

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.)

Prepared By: The Professional Staff of the Committee on Ethics and Elections

BILL: CS/SB 598

INTRODUCER: Ethics and Elections Committee and Senator Gibson

SUBJECT: Elections

DATE: April 4, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Ulrich	EE	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 598 allows a provisional ballot voter whose signature does not match the voter's registration signature or who fails to sign his or her name on the Voter's Certificate to "cure" the deficiency by submitting an affidavit *with a matching signature*, along with additional voter identification, by 5 p.m. on the *third* day following the election.

This bill has no fiscal impact on state government, but may result in minimal expenses for local Supervisors of Elections.

The bill is effective July 1, 2017.

II. Present Situation:

The ballot of a voter who fails to sign the Provisional Ballot Voter's Certificate and Affirmation, or that contains a signature that does not match the voter's registration signature, will not be counted; there is no process in law to fix the defective ballot.

When a poll worker cannot affirmatively confirm the eligibility of a person who presents himself or herself to vote at an early voting location or at a polling precinct on Election Day, the person is entitled to vote a "provisional," or conditional, ballot.¹

¹ Section 101.048(1), F.S.

In such case, the precinct clerk who is in charge of polling place operations generally works with the voter to complete the Provisional Ballot Voter's Certificate and Affirmation, making sure that all necessary information is filled out correctly including:

- **The voter's signature;**
- His or her printed name;
- Party registration;
- Residential address;
- Mailing address; and
- Driver's license number or the last four (4) digits of the voter's social security number.²

The Provisional Ballot Voter's Certificate and Affirmation must be sworn or affirmed before an election official, who must sign the attestation.³

The official gives the provisional voter written instructions about his or her right to provide the Supervisor of Elections with written evidence of eligibility by 5:00 p.m. on the second day after the election.⁴ The official also gives the provisional voter a numbered stub and directions on how to access a free system to find out if the provisional ballot was counted in the final tally or not, and if not, the reason why it was not counted.⁵ The Division of Elections Polling Place Procedures Manual, which election officials use at every precinct, details additional procedures.⁶

III. Effect of Proposed Changes:

CS/SB 598 establishes a statutory procedure to "cure" provisional ballots with defective voter signatures.

Specifically, the bill allows a provisional voter whose identity can otherwise be determined from information on the Provisional Ballot Voter's Certificate and Affirmation who fails to sign the Certificate, or whose signature doesn't match the voter's signature of record, to cure the omission by 5 p.m. on the third day after an election. Moving this deadline back one day means that some provisional ballots may not be included in the canvassing boards' *first set of unofficial results* for primary elections (due by noon of the third day after the election) — which the Secretary of State and canvassing boards rely upon in determining whether to order a recount in close races.

² *Id.* at (3).

³ *Id.*

⁴ *Id.* at (1). The 2nd day cut off allows for provisional ballots to be counted and included in the local canvassing boards' *first set of unofficial returns* to the Department of State, which provides the basis for the Secretary of State or county canvassing board to initiate the recount process in close elections (noon of the 3rd day after a primary election deadline; noon of the 4th day after a general election). Section 102.141(3),(5), F.S. The statutory time frames for the State Elections Canvassing Commission and the county canvassing boards to certify the election results — 5:00 p.m. on the 7th day after the primary election and the 12th day following the general election — can get extremely tight, especially when you have a statewide or multi-county race involving both machine recounts and manual recounts. Section 102.112, F.S.; *see also*, ss. 102.141(6),(7), F.S. (machine recount), and 102.166, F.S. (manual recount).

⁵ Section 101.048(5),(6), F.S..

⁶ *See* Florida Department of State, Division of Elections, *Polling Place Procedures Manual*, pp.14-16 (June 2014) available at <http://dos.myflorida.com/media/695052/dsde11.pdf> (last accessed March 29, 2017).

A voter who is otherwise eligible and who voted in the correct precinct can cure by submitting a Provisional Ballot Affidavit with a signature that matches the voter's registration signature along with the same identifying information currently required for curing vote-by-mail ballots with missing or mismatched signatures.⁷

CS/SB 598 requires the supervisor to promptly notify a provisional voter whose ballot is rejected as illegal and provide the reason for the rejection. It prescribes the form of the Provisional Ballot Affidavit, and lays out procedures and requirements for completing and submitting it, including the manner of processing the submission. The bill also requires the Department of State and the Supervisor of Elections to include the Provisional Ballot Affidavit and instructions on their respective websites. The mailing address, email address, and fax number must be included on the webpage containing the affidavit instructions.

The voter's eligibility would still have to be determined in order for the ballot to count. The cure proposed in the bill would only ensure that the ballot would not be voided for lack of the requisite legal signature. The post-submission cure concept in the bill appears to mirror the vote-by-mail ballot cure process for missing signatures adopted in 2013.⁸

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁷ 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. Section 101.68(4), F.S. While the statutes do not expressly designate them, the current practice and informal legal interpretation is to allow a Florida driver's license and State-issued ID as permissible forms of photo identification. Additional forms of acceptable statutory identification include documentation with the voter's name and current residence address, such as current utility bill, bank statement, government check, paycheck, or government document, but excluding voter identification card. *Id.*; *see also, Fla. Dem. Party v. Detzner*, Case No. 4:16cv607-MW/CAS (N.D. Fla., Oct. 16, 2016) (ordering the State to allow voters to cure *mismatched* vote-by-mail signatures in the same manner as *missing* signatures).

⁸ The distinction, however, is that vote-by-mail electors have no election official guiding them through the process of completing the ballot certificate and affirmation, and no requirement for an election worker to counter-sign.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of State has not completed an analysis of this bill. But its analysis of a similar bill last year indicated that there would be no fiscal impact on state government, but may result in minimal expenses for local Supervisors of Elections for providing copies of the cure affidavit and instructions to provisional voters who fail to sign the Voter's Certificate.⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 101.048 of the Florida Statutes, and amends section 97.053, to conform.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Ethics and Elections on April 4, 2017:

The committee substitute differs from the original bill in that it: 1) deletes the provisions of the bill relating to *vote-by-mail ballots*, transforming the bill into a pure *provisional ballot* bill; and, 2) narrows the title from “elections” to “canvassing of provisional ballots.”

B. Amendments:

None.

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

⁹ Department of State, *2016 Legislative Bill Analysis for SB 532* (November 6, 2015) (on file in the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development).