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# **State Affairs Committee**

**Monday, March 3, 2014**

**2:30 PM**

**Morris Hall (17 HOB)**

**Meeting Packet**

**Will Weatherford  
Speaker**

**Jim Boyd  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### State Affairs Committee

**Start Date and Time:** Monday, March 03, 2014 02:30 pm  
**End Date and Time:** Monday, March 03, 2014 03:30 pm  
**Location:** Morris Hall (17 HOB)  
**Duration:** 1.00 hrs

**Consideration of the following bill(s):**

HB 9 Legislative Session Dates by Nuñez

CS/HB 105 Florida Civil Rights Act by Civil Justice Subcommittee, Berman



CS/HB 215 Federal Write-in Absentee Ballot by Ethics & Elections Subcommittee, Broxson

**NOTICE FINALIZED on 02/24/2014 16:08 by Love.John**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 9 Legislative Session Dates  
**SPONSOR(S):** Nuñez  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 72

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	13 Y, 0 N	Harrington	Williamson
2) State Affairs Committee		Harrington 	Camechis 
3) Rules & Calendar Committee			

### SUMMARY ANALYSIS

The State Constitution provides that, in odd-numbered years, the regular session of the Legislature must begin on the first Tuesday after the first Monday in March. The State Constitution, however, permits the Legislature to fix by law the date for convening the regular legislative session for each even-numbered year. The Legislature has not fixed a date in law; as such, the regular legislative session for all years convenes on the first Tuesday after the first Monday in March.

The bill requires the regular session of the Legislature to convene on the first Tuesday after the second Monday in January of each even-numbered year, beginning in 2016.

The bill provides that it takes effect upon becoming a law.

The bill does not appear to have a fiscal impact on state or local government.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

The State Constitution prescribes the date for convening the 60-day regular session of the Legislature. Specifically, the State Constitution provides that, in odd-numbered years, the regular session of the Legislature must begin on the first Tuesday after the first Monday in March. The State Constitution, however, permits the Legislature to fix by law the date for convening the regular session in each even-numbered year.<sup>1</sup>

Presently, the Legislature has not fixed a specific date in law for convening in each even-numbered year; as such, the regular legislative session for all years convenes on the first Tuesday after the first Monday in March.<sup>2</sup>

##### **Effect of the Bill**

The bill requires the regular session of the Legislature to convene on the first Tuesday after the second Monday in January of each even-numbered year, beginning in 2016. For 2016, the regular legislative session would convene on Tuesday, January 12, 2016.

#### B. SECTION DIRECTORY:

Section 1 creates an unnumbered section of law and fixes the date for convening the regular session of the Legislature in even-numbered years.

Section 2 provides that the act is effective upon becoming a law.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

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

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

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<sup>1</sup> Subsection 3(b), Art. III, Fla. Const.

<sup>2</sup> Traditionally, the Legislature fixes an early start date for the regular session in apportionment (redistricting) years. For example, in 2012, the regular legislative session started on January 10, 2012. See chapter 2010-91, L.O.F.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

By moving the start of the regular legislative session in even-numbered years, the Legislature would enact the state budget approximately six weeks earlier in those years. As such, state agencies would have additional time prior to the start of the fiscal year to implement or react to any budgetary changes.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Governor's Recommended Budget

Current law requires the Governor to submit a recommended balanced budget to the state at least 30 days before the scheduled annual legislative session, unless a later date is approved in writing by the President of the Senate and the Speaker of the House of Representatives.<sup>3</sup> Moving the start date of the regular legislative session in even-numbered years would require the Governor to submit a recommended balanced budget earlier in those years.

Other Comments: Declaration of Impasse

Current law requires the Governor to declare an impasse in all collective bargaining negotiations for which he or she is deemed to be the public employer and for which a collective bargaining agreement has not been executed at the same time the Governor is required to furnish his or her recommended budget to the Legislature.<sup>4</sup> Moving the start date of the regular legislative session in even-numbered years would require the Governor to declare an impasse in collective bargaining issues earlier in those years.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

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<sup>3</sup> Section 216.162(1), F.S.

<sup>4</sup> Section 216.163(6), F.S.

HB 9

2014

1                   A bill to be entitled

2           An act relating to the Legislature; fixing the date  
3           for convening the regular session of the Legislature  
4           in even-numbered years; providing an effective date.

5  
6   Be It Enacted by the Legislature of the State of Florida:

7  
8           Section 1. In accordance with subsection (b) of Section 3  
9           of Article III of the State Constitution and in lieu of the date  
10           fixed therein, the Regular Session of the Legislature shall  
11           convene on the first Tuesday after the second Monday in January  
12           of each even-numbered year beginning in calendar year 2016.

13           Section 2. This act shall take effect upon becoming a law.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: State Affairs Committee  
 2 Representative Nuñez offered the following:

**Amendment**


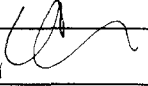
5 Remove line 9 and insert:  
 6 of Article III of the State Constitution, and in lieu of the  
 7 date





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 105 Florida Civil Rights Act  
**SPONSOR(S):** Civil Justice Subcommittee; Berman and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 220

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 1 N, As CS	Ward	Bond
2) State Affairs Committee		 Stramski	Camechis 
3) Judiciary Committee			

### SUMMARY ANALYSIS

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin. Title VII was amended in 1978 to specifically include discrimination based on pregnancy, childbirth, and related medical conditions as prohibited forms of sex discrimination.

The Florida Civil Rights Act of 1992 was enacted to "secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status..." Similar to federal law, the Florida Civil Rights Act prohibits a number of actions by employers as unlawful employment practices. For example, it is unlawful to discharge or fail to hire an individual or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment based on that individual's race, color, religion, sex, national origin, age, handicap, or marital status. However, unlike Title VII of the Civil Rights Act of 1964, the Florida Civil Rights Act has not been amended to specifically include a prohibition against pregnancy discrimination. State and federal courts in Florida to consider the issue have reached different conclusions as to whether the Florida Civil Rights Act prohibits discrimination based on pregnancy.

