

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCS for HB 131 Absent Uniformed Services and Overseas Voters  
**SPONSOR(S):** Governmental Affairs Policy Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1682

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		McDonald	Williamson
1)				
2)				
3)				
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5)				

**SUMMARY ANALYSIS**

The recent enactment of the Military and Overseas Voter Empowerment (MOVE) Act with the Military Defense Authorization Act (Public Law 111-84) expands the rights of voters subject to the Uniformed and Overseas Citizens Absentee Voting Act. At a minimum, the MOVE Act allows uniformed services members and their spouses and dependents absent from their place of residence whether inside or outside the United States, and civilians overseas to:

- Submit a request for and receive a voter registration application and an absentee ballot request form by mail or electronically,
- Receive from the supervisor of elections a blank (unvoted) absentee ballot by mail or electronically,
- Require the blank (unvoted) absentee ballot to be sent by mail or electronically no later than 45 days before an election, and
- Track via a free access system whether the voted absentee ballot has been received.

The bill adds a definition of "absent uniformed services voter" and amends the current definition of "overseas voter" to conform to changes in federal law. This definitional change makes clear that uniformed services voters who are stateside, but away from their place of residence, are governed the same under the Florida Election Code as are those voters who are overseas.

Upon receiving a request for an absentee ballot, the supervisor of elections must notify an absent uniformed services voter or overseas voter of the free access system designated by the department for determining absentee ballot status which is a new federal requirement. Timeframes for sending an absentee ballot and methods of transmission of the ballot to the absent uniformed voter and the overseas voter are amended to conform to recent changes in federal law. The bill requires the department to prescribe rules for a ballot to be sent to absent uniformed services voters and overseas voters if candidate certification for election cannot be accomplished within specified timeframes. It amends provisions relating to the federal postcard application to conform to the use of means other than mail to send an absentee ballot and to remove language regarding its two year effectiveness as registration, which was recently removed by changes to federal law.

The bill requires the supervisor of elections to record an overseas voter's e-mail address, if provided, in the voter's request for an absentee ballot, in the absentee ballot record. The bill then expands the information that a supervisor of elections must provide an overseas voter via e-mail to include confirmation of the ballot request and notification of the estimated date the ballot will be sent to the voter and confirmation of the receipt of the voted ballot.

The bill takes effect upon becoming a law.

There is an indeterminate fiscal impact on state expenditures and a possible minimal fiscal impact on local governments. See "Fiscal Comments."

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

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## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### The Florida Election Code (Chs. 97-106, F.S.)

An overseas voter<sup>1</sup> may request an absentee ballot or apply for voter registration with a Federal Post Card Application obtained from a Voting Assistance Officer or through the Federal Voter Assistance Program of the U.S. Department of Defense. Florida law specifies that the absentee ballot will be mailed if the ballots are available for mailing and if the registration information provided is in order. The postcard application request for an absentee ballot is effective for elections through the next two general elections.<sup>2</sup> Florida law also allows the overseas voter to request an absentee ballot by calling, mailing, faxing or e-mailing the supervisor of elections.

A supervisor of elections is required to record specific information for each request for any absentee ballot received; such as date of the request, date the ballot was delivered, date the ballot was received by the supervisor, and other information deemed necessary. The information is provided in electronic format, updated each day, and provided to the Division of Elections of the Department of State. Information collected is confidential and is made available only to the voter on request or to certain specified other groups.<sup>3</sup>

Under the Florida Election Code, an absentee ballot requested by an overseas voter who is qualified to vote must be mailed by the supervisor of elections not less than 35 days before the primary election and not less than 45 days before the general election.<sup>4</sup> Forwardable mail is the method of transmission

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<sup>1</sup>An overseas voter is defined in s. 97.021(22) and clarified in the definition of "uniformed services" in 97.21(38), F.S., as a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration while in the active service who is a permanent resident of the state and is temporarily residing outside the territorial limits of the U.S. and the District of Columbia; a member of the Merchant Marine of the U.S. who is a permanent resident of the state and is temporarily residing outside the territorial limits of the U.S. and the District of Columbia; and, any other U.S. citizen who is a permanent resident of the state and is temporarily residing outside the territorial limits of the U.S. and the District of Columbia, who is qualified and registered to vote as provided by law. Florida elections law does not include a definition for "absent uniformed services voter" as is provided in the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

<sup>2</sup> See s. 101.694, F.S.

<sup>3</sup> See s. 101.62(3), F.S.

