

STORAGE NAME: h1507a.ca

DATE: April 14, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 1507

RELATING TO: Elections

SPONSOR(S): Representative Brown

COMPANION BILL(S): SB 1782 (c) and SB 2132 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ELECTION REFORM (PRC) YEAS 11 NAYS 0
 - (2) COMMUNITY AFFAIRS (PRC) YEAS 10 NAYS 0
 - (3) CRIME & PUNISHMENT (CJCC)
 - (4)
 - (5)
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I. SUMMARY:

HB 1507 amends various provisions relating to voter registration identification cards and absentee ballots. Specifically, this bill:

- Requires Supervisors of Elections to be more vigorous in contacting electors whose voter registration identification card has been returned as undeliverable;
- Requires a record of all voter registration identification cards returned to be maintained for a minimum of two years;
- Eliminates the use of absentee ballot coordinators;
- Eliminates the restriction on witnessing more than five absentee ballots;
- Reduces the witnessing requirements for an absentee ballot to one witness of 18 years of age or older;
- Eliminates the requirement that an absentee ballot witness be a registered voter;
- Provides that a person witnessing an absentee ballot provide his or her name, signature, address, telephone number, and date of birth;
- Provides first degree misdemeanor penalties for any person who by mail solicitation:
 - fails to inform electors voting by absentee ballot that an oath is required attesting that the elector is qualified to vote absentee; or
 - asks that an absent elector give or mail the absentee ballot or absentee ballot request to anyone other than the Supervisor of Elections or an authorized designee.
- Amends the absentee ballot instruction sheet and penalties to conform.

Fiscal impact of this bill has yet to be determined.

This bill has an effective date of January 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

During the 1998 Legislative Session the Legislature passed Committee Substitute for Senate Bill 1402 ("CS/SB 1402, second engrossed) which sought to prevent the type of election fraud that was uncovered during a 1997 mayoral race. [Ch. 98-129, Laws of Fla.]. The statutory changes found in the measure were subjugated to the "preclearance" authority of the United States Justice Department pursuant to Section 5 of the Voting Rights Act of 1965. Several sections of the measure were objected to by the Justice Department and were therefore unenforceable. HB 1507 seeks to alleviate the sections subject to the Justice Department's objections by returning these sections to substantially their original form prior to the passage of CS/SB 1402, second engrossed.

VOTER REGISTRATION IDENTIFICATION CARD

A person wishing to register to vote must file an application with the Supervisor of Elections of the county in which the voter resides. Upon receipt and filing of the voter's application, the Supervisor is required to mail a voter registration identification card to the voter. The voter identification card includes the following information:

- Voter's registration number and date of registration;
- Name and date of birth;
- Party affiliation;
- Legal address;
- Precinct number;
- Signature block for the voter;
- Signature of the Supervisor of Elections;
- Sex, race, and ethnicity of voter if provided.

The voter identification card is mailed to the voter's legal residence as indicated on the registration application by nonforwardable, return-if-undeliverable mail. If the card is returned as undeliverable and the voter indicated a different mailing address on the registration application, then the Supervisor is required to mail a notice to the voter indicating that the registration card was returned as undeliverable. The notice informs the voter that he or she must appear in-person at the Supervisor's office in order to receive his or her registration card. [s. 97.071, F.S. (1998 Supplement)]. However, where no additional address is provided, no legislative direction is given to Supervisors to actively seek the whereabouts of the voter.

Section 97.1031, F.S. (1997), provides general requirements for updating a voter's registration identification card when a voter has either changed address, changed their name, or changed party affiliation. The voter must notify the Supervisor of any of the above changes by written notification in order for the Supervisor to update the voter's registration identification card.

ABSENTEE BALLOTS

An elector who is unable to attend the polls on election day may vote by absentee ballot if one of the following reasons apply:

- The voter is unable without another's assistance to attend the polls.
- The voter is an inspector, a poll worker, a deputy voting machine custodian, a deputy sheriff, a supervisor of elections, or a deputy supervisor who is assigned to a different precinct than that in which he or she is registered to vote.
- On account of the tenets of his or her religion, the voter cannot attend the polls on the day of the general, special, or primary election.
- The voter may not be in the precinct of his or her residence during the hours the polls are open for voting on the day of the election.
- The voter has changed his or her residency to another county in this state within the time period during which the registration books are closed for the election for which the ballot is requested.
- The voter has changed his or her residency to another state and is ineligible under the laws of that state to vote in the general election; however, this pertains only to presidential ballots.

