

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: SB 598

INTRODUCER: Senator Gibson

SUBJECT: Elections; Canvassing of Provisional and Vote-by-Mail Ballots

DATE: March 30, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Ulrich	EE	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

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.

The bill also expands the current statutory process for curing vote-by-mail ballots that contain no signature to include ballot certificates with *mismatched* voter signatures, providing that otherwise eligible voters can cure such signature defects 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:

Senate Bill 598 establishes and expands upon a voter’s current statutory opportunities to cure provisional and vote-by-mail ballots, respectively, with defective signatures.

Provisional Ballots

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 can't 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

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

Vote-by-Mail Ballots

In 2013, at the urging of the State's 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.⁷ The 2013 bill established a deadline of 5:00 p.m. on the day before the election for "curing" a vote-by-mail ballot.⁸

¹ Section 101.048(1), F.S.

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' *second 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 (s. 102.166, F.S.). Section 102.112, F.S.; *see also*, ss. 102.141(6),(7), F.S. (machine recount), 102.166 (manual recount).

⁵ *Id.* at (5) and (6)

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).

⁷ 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.

⁸ Many Supervisors of Elections begin canvassing vote-by-mail ballots and running them through the optical scanners (without tabulating them) 15 days before the primary and general election. Section 101.68(2)(a), F.S. This process continues

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*.⁹ 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.¹⁰

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.¹¹ 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.¹²

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,

primarily through the close of the polls on Election Day, the deadline for Supervisors of Elections to receive *most* vote-by-mail ballots. Sections 101.67, 101.6952(5), F.S. (Supervisors of Elections must accept overseas ballots in a presidential preference primary or general election up to 10 days after the election, if the ballot is otherwise proper and postmarked or dated by the date of the election).

The pre-election "cure" cut-off allows most vote-by-mail ballots to be counted and included in the county canvassing boards' initial returns after the polls close on election night. Section 102.141(3),(4), F.S. Further, it ensures that vote-by-mail ballots will be included in the local canvassing boards' *second 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), 102.166 (manual recount).

⁹ There was and is no statutory requirement that the supervisors notify voters who submit missing ballot signatures. Third parties (political parties, other groups) who follow vote-by-mail ballot returns on a daily basis handle that responsibility.

¹⁰ "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).

¹¹ *Fla. Dem Party v. Detzner*, 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.

¹² 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.

- Recalled using a different signature in the past, and signed the cure affidavit with that prior signature.¹³

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).

The federal court stayed the case on 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, 2017.¹⁴

III. Effect of Proposed Changes:

Senate Bill 598 establishes and expands upon a voter's current statutory opportunities to cure provisional and vote-by-mail ballots, respectively, with defective voter signatures.

Provisional Ballots

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' *second 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.

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.¹⁵

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

¹³ A person may use several different signatures at various stages of life, especially at a younger age when the person is seeking to establish their own identity.

¹⁴ *Fla. Dem. Party, et al. v. Detzner*, No.4:16cv607-MW/CAS (N.D. Fla., Dec. 12, 2016) (Order staying case).

¹⁵ 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).

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 2013.¹⁶

Vote-by-Mail Ballots

SB 598 allows a vote-by-mail elector who fails to sign the Voter's Certificate on the back of the mailing envelope, or whose signature doesn't match the voter's signature on file in the registration book/precinct register, to "cure" the defect by *5 p.m. on the third day after an election*. Moving the cure process into election day and beyond (from the current cure cut-off of 5 p.m. on the day before the election) could create administrative burdens for some Supervisors of Elections at an extremely hectic and busy time, thereby increasing the chance for errors and delays in reporting election results. Also, some vote-by-mail ballots may not be included in the canvassing boards' *second 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.

An otherwise eligible vote-by-mail elector can cure by submitting a Vote-by-Mail Affidavit with a signature that matches the voter's signature on file, along with the current statutorily required identification.¹⁷

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.

¹⁶ 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.

¹⁷ See *supra* note 15 (detailing acceptable forms of identification for curing vote-by-mail ballots with missing or mismatched signatures).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Provisional Ballots

The Department of State has not completed an analysis of SB 598. 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.¹⁸

Vote-by-Mail Ballots

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:

None.

VIII. Statutes Affected:

This bill substantially amends sections 101.048 and 101.68 of the Florida Statutes, and amends section 97.053, to conform.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

¹⁸ 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).

B. Amendments:

None.

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