<sup>4</sup> See s. 101.62(4)(a), F.S.

specified for voters who are entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.<sup>5</sup>

If an overseas voter's request for an absentee ballot includes an e-mail address, the supervisor of elections must e-mail the voter a list of candidates who will be on the ballots. The list of candidates for the primary and general election must be sent no later than 30 days before each election. Information pertaining to whether the absentee ballot was sent or received is not required.<sup>6, 7</sup>

Absentee ballots received from overseas voters are presumed to be mailed on the date provided on the outside of the return envelope regardless of the absence of a postmark date on the envelope or a date that is later than the election date.<sup>8</sup>

The Department of State is required to determine if secure electronic means can be established for receiving ballots from overseas voters. Additionally, if security can be established, the department is required to adopt rules authorizing a supervisor of elections to accept a request for an absentee ballot or a voted absentee ballot from an overseas voter by secure facsimile transmission (fax) or other secure electronic means. Acceptance of a voted ballot requires verification of the voter, security of the transmission, and the recording of each ballot.<sup>9</sup> The department has adopted a rule allowing overseas voters to receive their blank ballot by mail, fax, or e-mail. Voted ballots, however, must be returned by mail or fax.<sup>10</sup> As provided in law, the department may authorize other methods of returning voted ballots if it determines that secure methods can be established.

As of this date, the Department of State has authorized only one secured electronic transmission program. In the 2008 General Election, the Okaloosa County's Distance Balloting Pilot Program (ODEP) in conjunction with Operation BRAVO Foundation was implemented. Supervised absentee voting kiosks were established at U.S. military installations in Mildenhall, England; Ramstein, Germany; and Kadena, Japan. Each kiosk location permitted voting by secure electronic remote voting technology under the management and control of the Supervisor of Elections. These voting stations were connected by a secure Virtual Private Network (VPN) to a secure voting server in Florida. Ninety-three ballots using 23 different ballot styles were cast in the 2008 election.<sup>11</sup>

### Recent Changes in Federal Law Relating to Military and Overseas Voters

The Military and Overseas Voter Empowerment Act (MOVE) was signed into law on October 28, 2009 as part of the National Defense Authorization Act for Fiscal Year 2010<sup>12</sup>. The MOVE Act amends the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) which pertains to absentee voting for members of the United States uniformed services and merchant marines who are overseas or absent stateside from their place of residence, their family members who are also absent, and U.S. citizens residing outside the U.S.<sup>13</sup> Some provisions pertain to new requirements concerning state actions while others relate to the U.S. Department of Defense. Additionally, some requirements impact the November 2010 General Election while others take effect after the 2010 General Election. UOCAVA and MOVE pertain only to Federal elections. The following provisions take effect prior to the 2010 General Election:

- Each state must establish procedures that allow UOCAVA voters to request voter registration applications and absentee ballot applications by mail or electronically for general, special, primary, and runoff elections for Federal office. Voters must be able to state a preference for how information is to be received. The state must transmit voter registration applications and

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<sup>5</sup> See s. 101.62(4)(b), F.S.

<sup>6</sup> Analysis of HB 131, Department of State, November 5, 2009, p.1.

<sup>7</sup> See s. 101.6952(1), F.S.

<sup>8</sup> See s. 101.6952(2), F.S.

<sup>9</sup> See s. 101.697, F.S.

<sup>10</sup> Rule 2.013, F.A.C.

<sup>11</sup> Analysis of HB 131, Department of State, November 5, 2009, p. 1.

<sup>12</sup> P.L. 111-084.

<sup>13</sup> UOCAVA is 42 U.S.C. 1973ff et seq. and MOVE adds Part H to Title V.

absentee ballot applications based on the preference of the voter or in accordance with state law, if no preference is given, or if there is no state law, then by mail.

- Each state must designate at least one means of electronic communication for use by voters to request voter registration or absentee ballot application and for the state to send such information and to provide UOCAVA voters with election and voting information. The means of electronic communication must be included on all information and instructional materials sent with the ballot materials.
- Each state may provide a means of electronic communication for jurisdictions in the state to communicate with UOCAVA voters.
- Each state must develop procedures for transmitting blank ballots to UOCAVA voters, including military stateside, by mail and electronically; must include a means for the voter to designate how he or she wants to receive the ballot, by mail or electronically; and must send the requested information based on the stated preference. To the extent practicable, privacy and integrity of absentee ballots must be protected as well as the privacy of the identity and personal data of the voter throughout the transmission process.
- Each state chief election official must work with local jurisdictions to develop a free access system allowing a UOCAVA voter to determine if the voted absentee ballot was received by the election official.
- Absentee ballots must be sent 45 days before the primary and general elections -- applies to all UOCAVA voters. Provision for certain waivers regarding timeframes is established for states.
- Any runoff election must have a written plan to make absentee ballots available to UOCAVA voters with sufficient time to vote.
- The federal provision allowing one request to serve as a request to receive absentee ballots through the next two federal general elections is repealed.<sup>14</sup>

On December 31, 2010, the use of the Federal Write-In Absentee Ballot (FWAB) is expanded to include all special and primary elections as well as general elections for federal office.

Provision is made for financial assistance in implementing MOVE. There is a 5 percent match requirement.