Request and Delivery of Ballots

An elector voting by absentee ballot must request a ballot from the Supervisor of Elections for the county in which the elector resides. The request must be made in person, in writing, or by telephone. The elector may also direct a member of his or her immediate family or legal guardian to request an absentee ballot on the elector's behalf. Upon receipt of an appropriate request for an absentee ballot, the Supervisor may deliver the ballot by mail, to the elector appearing in-person at the Supervisor's office, or to a designee of the elector who appears in-person at the Supervisor's office.

The Ballot

The absentee ballot consists of four components: the ballot; a secrecy envelope; a mailing envelope; and voting instructions. The back of the mailing envelope has a voter's certificate which informs the voter of the penalties for voting a fraudulent ballot. The envelope enumerates the valid reasons which entitle an elector to vote absentee with a statement that the elector is qualified to vote absentee due to one of the causes stated, or that they will vote in person at the Supervisor's office. The certificate also bears signature blocks for the voter and a notary or witness. [ss. 97.021, 101.62, 101.64, *et seq.*, F.S. (1998 Supplement)].

Return of Ballot

Once the ballot has been voted, it may be returned to the Supervisor by mail or in-person by either the elector voting the ballot or a person designated in writing by the elector. Such a designee may return no more than two absentee ballots other than the designee's own ballot with the exception of the designee's immediate family. The designee's immediate family includes the spouse or the parent, child, grandparent, or sibling of the designee or the designee's spouse. [s. 101.647, F.S. (1998 Supplement)].

Absentee Ballot Coordinators

Chapter 98-129, Laws of Florida, created "absentee ballot coordinators." These coordinators can only be designated by a political party having a candidate on the ballot for the general or special election. [Ch. 98-124, s. 21 Laws of Fla.]. A political party wishing to use absentee ballot coordinators is required to submit a list of those persons so designated to the Division of Elections no later than 28 days prior to the general or special election for which the coordinators are requested. The Division, in turn, is required to investigate the criminal background of each designee and submit a list to the appropriate political party of those who could not be certified due to an election related conviction. Those persons certified as coordinators are not limited to the number of absentee ballots they can witness. A coordinator's authority ceases upon the closing of the polls for the election the coordinator was so designated. [s. 101.685, F.S. (1998 Supplement)].

Canvassing of Absentee Ballots

All voted absentee ballots returned to the Supervisor are required to be safely kept in the Supervisor's office until such time as the county canvassing board meets to canvass the votes. However, the Supervisor may begin comparing the signature of the voter appearing on the voter's certificate on the back of the mailing envelope to that on the registration books to determine the legality of the ballot. The canvassing of absentee ballots may begin up to four days prior to the election however, no result or tabulation may be conducted. Absentee ballots that do not include the voter's signature and last four digits of the voter's social security number and either a notary subscription, or an attesting witness which includes the name, address, voter identification number, and county of registration of that witness, is considered an illegal absentee ballot. [s. 101.68, F.S. (1998 Supplement)].

Penalties

Section 104.047(3), F.S. (1998 Supplement), provides that anyone who witnesses more than five absentee ballots, except as provided by law, commits a first degree misdemeanor.

B. EFFECT OF PROPOSED CHANGES:

The bill amends those sections of the Florida Election Code governing voter identification cards and absentee ballots.

VOTER REGISTRATION IDENTIFICATION CARD

Under HB 1507, the Supervisor of Elections will have a greater responsibility to assure that every voter receives his or her voter identification card. Specifically, when a identification card has been returned undeliverable, the Supervisor must attempt to contact the voter to verify the legal address and then must resend the voter's identification card. Although "contact" is not specified, the Supervisor could contact the elector via mail, telephone or any other means available to the Supervisor. The Supervisor must maintain a record of all identification cards for voters who could not be contacted or voters determined not to be eligible to vote. Records must be maintained for a minimum of two years.

ABSENTEE BALLOTS

Request and Delivery of Ballots

A "grandchild" is added to the definition of "immediate family" as that term applies to the pickup and delivery of absentee ballots.

The Ballot

The "Voter's Certificate" printed on the back of the mailing envelope is amended to conform to the changes of the bill. Specifically, the "Voter's Certificate" will no longer:

- inform the voter of the penalties for voting a fraudulent ballot;
- list the reasons available for voting by absentee ballot;
- require the last four digits of the voter's social security number; or
- require the voter registration identification number or county of registration for the attesting witness.