The bill specifically prohibits pregnancy discrimination in:

- Public lodging or food service establishments;
- Hiring for employment;
- Compensation for employment;
- Professional licensing; and
- Terms, conditions, benefits, or privileges of employment, including participation in labor organizations and labor-management committees.

The bill does not appear to have a fiscal impact on the state or local governments; however, it could have an indeterminate direct economic impact on the private sector.

The bill is effective July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### **Title VII of the Civil Rights Act of 1964<sup>1</sup>**

Title VII of the Civil Rights Act of 1964 (Title VII) prohibits discrimination in employment on the basis of race, color, religion, national origin, or sex. Title VII covers employers with 15 or more employees and outlines a number of unlawful employment practices. For example, Title VII makes it unlawful for an employer to refuse to hire, discharge, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, based on race, color, religion, national origin, or sex.

##### **Pregnancy Discrimination Act<sup>2</sup>**

In 1976, the United States Supreme Court ruled in *General Electric Co. v. Gilbert*<sup>3</sup> that Title VII did not include pregnancy discrimination as a form of sex discrimination under its prohibition against unlawful employment practices. The Pregnancy Discrimination Act (PDA), passed in 1978, amended Title VII to define the terms “because of sex” or “on the basis of sex,” to prohibit discrimination against a woman due to pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.<sup>4</sup> Under the PDA, an employer cannot discriminate against a woman on the basis of pregnancy in hiring, fringe benefits (such as health insurance), pregnancy and maternity leave, harassment, or any other term or condition of employment.<sup>5</sup>

##### **Florida Civil Rights Act of 1992**

The Florida Civil Rights Act of 1992 (FCRA) was enacted to “secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status...”<sup>6</sup> The FCRA provides protection from discrimination in employment and public accommodations.

Similar to Title VII, the FCRA specifically provides a number of actions that, if undertaken by an employer, would be considered unlawful employment practices.<sup>7</sup> For example, it is unlawful to discharge or fail to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment based on an individual’s race, color, religion, sex, national origin, age, handicap, or marital status. Unlike Title VII, the FCRA has not been amended to specifically include a prohibition against pregnancy discrimination, although the question of

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<sup>1</sup> 42 U.S.C. s. 2000e. *et seq.*

<sup>2</sup> Pub. L. No. 95-555, 95th Cong. (Oct. 31, 1978), codified as 42 U.S.C. s. 2000e(k).

<sup>3</sup> 429 U.S. 125, 145 (1976).

<sup>4</sup> The PDA defines the terms “because of sex” or “on the basis of sex” to include pregnancy, childbirth, or related conditions and women who are affected by pregnancy, childbirth, or related conditions. It further states that these individuals must be treated the same for employment purposes, including the receipt of benefits, as any other person who is not so affected but has similar ability or inability to work.

<sup>5</sup> For more information, see U.S. Equal Employment Opportunity Commission, Facts about Pregnancy Discrimination, <http://www.eeoc.gov/facts/fs-preg.html> (last visited February 18, 2014).

<sup>6</sup> Section 760.01, F.S.

<sup>7</sup> Section 760.10, F.S. Note that this section does not apply to a religious corporation, association, educational institution, or society which conditions employment opportunities to members of that religious corporation, association, educational institution, or society.

whether the FCRA impliedly covers pregnancy discrimination is currently pending before the Florida Supreme Court.<sup>8</sup>

### **Pregnancy Discrimination in Florida**

Although Title VII expressly includes pregnancy status as a component of sex discrimination, the FCRA does not. The fact that the FCRA is patterned after Title VII but has not been amended to include this provision has caused division among both federal and state courts as to whether the Florida Legislature intended to provide protection from discrimination on the basis of pregnancy under state law. Since the Florida Supreme Court has not yet decided the issue, the ability to bring a claim based on pregnancy discrimination varies among the jurisdictions.

The earliest case to address the issue of pregnancy discrimination under Florida law was *O'Laughlin v. Pinchback*.<sup>9</sup> In this case, the plaintiff alleged that she was terminated from her position as a correctional officer based on pregnancy. The First District Court of Appeal held that the Florida Human Rights Act was preempted by Title VII, as amended, as it stood as "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress by not recognizing that discrimination against pregnant employees is sex based discrimination."<sup>10</sup> By finding the Florida Human Relations Act<sup>11</sup> to be preempted by federal law, the court did not reach the question of whether the Florida law on its own prohibits pregnancy discrimination. However, the court did note that Florida law had not been amended to include a prohibition against pregnancy-based discrimination.

The Fourth District Court of Appeal in *Carsillo v. City of Lake Worth*<sup>12</sup> found that since the FCRA is patterned after Title VII, which considers pregnancy discrimination to be sex discrimination, the FCRA also bars such discrimination. The court recognized that the Florida statute had never been amended, but concluded that since Congress' original intent, as expressed by the PDA, was to prohibit this type of discrimination it was unnecessary for Florida to amend its statute to import the intent of the law after which it was patterned.

In contrast, the Third District Court of Appeal in *Delva v. Continental Group, Inc.*<sup>13</sup> held that the FCRA does not prohibit pregnancy discrimination based on the *O'Laughlin* court's analysis that the FCRA had not been amended to include pregnancy status. The issue before the court was narrowly defined to whether the FCRA prohibited discrimination in employment on the basis of pregnancy; therefore, it did not address the preemption holding in *O'Laughlin*. The court certified the conflict with the *Carsillo* case to the Florida Supreme Court, where the case has been fully briefed and argued before the Court.<sup>14</sup> A decision in the case has not been issued.

Federal courts interpreting the FCRA have similarly wrestled with whether pregnancy status is covered by its provisions.<sup>15</sup> Like the state courts, the federal courts that have found that the FCRA does provide a cause of action based on pregnancy discrimination did so because the FCRA is patterned after Title VII, which bars pregnancy discrimination. The courts finding that the FCRA does not prohibit pregnancy

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<sup>8</sup> *Delva v. The Continental Group, Inc.*, Fla.Sup.Ct. Case No. SC12-2315. Oral argument was held Nov. 7, 2013.

