Either Tier 1 identification, such as picture identification that is accepted at the polls or one of the lesser forms of identification currently authorized in law for curing

<sup>7</sup> *Fla. Dem. Party, et al. v. Detzner*, No. 4:16cv607-MW/CAS (N.D. Fla., Dec. 12, 2016) (order staying case).

<sup>8</sup> Current law does not specifically task the supervisor with this responsibility, as the 2013 authorizing legislation envisioned notification by campaigns, parties, and interested third-party groups that track vote-by-mail ballots on a daily basis. This position is no longer viable given the judge’s temporary injunction in *Fla. Dem. Party* case directing the supervisors to provide such notice, notwithstanding that the directive may have sprung from a misunderstanding of current Florida law. See *Fla. Dem. Party v. Detzner*, No. 4:16cv607-MW/CAS at p. 28-29 (N.D. Fla., Oct. 16, 2016) (citing a notice provision historically applied only *post-election*).

<sup>9</sup> The affidavit and instructions are available on the Division of Elections and all supervisors’ websites, along with all relevant contact information and mailing addresses. Section 101.68(4)(e), F.S. (re-designated as subparagraph (d) in the bill).

<sup>10</sup> Tier 1 identification includes the following current and valid photo IDs: Florida driver license; Florida identification card issued by the Department of Highway Safety and Motor Vehicles; 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. The bill also *specifically* designates a Florida driver’s license and state-issued ID as permissible forms of photo identification, a clarification of the original 2013 legislation that incorporates the current practice and informal legal interpretation.

*missing* signatures with the voter's name and current residence address, which is — categorized in the bill as Tier 2<sup>11</sup> identification, such as a current utility bill, if the signature on the cure affidavit does not match the voter's signature on file.

### Missing-Signature Ballots<sup>12</sup>

A voter may cure a missing signature on a vote-by mail ballot by submitting:

- A *signed affidavit* attesting to his or her eligibility to vote and attesting to the fact that he or she requested and returned a vote-by-mail ballot; and
- The same type of current and valid picture identification required at the polls, now categorized as Tier 1 identification,<sup>13</sup> if the signature on the cure affidavit does not match the voter's signature on file; or
- Either Tier 1 identification, like a photo identification acceptable at the polls, or one of the lesser forms of identification currently authorized in law with the voter's name and current residence address, which is categorized in the bill as Tier 2,<sup>14</sup> such as a current utility bill, if the signature on the cure affidavit does match the voter's signature on file.

Additional minor changes made by the bill include:

- Modifying the cure affidavit instructions to request a preference for Tier 1 identification, if available. (If the signature on the cure affidavit does not match the signature on file, the voter must have submitted a current and valid Tier 1 photo ID for the ballot to count.)
- Amending the *post-election* notification process to require that a supervisor of elections send a voter registration card to any voter whose ballot *counted* notwithstanding a non-matching signature — for purposes of updating the signature for the next election.
- Making technical, conforming, and structural changes to the statute.

The bill takes effect upon becoming a law.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

### B. Public Records/Open Meetings Issues:

None.

### C. Trust Funds Restrictions:

None.

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<sup>11</sup> Tier 2 identification includes a current utility bill, bank statement, government check, paycheck, or government document, but excluding a voter identification card.

<sup>12</sup> With the exception of providing an *additional* opportunity for a voter to cure a defective ballot upon submission of a cure affidavit with a *mismatched* voter signature, which would not count under current law, the process for cure remains the same.

<sup>13</sup> See *supra* note 10.

<sup>14</sup> See *supra* note 11.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

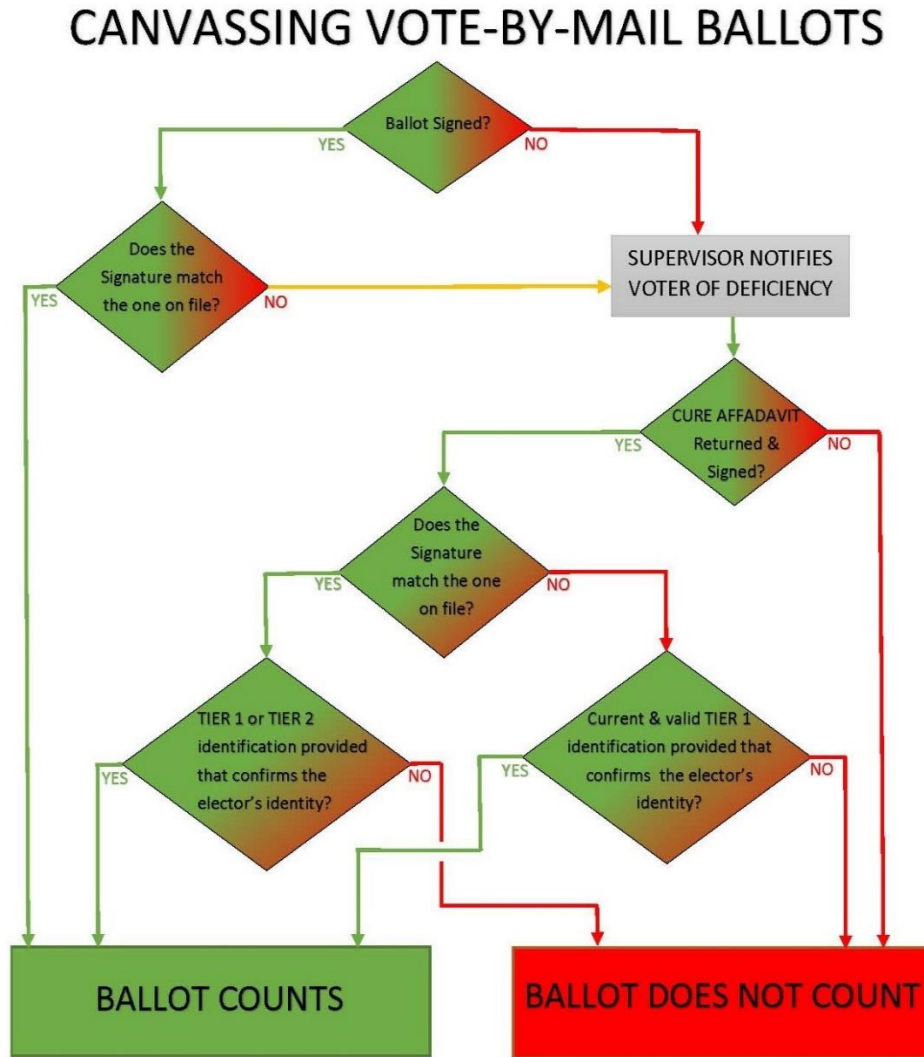
Supervisors of Elections may incur some additional costs to notify voters who submit vote-by-mail ballots with missing or mismatched signatures and do not have an e-mail address on file. Such costs are expected to be minimal.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The following decision tree outlines the canvassing board process for determining the validity of vote-by-mail ballots with missing and/or mismatched signatures:



**VIII. Statutes Affected:**

This bill substantially amends section 101.68, Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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