Under the bill, the certificate requires the witness to print and sign his or her name and provide an address, telephone number, and date of birth. The prohibition banning candidates from witnessing absentee ballots has not changed.

The absentee ballot instruction sheet is amended to conform.

Absentee Ballot Coordinators

HB 1507 eliminates both the use of absentee ballot coordinators and the five ballot limit which a person may witness. Witness requirements for an absentee ballot are amended to require only one witness who is 18 years of age or older. Witnesses are no longer required to be registered voters.

Canvassing of Absentee Ballots

The requirements for county canvassing boards to determine the legality of a ballot are amended to conform to the changes on the "Voter's Certificate."

Penalties

Section 104.047(3), F.S. (1998 Supplement), is amended to remove penalties for persons witnessing more than five absentee ballots. This is a conforming change to correspond to the elimination of absentee ballot coordinators.

First degree misdemeanor penalties have been added with respect to mail solicitation as follows: Any person who by mail solicits a voter to vote by absentee ballot is guilty of a first degree misdemeanor if that person:

- fails to inform the voter that he or she must attest to an oath on the voter's certificate that the elector is qualified to vote absentee.
- asks the voter to give or mail the absentee ballot to anyone other than the Supervisor of Elections or a person designated by the elector.
- asks the voter to give or mail the absentee ballot request to anyone other than the Supervisor of Elections or a person designated by the elector.

Please refer to the "Comments" section for a discussion of federal preclearance.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Not applicable.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Not applicable.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

- (4) Are families required to participate in a program?

Not applicable.

- (5) Are families penalized for not participating in a program?

Not applicable.

- b. Does the bill directly affect the legal rights and obligations between family members?

Not applicable.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. STATUTE(S) AFFECTED:

HB 1507 amends ss. 97.071, 97.1031, 98.461, 98.471, 101.62, 101.64, 101.647, 101.65, 101.68, and 104.047, F.S., and repeals s. 101.685, F.S.

E. SECTION-BY-SECTION ANALYSIS:

- Section 1. Requires the Supervisors of Elections to attempt to contact any voter whose voter identification card has been returned as undeliverable. Voters who could not be contacted or who the Supervisor determined were not eligible to vote will have a record of the identification card maintained for a minimum of two years.
- Section 2. Corrects cross references for voters who have had a change in their registration such as a name change, party affiliation change, or address change.
- Section 3. Makes technical changes to the acceptable forms of identification which may be used for identifying voters at the polls.
- Section 4. Makes technical changes to the acceptable forms of identification which may be used for identifying voters at the polls to conform.
- Section 5. Adds a grandchild to the "immediate family" for the purpose of a designee's ability to pick up absentee ballots in excess of the limits imposed by s. 101.62, F.S. (1998 Supplement).
- Section 6. Amends the "Voter's Certificate" printed on the absentee ballot's mailing envelope. The certificate is streamlined by removing the reasons for voting absentee, the penalty notification for fraudulent voting of an absentee ballot, and removes the notary requirement for witnessing purposes.
- Section 7. Makes clarifying changes to subsections (1) and (2) of s. 101.647, F.S. (1998 Supplement). Adds "immediate family" to subsection (1), to conform to the current language found in subsection (2) of that section. Moves the definition of "immediate family" into a newly created subsection (3) of this section and includes grandchild to conform (see Section 5., above).
- Section 8. Amends the instruction sheet provided for absentee ballots to conform to the amended "Voter's Certificate." Removed are: reasons for voting absentee; last four digits of voter's social security number; language informing voter of penalty for voting a fraudulent ballot; and option for the witnessing of the absentee ballot by a notary. Added is language instructing the voter that the person witnessing the absentee ballot must include his or her printed name, signature, address, telephone number, and date of birth. No other changes to the absentee ballot instructions are made.
- Section 9. Amends the requirements for determining the legality of an absentee ballot to conform. Removes the provision which invalidates an absentee ballot when witnessed by someone who exceeds the five ballot limit with respect to witnessing provided in s. 104.047, F.S. (1998 Supplement).

Section 10. Repeals s. 101.685, F.S. (1998 Supplement), which provides for absentee ballot coordinators.

Section 11. Provides penalties pertaining to the solicitation of electors to vote absentee.

Section 12. Provides an effective date of January 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Not applicable.

2. Recurring Effects:

Not applicable.

3. Long Run Effects Other Than Normal Growth:

Not applicable.

4. Total Revenues and Expenditures:

Not applicable.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

The fiscal impact of this bill has not been determined.