<sup>9</sup> 579 So.2d 788 (Fla. 1st DCA 1991). This case was brought under the Florida Human Rights Act of 1977, which was the predecessor to the Florida Civil Rights Act of 1992, and was also patterned after Title VII.

<sup>10</sup> *Id.* at 792.

<sup>11</sup> The Florida Human Relations Act was the precursor to FCRA. Chs. 69-287, 72-48, and 77-341, L.O.F.

<sup>12</sup> 995 So.2d 1118 (Fla. 4th DCA 2008), *rev. denied*, 20 So.3d 848 (Fla. 2009).

<sup>13</sup> 96 So.3d 956 (Fla. 3d DCA 2012), *reh'g denied*.

<sup>14</sup> The case was filed with the Florida Supreme Court on October 16, 2012, and assigned case number SC12-2315.

<sup>15</sup> Federal courts finding that the FCRA does not include a prohibition against pregnancy discrimination include: *Frazier v. T-Mobile USA, Inc.*, 495 F.Supp.2d 1185, (M.D. Fla. 2003), *Boone v. Total Renal Laboratories, Inc.*, 565 F.Supp.2d 1323 (M.D. Fla. 2008), and *DuChateau v. Camp Dresser & McKee, Inc.*, 822 F.Supp.2d 1325 (S.D. Fla. 2011). Federal courts finding that FCRA does provide protection against pregnancy discrimination include *Jolley v. Phillips Educ. Grp. of Cent. Fla., Inc.*, 1996 WL 529202 (M.D. Fla. 1996), *Terry v. Real Talent, Inc.*, 2009 WL 3494476 (M.D. Fla. 2009), and *Constable v. Agilysys, Inc.*, 2011 WL 2446605 (M.D. Fla. 2011).

discrimination primarily did so because the Legislature has not amended the FCRA to specifically protect pregnancy status.

Most recently, a Florida federal court concluded that the Florida Legislature intended to include pregnancy in its definition of 'sex,' and therefore discrimination based on pregnancy is an unlawful employment practice under the FCRA.<sup>16</sup>

### **Procedures for Filing Claims under Title VII and the FCRA**

A Florida employee may file a charge of an unlawful employment practice with either the federal Equal Employment Opportunity Commission (EEOC) or the Florida Commission on Human Relations (FCHR).

A person who wishes to file a complaint with the EEOC must do so within 300 days of a violation in a jurisdiction with a fair employment practices agency (such as Florida, which has the FCHR), or within 180 days in a jurisdiction with no such agency.<sup>17</sup>

The EEOC may then investigate the charge of discrimination, or refer it to a local fair employment practices agency.<sup>18</sup> The EEOC may also refer the charge for mediation. If within 180 days of the claim the EEOC dismisses a charge under Title VII, or if the EEOC has not conciliated a charge or filed suit within that time, the EEOC may issue upon request a notice to the complainant that the complainant may file suit against the alleged offending party. If the EEOC finds reasonable cause to believe that a violation of Title VII occurred, it may likewise issue a right to sue notice to the complainant if the claim cannot be resolved informally. The suit must then be filed within 90 days of the notice.<sup>19</sup>

A person who wishes to file a complaint with the FCHR must do so within 365 days of a violation. If a complaint is filed with the FCHR, the FCHR has 180 days to conciliate the claim or determine whether there is reasonable cause to conclude that a discriminatory practice prohibited by FCRA took place, at which point it must notify the complainant and respondent of its determination.<sup>20</sup> If the FCHR concludes that there is reasonable cause to conclude that a violation took place, or if it fails to make any determination as required, the aggrieved person may either bring a civil action in an appropriate court, which may be filed within one year of the determination of reasonable cause, or request an administrative hearing under sections 120.569 and 120.57, Fla. Stat., within 35 days of the determination of reasonable cause.<sup>21</sup>

If the FCHR determines that there is no reasonable cause to believe a violation of the FCRA occurred, a complainant may only request an administrative proceeding under sections 120.569 and 120.57, Fla. Stat. If the complainant prevails, a final order from the FCHR may be entered requiring affirmative relief, including back pay. The complainant then has one year to accept the affirmative relief offered, or to bring a civil action in state court as if there had originally been a determination of reasonable cause.<sup>22</sup>

### **Remedies under Title VII and the FCRA**

Remedies available to persons who bring employment discrimination claims differ depending on whether the claim is brought under Title VII or under the FCRA. If a plaintiff prevails under Title VII or the FCRA in an employment discrimination case, the plaintiff might be entitled to an order prohibiting

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<sup>16</sup> *Glass v. Captain Katanna's, Inc.*, 950 F.Supp.2d 1235 (M.D. Fla. 2013).

<sup>17</sup> EEOC Compliance Manual, Chapter 2-IV. The enforcement procedures referenced in this paper do not apply to individuals affected by federal agencies, who have a separate process. 29 C.F.R. part 1614.

<sup>18</sup> 29 C.F.R. s. 1601.70.

<sup>19</sup> 42 U.S.C. s. 2000e-5(f)(1); 42 U.S.C. s. 12117.

<sup>20</sup> Section 760.11(3), Fla. Stat.

<sup>21</sup> Section 760.11(6), Fla. Stat.

<sup>22</sup> Section 760.11(7), Fla. Stat.

the discriminatory practice, as well as reinstatement or hiring, with or without back pay.<sup>23</sup> The amount of additional damages available, however, differs under the FCRA and Title VII.

A claimant who prevails in a discrimination claim against a private entity under the FCRA may recover up to \$100,000 in punitive damages.<sup>24</sup> Compensatory damages against private entities, such as damages for mental anguish, loss of dignity, and other intangible injuries, are not limited under the FCRA. However, the total recovery, including back pay, for a claimant who brings a discrimination claim against the state or its subdivisions is limited under the FCRA to \$300,000.<sup>25</sup>

By contrast, the total amount of punitive and compensatory damages available to a prevailing plaintiff under Title VII depends on the size of the offending employer as follows: for employers with between 15 and 100 employees, the cap on compensatory and punitive damages is \$50,000; for employers with between 101 and 200 employees, the cap is \$100,000; for employers with between 201 and 500 employees, the cap is \$200,000; and for employers with more than 500 employees, the cap is \$300,000.<sup>26</sup> Unlike the FCRA, there apparently is no limitation on total recovery, including back pay, for a claimant who brings suit against the state or its subdivisions under Title VII, though the caps on compensatory and punitive damages would apply.