### **Effect of the Bill**

The bill adds a definition of "absent uniformed services voter" and amends the current definition of "overseas voter" to conform to changes in federal law. This definitional change makes clear that uniformed services voters who are stateside, but away from their place of residence, are governed the same under the Florida Election Code as are those voters who are overseas.

Upon receiving a request for an absentee ballot from an absent uniformed services voter or an overseas voter, the supervisor of elections must notify the absentee voter of the free access system designated by the department for determining absentee ballot status which is a new federal requirement. Timeframes for sending an absentee ballot and methods of transmission of the ballot to the absent uniformed voter and the overseas voter are amended to conform to recent changes in federal law, including the transmission of an absentee ballot by facsimile or electronic mail. The bill requires the department to prescribe rules for a ballot to be sent to absent uniformed services voters and overseas voters if candidate certification for election cannot be accomplished within specified timeframes. It also amends provisions relating to the federal postcard application to conform to the use of means other than mail to send an absentee ballot and to remove language regarding its two year effectiveness as registration, which was recently removed by changes to federal law.

The bill requires the supervisor of elections to record an overseas voter's e-mail address, if provided, in the voter's request for an absentee ballot, in the absentee ballot record. The bill then expands the information that a supervisor of elections must provide an overseas voter via e-mail to include confirmation of the ballot request and notification of the estimated date the ballot will be sent to the voter and confirmation of the receipt of the voted ballot.

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<sup>14</sup> Florida law requires ballots to be sent through two general elections.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 97.021, F.S., to add a definition for "absent uniformed services voter" and to amend the definition of "overseas voter" to conform to federal law related to military and overseas voters.

**Section 2.** Amends s. 98.0981, F.S., to correct a cross-reference.

**Section 3.** Amends s. 101.62, F.S., to require supervisors of elections to accept certain requests for absentee ballots; to require supervisors of elections to notify an absent uniformed services voter and overseas voter of the free access system designated by the department for determining absentee ballot status; and to authorize the department to prescribe rules for a ballot to be sent to absent uniformed services voters and overseas voters if candidate certification for election cannot be accomplished within specified timeframes.

**Section 4.** Amends s. 101.694, F.S., to require supervisors of elections to mail ballots upon receipt of the federal postcard application and to remove provisions relating to two year applicability of the application in compliance with changes in federal law.

**Section 5.** Amends s. 101.6952, F.S., to require a supervisor of elections to record the overseas voter's e-mail address in the absentee ballot record, confirm by e-mail the receipt of the ballot request and provide the estimated date for the ballot being sent, and confirm by e-mail the receipt of the voted absentee ballot.

**Section 6.** Amends s. 379.352, F.S., to correct a cross-reference.

**Section 7.** Provides that the bill takes effect upon becoming a law.

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

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

1. Revenues:

None.

2. Expenditures:

Indeterminate. See "Fiscal Comments."

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

1. Revenues:

None.

2. Expenditures:

Indeterminate. See "Fiscal Comments."

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

None.

#### D. FISCAL COMMENTS:

Correspondence from the Florida Association of Supervisors of Elections indicates there is no cost associated with section 5 of the bill; however, some programming changes might be involved.<sup>15</sup>

Costs related to implementation of the "single free access system" for persons who vote absentee ballot to be able to access information on the status of their absentee ballots is indeterminate for the state and local levels at this time. The Department of State has been gathering information from vendors and others on various ways to implement the federal requirement. According to department staff, costs would be for programming and implementation changes needed for such a system; however, different implementation methodologies are being considered.<sup>16</sup>

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

This bill is exempt from mandate requirements because it is amending the elections laws.

##### 2. Other:

Under section 5 of the Voting Rights Act, new legislation that implements a voting change, including, but not limited to, a change in the manner of voting, change in candidacy requirements and qualifications, change in the composition of the electorate that may vote for a candidate, or change affecting creation or abolition of an elective office, is subject to preclearance by the U.S. Department of Justice. The preclearance review is to determine if the change has a discriminatory purpose or effect that denies or abridges the right to vote on account of race, color or membership in a language minority group in a covered jurisdiction. Florida has five covered jurisdictions subject to preclearance: Collier, Hardee, Hendry, Hillsborough, and Monroe. If the Attorney General objects to the voting change, the legislation is unenforceable.

#### B. RULE-MAKING AUTHORITY:

The bill conforms current statutory authorization for department rulemaking authority for a ballot to be sent to specified voters if candidate certification for election cannot be accomplished within specified timeframes to changes in voter definitions and federal requirements for transmission of certain information to such voters.

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

None.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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<sup>15</sup> Information received from Mr. Bill Cowles, Chair of the Legislative Committee, Florida Association of Supervisors of Elections, December 30, 2009. Correspondence on file with the Governmental Affairs Policy Committee.

<sup>16</sup> Conversation with Department of State staff, January 25, 2010.