2. Recurring Effects:

Not applicable.

3. Long Run Effects Other Than Normal Growth:

Not applicable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Not applicable.

2. Direct Private Sector Benefits:

Not applicable.

3. Effects on Competition, Private Enterprise and Employment Markets:

Not applicable.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Election laws are exempt from the mandates of Art. VII, s. 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

Any statutory change that modifies procedures for voter registration, absentee and in-person voting, powers of election officials, and voting crimes and penalties insofar as these penalties or procedures affect voters in the counties of Collier, Hardee, Hendry, Hillsborough, and Monroe must be "pre-cleared" by the United States Department of Justice pursuant to the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c.

Any provision objected to by the Justice Department will not be enforced in any county of this state until preclearance has been granted by the Justice Department or the Courts.

HB 1507 changes the procedures for voter registration and absentee voting in addition to providing penalties. Therefore, this bill would be subject to federal preclearance.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee on Election Reform: On March 30, 1999, the Committee on Election Reform unanimously adopted a "strike everything" amendment. The amendment does the following:

- Section 1. Repeals s. 97.056, F.S., requiring voters who register by mail and who have not previously voted in the county to vote in person.
- Section 2. Removes a requirement that voter registration cards be mailed to the voter's legal residence address shown on the voter registration form.
- Section 3. Modifies the Voter's Certificate and corresponding instructions in connection with absentee voting and witnessing. Requires the *elector* to sign the Voter's Certificate and print his or her name; removes requirement that last four digits of *elector's* social security number be provided; allows any person over 18 to *witness* the ballot in lieu of a registered voter or notary; requires the witness to include his or her signature, printed name, address, city, state, and country.
- Section 4. Amends absentee ballot instruction sheet to correspond to the changes on the Voter's Certificate.
- Section 5. Provides that an absentee ballot is not legal if the signature, printed name, and address of the attesting witness is not included on the ballot. Removes provisions with respect to witness requirements to conform.
- Section 6. Removes a requirement that a designee returning a ballot for an elector provide a written notice from the elector; requires instead that the designee sign an affidavit attesting that:
 - ▶ The designee is authorized by the elector to return the ballot
 - ▶ The relationship to the elector if the designee is a member of the elector's "immediate family."
 - ▶ The designee has not and will not return more than two absentee ballots other than for the designee's immediate family.

- Section 7. Adds "witnessing" an absentee ballot for compensation to the "vote brokering" restrictions constituting a third-degree felony. Provides first-degree felony penalties for any solicitation by mail that requests an absent elector to mail or give the absentee ballot or absentee ballot request to someone other than the Supervisor or a designee.
- Section 8. Requires filing fees collected from judicial candidates to be deposited into the Elections Commission Trust Fund.
- Section 9. Requires filing fees collected from school board candidates to be deposited into the Elections Commission Trust Fund.
- Section 10. Provides that editorial endorsements via newspaper, radio, television or other recognized news medium are not considered a "contribution" for the purposes of campaign finance.
- Section 11. Decreases from \$1,000 to \$500 the amount a person may give to a third party for the purpose of making an independent expenditure.
- Section 12. Adds "county, municipality or special district" to the list of public employees which a candidate is prohibited from using to further his or her candidacy.
- Section 13. Provides an effective date of January 1, 2000.

Committee on Community Affairs: On April 14, 1999, the Committee on Community Affairs adopted the following amendments:

Amendment #1 - Section 4 of the "strike everything" amendment: Expands subsection 101.64, Florida Statutes, by deleting the requirement that the voter be unable to attend the polls *without another's assistance* and allows absentee balloting due to being *unable to attend the polls on election day*.

Amendment #2 - Section 7 of the "strike everything" amendment: Expands subsection 101.647(2), Florida Statutes, allowing *certified ballot coordinators* to be designated to return more than two absentee ballots per election, this limitation does not include the certified ballot coordinator's ballot.

Amendment #4a - Section 8 of the "strike everything" amendment: Deleted new language prohibiting mail solicitation of an elector to mail or give his or her absentee ballot or absentee ballot request to anyone other than the supervisor of elections or authorized designee as provided for in statute, is guilty of a misdemeanor of the first degree, as punishable by statute.

Amendment #5 - Section 12 of the "strike everything" amendment: Expands subsection 106.15(3), Florida Statutes, expanding the list of prohibited acts to include prohibiting a candidate from using the services of any officer or employee of the school board during working hours.

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

Prepared by:

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AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

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