### **Effect of the Bill**

The bill provides that pregnancy discrimination in employment and in public lodging and food service establishments is unlawful. The bill prohibits discrimination based on pregnancy in:

- Public lodging or food service accommodations;
- Hiring for employment;
- Compensation for employment;
- Professional licensing;
- Terms, conditions, benefits, or privileges of employment, including participation in labor organizations, employment agencies, and labor-management committees.

The bill also adds "benefits" to the existing list of employment perquisites that may not be used to discriminate for any of the prohibited reasons. The addition of the term "benefits" (line 102) may have no practical effect since courts routinely use the term "benefits" interchangeably with the existing statutory language "terms, conditions, or privileges of employment."<sup>27</sup> Courts have awarded employment "benefits" as damages without finding the word in the statute.<sup>28</sup> The term "benefits" is not included in the federal equivalent to this statute,<sup>29</sup> but is included in the federal provision which includes pregnancy in the definition of "sex."<sup>30</sup>

Title VII provides that discrimination on the basis of sex includes "pregnancy, childbirth, or related medical conditions."<sup>31</sup> This bill does not include a definition of pregnancy. As a result, it is unclear if the

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<sup>23</sup> Section 760.11(5), F.S.; 42 U.S.C. s. 2000e-5(g).

<sup>24</sup> Section 760.11(5), F.S.

<sup>25</sup> Section 760.11(5), F.S., referring to the limited waiver of sovereign immunity in section 768.28, F.S.

<sup>26</sup> 42 U.S.C. s. 1981a(b).

<sup>27</sup> See, e.g., *Sunbeam Television Corp. v. Mitzel*, 83 So.3d 865 (Fla. 3d DCA 2012) and *Duchateau v. Camp, Dresser & McKee, Inc.*, 713 F.3d 1298, 1300 (11th Cir. 2013) ("... a position that did not affect her compensation, benefits, or the terms of her employment.").

<sup>28</sup> *Sunbeam Television Corp. v. Mitzel*, 83 So.3d 865 (Fla. 3d DCA 2012).

<sup>29</sup> See 42 U.S.C. s. 2000e-2, which provides, "It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin. . . ."

<sup>30</sup> 42 U.S.C. s. 2000e (k).

<sup>31</sup> 42 U.S.C. s. 2000e.

prohibition against pregnancy discrimination under this bill would prohibit discrimination against, or require accommodation for, women with certain conditions that are related to pregnancy.<sup>32</sup>

**B. SECTION DIRECTORY:**

Section 1 amends s. 509.092, F.S., relating to public lodging establishments and public food service establishments.

Section 2 amends s. 760.01, F.S., revising the general purpose of the FCRA.

Section 3 amends s. 760.05, F.S., relating to functions of the Florida Commission on Human Relations.

Section 4 amends s. 760.07, F.S., providing civil and administrative remedies for pregnancy discrimination.

Section 5 amends s. 760.08, F.S., prohibiting discrimination on the basis of pregnancy in places of public accommodation.

Section 6 amends s. 760.10, F.S., prohibiting discrimination on the basis of pregnancy in employment and employment related matters.

Section 7 reenacts s. 760.11, F.S., to incorporate pregnancy discrimination into provisions relating to administrative and civil remedies for violations of the FCRA.

Section 8 provides an effective date of July 1, 2014.

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

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

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

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

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

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

The bill may have an indeterminate economic impact on some private entities in those jurisdictions where courts interpret the FCRA as not covering claims of pregnancy discrimination. Private entities in those jurisdictions may be subject to increased liability for pregnancy discrimination as a result of this

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<sup>32</sup> For example, an adverse employment action against an employee because she was lactating was held to violate Title VII's prohibition on sex discrimination, as the lactation was a "related medical condition" of pregnancy and childbirth. *EEOC v. Houston Funding II, Ltd.*, 717 F.3d 425 (5th. Cir. 2013).

bill, due to the potential for higher compensatory damages awards under the FCRA than those available under Title VII. Additionally, some potential pregnancy discrimination claimants may have more time to file suit under state law as a result of this bill, as a claimant who receives a right to sue under state law has one year to file suit after receiving a right to sue notice, while a claimant who receives a right to sue notice from the federal EEOC under federal law must file suit within 90 days.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Scope of the Prohibition of Discrimination on the Basis of Pregnancy

Title VII provides that discrimination on the basis of sex includes "pregnancy, childbirth, or related medical conditions."<sup>33</sup> This bill does not include a definition of pregnancy. As a result, it is unclear if the prohibition against pregnancy discrimination under this bill would prohibit discrimination against, or require accommodation for, women with certain conditions that are related to pregnancy.<sup>34</sup>

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 13, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed the definition of pregnancy. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

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<sup>33</sup> 42 U.S.C. s. 2000e.

<sup>34</sup> See *supra*, fn. 32.



1                                   A bill to be entitled  
2           An act relating to the Florida Civil Rights Act;  
3           amending s. 509.092, F.S.; prohibiting discrimination  
4           on the basis of pregnancy in public lodging and food  
5           service establishments; amending s. 760.01, F.S.;  
6           revising the general purpose of the Florida Civil  
7           Rights Act of 1992; amending s. 760.05, F.S.; revising  
8           the function of the Florida Commission on Human  
9           Relations; amending s. 760.07, F.S.; providing civil  
10          and administrative remedies for discrimination on the  
11          basis of pregnancy; amending s. 760.08, F.S.;  
12          prohibiting discrimination on the basis of pregnancy  
13          in places of public accommodation; amending s. 760.10,  
14          F.S.; prohibiting discrimination with regard to  
15          employment benefits; prohibiting employment  
16          discrimination on the basis of pregnancy; prohibiting  
17          discrimination on the basis of pregnancy by labor  
18          organizations, joint labor-management committees, and  
19          employment agencies; prohibiting discrimination on the  
20          basis of pregnancy in occupational licensing,  
21          certification, and membership organizations; providing  
22          an exception to unlawful employment practices based on  
23          pregnancy; reenacting s. 760.11(1), F.S., relating to  
24          administrative and civil remedies for violations of  
25          the Florida Civil Rights Act of 1992, to incorporate  
26          the amendments made to s. 760.10(5), F.S., in a

27 reference thereto; providing an effective date.

28

29 Be It Enacted by the Legislature of the State of Florida:

30

31 Section 1. Section 509.092, Florida Statutes, is amended  
32 to read:

33 509.092 Public lodging establishments and public food  
34 service establishments; rights as private enterprises.—Public  
35 lodging establishments and public food service establishments  
36 are private enterprises, and the operator has the right to  
37 refuse accommodations or service to any person who is  
38 objectionable or undesirable to the operator, but such refusal  
39 may not be based upon race, creed, color, sex, pregnancy,  
40 physical disability, or national origin. A person aggrieved by a  
41 violation of this section or a violation of a rule adopted under  
42 this section has a right of action pursuant to s. 760.11.

43 Section 2. Subsection (2) of section 760.01, Florida  
44 Statutes, is amended to read:

45 760.01 Purposes; construction; title.—

46 (2) The general purposes of the Florida Civil Rights Act  
47 of 1992 are to secure for all individuals within the state  
48 freedom from discrimination because of race, color, religion,  
49 sex, pregnancy, national origin, age, handicap, or marital  
50 status and thereby to protect their interest in personal  
51 dignity, to make available to the state their full productive  
52 capacities, to secure the state against domestic strife and

53 | unrest, to preserve the public safety, health, and general  
 54 | welfare, and to promote the interests, rights, and privileges of  
 55 | individuals within the state.

56 |       Section 3. Section 760.05, Florida Statutes, is amended to  
 57 | read:

58 |           760.05 Functions of the commission.—The commission shall  
 59 | promote and encourage fair treatment and equal opportunity for  
 60 | all persons regardless of race, color, religion, sex, pregnancy,  
 61 | national origin, age, handicap, or marital status and mutual  
 62 | understanding and respect among all members of all economic,  
 63 | social, racial, religious, and ethnic groups; and shall endeavor  
 64 | to eliminate discrimination against, and antagonism between,  
 65 | religious, racial, and ethnic groups and their members.

66 |       Section 4. Section 760.07, Florida Statutes, is amended to  
 67 | read:

68 |           760.07 Remedies for unlawful discrimination.—Any violation  
 69 | of any Florida statute making unlawful discrimination because of  
 70 | race, color, religion, gender, pregnancy, national origin, age,  
 71 | handicap, or marital status in the areas of education,  
 72 | employment, housing, or public accommodations gives rise to a  
 73 | cause of action for all relief and damages described in s.  
 74 | 760.11(5), unless greater damages are expressly provided for. If  
 75 | the statute prohibiting unlawful discrimination provides an  
 76 | administrative remedy, the action for equitable relief and  
 77 | damages provided for in this section may be initiated only after  
 78 | the plaintiff has exhausted his or her administrative remedy.

79 The term "public accommodations" does not include lodge halls or  
 80 other similar facilities of private organizations which are made  
 81 available for public use occasionally or periodically. The right  
 82 to trial by jury is preserved in any case in which the plaintiff  
 83 is seeking actual or punitive damages.

84 . Section 5. Section 760.08, Florida Statutes, is amended to  
 85 read:

86 760.08 Discrimination in places of public accommodation.-  
 87 All persons are ~~shall be~~ entitled to the full and equal  
 88 enjoyment of the goods, services, facilities, privileges,  
 89 advantages, and accommodations of any place of public  
 90 accommodation, ~~as defined in this chapter,~~ without  
 91 discrimination or segregation on the ground of race, color,  
 92 national origin, sex, pregnancy, handicap, familial status, or  
 93 religion.

94 Section 6. Subsections (1) and (2), paragraphs (a) and (b)  
 95 of subsection (3), subsections (4) through (6), and paragraph  
 96 (a) of subsection (8) of section 760.10, Florida Statutes, are  
 97 amended to read:

98 760.10 Unlawful employment practices.-

99 (1) It is an unlawful employment practice for an employer:

100 (a) To discharge or to fail or refuse to hire any  
 101 individual, or otherwise to discriminate against any individual  
 102 with respect to compensation, benefits, terms, conditions, or  
 103 privileges of employment, because of such individual's race,  
 104 color, religion, sex, pregnancy, national origin, age, handicap,

105 or marital status.

106 (b) To limit, segregate, or classify employees or  
 107 applicants for employment in any way which would deprive or tend  
 108 to deprive any individual of employment opportunities, or  
 109 adversely affect any individual's status as an employee, because  
 110 of such individual's race, color, religion, sex, pregnancy,  
 111 national origin, age, handicap, or marital status.

112 (2) It is an unlawful employment practice for an  
 113 employment agency to fail or refuse to refer for employment, or  
 114 otherwise to discriminate against, any individual because of  
 115 race, color, religion, sex, pregnancy, national origin, age,  
 116 handicap, or marital status or to classify or refer for  
 117 employment any individual on the basis of race, color, religion,  
 118 sex, pregnancy, national origin, age, handicap, or marital  
 119 status.

120 (3) It is an unlawful employment practice for a labor  
 121 organization:

122 (a) To exclude or to expel from its membership, or  
 123 otherwise to discriminate against, any individual because of  
 124 race, color, religion, sex, pregnancy, national origin, age,  
 125 handicap, or marital status.

126 (b) To limit, segregate, or classify its membership or  
 127 applicants for membership, or to classify or fail or refuse to  
 128 refer for employment any individual, in any way which would  
 129 deprive or tend to deprive any individual of employment  
 130 opportunities, or adversely affect any individual's status as an

131 employee or as an applicant for employment, because of such  
 132 individual's race, color, religion, sex, pregnancy, national  
 133 origin, age, handicap, or marital status.

134 (4) It is an unlawful employment practice for any  
 135 employer, labor organization, or joint labor-management  
 136 committee controlling apprenticeship or other training or  
 137 retraining, including on-the-job training programs, to  
 138 discriminate against any individual because of race, color,  
 139 religion, sex, pregnancy, national origin, age, handicap, or  
 140 marital status in admission to, or employment in, any program  
 141 established to provide apprenticeship or other training.

142 (5) Whenever, in order to engage in a profession,  
 143 occupation, or trade, it is required that a person receive a  
 144 license, certification, or other credential, become a member or  
 145 an associate of any club, association, or other organization, or  
 146 pass any examination, it is an unlawful employment practice for  
 147 any person to discriminate against any other person seeking such  
 148 license, certification, or other credential, seeking to become a  
 149 member or associate of such club, association, or other  
 150 organization, or seeking to take or pass such examination,  
 151 because of such other person's race, color, religion, sex,  
 152 pregnancy, national origin, age, handicap, or marital status.

153 (6) It is an unlawful employment practice for an employer,  
 154 labor organization, employment agency, or joint labor-management  
 155 committee to print, or cause to be printed or published, any  
 156 notice or advertisement relating to employment, membership,

157 classification, referral for employment, or apprenticeship or  
 158 other training, indicating any preference, limitation,  
 159 specification, or discrimination, based on race, color,  
 160 religion, sex, pregnancy, national origin, age, absence of  
 161 handicap, or marital status.

162 (8) Notwithstanding any other provision of this section,  
 163 it is not an unlawful employment practice under ss. 760.01-  
 164 760.10 for an employer, employment agency, labor organization,  
 165 or joint labor-management committee to:

166 (a) Take or fail to take any action on the basis of  
 167 religion, sex, pregnancy, national origin, age, handicap, or  
 168 marital status in those certain instances in which religion,  
 169 sex, condition of pregnancy, national origin, age, absence of a  
 170 particular handicap, or marital status is a bona fide  
 171 occupational qualification reasonably necessary for the  
 172 performance of the particular employment to which such action or  
 173 inaction is related.

174 Section 7. For the purpose of incorporating the amendment  
 175 made by this act to section 760.10(5), Florida Statutes, in a  
 176 reference thereto, subsection (1) of section 760.11, Florida  
 177 Statutes, is reenacted to read:

178 760.11 Administrative and civil remedies; construction.—

179 (1) Any person aggrieved by a violation of ss. 760.01-  
 180 760.10 may file a complaint with the commission within 365 days  
 181 of the alleged violation, naming the employer, employment  
 182 agency, labor organization, or joint labor-management committee,

183 or, in the case of an alleged violation of s. 760.10(5), the  
184 person responsible for the violation and describing the  
185 violation. Any person aggrieved by a violation of s. 509.092 may  
186 file a complaint with the commission within 365 days of the  
187 alleged violation naming the person responsible for the  
188 violation and describing the violation. The commission, a  
189 commissioner, or the Attorney General may in like manner file  
190 such a complaint. On the same day the complaint is filed with  
191 the commission, the commission shall clearly stamp on the face  
192 of the complaint the date the complaint was filed with the  
193 commission. In lieu of filing the complaint with the commission,  
194 a complaint under this section may be filed with the federal  
195 Equal Employment Opportunity Commission or with any unit of  
196 government of the state which is a fair-employment-practice  
197 agency under 29 C.F.R. ss. 1601.70-1601.80. If the date the  
198 complaint is filed is clearly stamped on the face of the  
199 complaint, that date is the date of filing. The date the  
200 complaint is filed with the commission for purposes of this  
201 section is the earliest date of filing with the Equal Employment  
202 Opportunity Commission, the fair-employment-practice agency, or  
203 the commission. The complaint shall contain a short and plain  
204 statement of the facts describing the violation and the relief  
205 sought. The commission may require additional information to be  
206 in the complaint. The commission, within 5 days of the complaint  
207 being filed, shall by registered mail send a copy of the  
208 complaint to the person who allegedly committed the violation.



CS/HB 105

2014

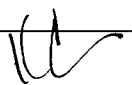
209 | The person who allegedly committed the violation may file an  
210 | answer to the complaint within 25 days of the date the complaint  
211 | was filed with the commission. Any answer filed shall be mailed  
212 | to the aggrieved person by the person filing the answer. Both  
213 | the complaint and the answer shall be verified.

214 |       Section 8. This act shall take effect July 1, 2014.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 215 Federal Write-in Absentee Ballot  
**SPONSOR(S):** Ethics & Elections Subcommittee, Broxson and Other  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 486

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ethics & Elections Subcommittee	10 Y, 0 N, As CS	Davison	Marino
2) Veteran & Military Affairs Subcommittee	11 Y, 0 N	Dugan	Kiner
3) State Affairs Committee		Davison	Camechis 

### SUMMARY ANALYSIS

Absent uniformed services voters and overseas voters may vote via three different types of ballots: state absentee ballots, state write-in absentee ballots, or federal write-in absentee ballots.

Federal write-in absentee ballots (FWABs) are available to absent uniformed services voters and overseas voters who apply for, but do not receive, a state absentee ballot. FWABs can be used to vote in any general election for federal office, and in state or local elections involving two or more candidates. Approximately 2,268 voters used FWABs in Florida in the 2012 general election, which is approximately 2.6 percent of the total absentee ballots cast by uniformed services and overseas voters.

The bill expands the permitted uses of FWABs to include uncontested races, merit retention races, and ballot measures.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### *Current Situation*

##### Federal Write-in Absentee Ballots

The federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) requires each state to permit absent uniformed services and overseas voters who apply for, but do not receive, a state absentee ballot to use a federal write-in absentee ballot (FWAB) to vote in any general election for federal office.<sup>1</sup> Florida law expands the use of a FWAB to include federal races in any election, as well as state or local elections involving two or more candidates.<sup>2</sup> Therefore, FWABs are not permitted for an uncontested race, a merit retention race (where there is only one candidate), or a ballot measure (where there is no candidate).<sup>3</sup>

Absent uniformed services and overseas voters may obtain a FWAB through the Federal Voting Assistance Program (FVAP).<sup>4</sup> FVAP provides assistance for absent uniformed services and overseas voters. FVAP's website provides a step-by-step guide for voters to either request an absentee ballot or fill out a FWAB. The website includes information regarding how and where to mail the FWAB once completed.

In an election for federal office, the voter completes the FWAB by writing the name of the candidate in boxes designated for President/Vice President, U.S. Senator, and U.S. Representative.<sup>5</sup> In an election for state or local office, the voter completes the section designated as "addendum" for non-federal races by writing the title of each office and the name of the candidate for whom the voter is voting.<sup>6</sup>

Except for primary, special primary, or nonpartisan elections, the voter may write in the name of a political party as opposed to the name of the candidate. In both federal and state or local elections, a voter's designation of a political party must be counted as a vote for the candidate of that party if there is such a party candidate in the race.<sup>7</sup>

For races with joint candidacy, such as President/Vice President or Governor/Lieutenant Governor, a vote for one or both candidates on the same ticket constitutes a vote for the joint candidacy.<sup>8</sup> If a candidate in the election is affiliated with a political party whose name includes the word "Independent," "Independence," or a similar term, a voter's designation on the FWAB of "No Party Affiliation" or "Independent," or any other minor variation, misspelling, or abbreviation thereof is considered a designation for the candidate, except for a write-in candidate, who qualified to run with no party affiliation. If more than one candidate qualifies with no party affiliation, the voter's designation does not count for any candidate unless there is a valid, additional designation of the candidate's name.<sup>9</sup>

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<sup>1</sup> 42 U.S.C.A. § 1973ff-1(a)(3) (2009).

<sup>2</sup> s. 101.6952(2), F.S. (2013).

<sup>3</sup> The FWAB was recently changed to permit the use of ballot measures, but Florida law currently precludes the use of a FWAB to vote on a ballot measure.

<sup>4</sup> Federal Voting Assistance Program, available at: <http://www.fvap.gov/> (last viewed February 18, 2014).

<sup>5</sup> Residents of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands may vote for Delegate or Resident Commissioner to the Congress in the same part of the form.

<sup>6</sup> s. 101.6952(2)(b), F.S. (2013).

<sup>7</sup> *Id.*

<sup>8</sup> s. 101.6952(2)(c), F.S. (2013).

<sup>9</sup> s. 101.6952(2)(d), F.S. (2013).

In determining the validity of a FWAB, any abbreviation, misspelling, or other minor variation in the form of the name of an office, the name of a candidate, or the name of a political party must be disregarded.<sup>10</sup>

An absent uniformed services or overseas voter who submits a FWAB and later receives an official absentee ballot may still submit the official absentee ballot. A voter in this situation should make every reasonable effort to inform the local supervisor of elections that he or she has submitted more than one ballot.<sup>11</sup> If both an official absentee ballot and a FWAB are received by 7 p.m. on election day, the FWAB is invalid and the official absentee ballot is canvassed.<sup>12</sup>

Absent voters must mail FWABs to the supervisor of elections of the county where they reside. FWABs may be canvassed beginning at 7 p.m. on the day of the election.<sup>13</sup>

FWABs must be submitted and processed in the same manner provided by law for state absentee ballots for the state the voter is voting in. A FWAB is not valid if the voter is an overseas voter (*not* an absent uniformed services voter) who submits the ballot from any location in the United States. A FWAB is not counted if the application for an absentee ballot is received by the state election official after a certain deadline. An application for an absentee ballot must be timely received in order for a FWAB to count.<sup>14</sup>

Approximately 2,268 voters used FWABs in Florida in the 2012 general election, which is approximately 2.6 percent of the total absentee ballots cast by uniformed services and overseas voters.<sup>15</sup>

### State Absentee Ballots

The UOCAVA requires each state to permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for federal office.<sup>16</sup> Florida law also permits the use of state absentee ballots for all state and local elections, merit retention, and ballot measures. Any voter may obtain an absentee ballot by submitting a request to his or her supervisor of elections in person, by phone, or in writing (online or by mail, fax, or e-mail).<sup>17</sup> Absent uniformed services and overseas voters may receive their state absentee ballots by forwardable mail, e-mail, or fax machine transmission.<sup>18</sup> The voter may designate in the absentee ballot request the preferred method of transmission.<sup>19</sup> If the voter does not designate the method of transmission, the ballot must be delivered by mail.<sup>20</sup>

The timing of the delivery of an absentee ballot to a uniformed services or overseas voter depends on when the supervisor of elections receives the voter's absentee ballot request. The following table describes the timing of the delivery of state absentee ballots to absent uniformed services and overseas voters prior to each presidential preference primary, primary election, and general election:

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<sup>10</sup> s. 101.6952(2)(e), F.S. (2013).

<sup>11</sup> s. 101.6952(3)(a), F.S. (2013); 42 U.S.C.A. § 1973ff-2(b) (2009).

<sup>12</sup> s. 101.6952(3)(b), F.S. (2013).

<sup>13</sup> *Id.*

<sup>14</sup> 42 U.S.C.A. § 1973ff-2(b) (2009).

<sup>15</sup> U.S. Election Assistance Commission, *2012 Uniformed and Overseas Citizens Absentee Voting Act Report*, July 2013, available at: [http://www.eac.gov/research/uocava\\_studies.aspx](http://www.eac.gov/research/uocava_studies.aspx) (last viewed February 18, 2014).

<sup>16</sup> 42 U.S.C.A. § 1973ff-1(a)(1) (2009).

<sup>17</sup> s. 101.62(1)(a)-(b), F.S. (2013).

<sup>18</sup> s. 101.62(4)(c)2., F.S. (2013).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

## Delivery of State Absentee Ballots to Absent Uniformed Services and Overseas Voters

Days Before Election	Delivery Method Requested	Time Request Must Be Received Prior to Election	Time of Delivery
45 days or more before each election	Mail, fax, or e-mail	More than 45 days before the election	Must be sent at least 45 days before the election <sup>21</sup>
Less than 45 days before each election	Mail	No later than 5 p.m. on the sixth day before the election <sup>22</sup>	Must be mailed no later than 4 days before the election <sup>23</sup>
	Fax or e-mail	Any time before the polls close	May be sent at any time before the polls close

State absentee ballots for uniformed services and overseas voters may only be returned by mail, by fax, in person, or through someone else on behalf of the voter.<sup>24</sup> To be accepted and counted, the ballots must be received by the supervisor of elections by 7 p.m. on election day.<sup>25</sup> For state absentee ballots returned by absent uniformed services and overseas voters in a presidential preference primary or general election, the ballot is counted if it is postmarked or dated no later than the date of the election, and it is received by the supervisor of elections no later than 10 days after the date of the election.<sup>26</sup>

As of 2013, more than 450,000 U.S. Department of Defense employees are stationed overseas.<sup>27</sup> Approximately 83,231 uniformed services voters and overseas voters used state absentee ballots in Florida in the 2012 general election.<sup>28</sup>

### State Write-in Absentee Ballots

An overseas voter may also request, no earlier than 180 days before a general election, a state write-in absentee ballot (SWAB) from his or her supervisor of elections. The voter must state that due to military or "other contingencies" that preclude normal delivery, the voter cannot vote a state absentee ballot during the normal absentee voting period. SWABs must be made available to voters 90 to 180 days prior to a general election.<sup>29</sup> The SWAB must contain all offices (federal, state, and local) for which the voter would otherwise be entitled to vote.<sup>30</sup> On the SWAB, the voter may indicate the name of the candidate or a political party, in which case the ballot is counted for the candidate of that political party, if there is such a party candidate on the ballot.<sup>31</sup> Any abbreviation, misspelling, or other minor variation in the form of a candidate or a political party must be disregarded in determining the validity of the ballot if there is a clear indication on the ballot that the voter has made a definite choice.<sup>32</sup> For the retention of justices of the Supreme Court and judges of a district court of appeal, the supervisor must print the

<sup>21</sup> s. 101.62(4)(a), F.S. (2013); 42 U.S.C.A. § 1973ff-1(a)(8) (2009).

<sup>22</sup> s. 101.62(2), F.S. (2013). This provision also applies to absentee ballot requests submitted by voters who are not absent uniformed services or overseas voters.

<sup>23</sup> s. 101.62(2), F.S. (2013). This provision also applies to absentee ballot requests submitted by voters who are not absent uniformed services or overseas voters.

<sup>24</sup> 1S-2.030(4), F.A.C. (2012).

<sup>25</sup> *Id.*

<sup>26</sup> s. 101.6952(5), F.S. (2013).

<sup>27</sup> U.S. Dept. of Defense website, available at: <http://www.defense.gov/about/> (last viewed February 18, 2014).

<sup>28</sup> U.S. Election Assistance Commission, *2012 Uniformed and Overseas Citizens Absentee Voting Act Report*, July 2013, available at: [http://www.eac.gov/research/uocava\\_studies.aspx](http://www.eac.gov/research/uocava_studies.aspx) (last viewed February 18, 2014).

<sup>29</sup> s. 101.6951(1), F.S. (2013). The SWAB form is established by Rule 1S-2.028, F.A.C.

<sup>30</sup> s. 101.6951(4), F.S. (2013).

<sup>31</sup> s. 101.6951(2), F.S. (2013).

<sup>32</sup> s. 101.6951(3), F.S. (2013).

names of the incumbent justices and judges scheduled to be on the ballot for retention in the election on the SWAB.<sup>33</sup>

#### Department of State Rulemaking Authority

The Department of State (DOS) is generally authorized to adopt rules to obtain and maintain uniformity in the interpretation and implementation of the election laws.<sup>34</sup> Section 102.166(4)(b), F.S., requires DOS to adopt rules for FWABs and specifies the minimum issues the rules must address. DOS has adopted by rule the standards for determining a voter's choice on a FWAB.<sup>35</sup>

#### *Effect of Proposed Changes*

The bill expands the permitted uses of FWABs to include uncontested races, merit retention races,<sup>36</sup> and ballot measures.

For uncontested races, a voter would indicate the uncontested race in the first blank of the FWAB. In the second blank, the voter would indicate the candidate's name or political party.

For ballot measures, a voter would indicate in the first blank the ballot measure, and in the second blank, the voter would indicate a yes or no vote. The bill requires that any abbreviation, misspelling, or other minor variation in the form of the ballot measure be disregarded in determining the validity of the ballot. The bill does not explicitly specify what methods a voter can use to indicate which ballot measure he or she intends to vote on (i.e., "Ballot Measure 1," "Tax Measure," etc.).

A vote cast in a judicial merit retention election would be treated in the same manner as a vote cast for a ballot measure. In the second blank of the FWAB, the voter may only indicate "yes" or "no." The bill does not explicitly specify by what methods a voter would use to indicate which judicial officer he or she intends to vote for or against (i.e., "Florida Supreme Court Justice," "John Smith," "Supreme Court Justice/John Smith," etc.). It appears that DOS has sufficient rulemaking authority to address these issues.

The bill also expands required rulemaking to include the changes made by the bill.

The bill is effective on July 1, 2014.

#### B. SECTION DIRECTORY:

Section 1: amends s. 101.6952, F.S., authorizing absent uniformed services voters and overseas voters to use the federal write-in absentee ballot in any state or local election; providing that an eligible elector may vote on any ballot measure in an election using the federal write-in absentee ballot.

Section 2: amends s. 102.166, F.S., revising minimum requirements for DOS rules used in determining what constitutes a valid vote on a federal write-in absentee ballot involving manual recounts.

Section 3: provides an effective date.

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<sup>33</sup> 1S-2.028, F.A.C. (2003).

<sup>34</sup> s. 97.012(1), F.S. (2013).

<sup>35</sup> See 1S-2.051, F.A.C. (2003).

<sup>36</sup> See art. V, sec. 10, Fla. Const.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill also expands required rulemaking to include the changes made by the bill.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 8, 2014, the Ethics and Elections Subcommittee adopted an amendment, the effect of which was to conform the bill to SB 486. The amendment specifies that on FWABs, a vote cast in a judicial merit retention election must be treated in the same manner as a ballot measure.



1                                   A bill to be entitled  
 2           An act relating to the federal write-in absentee  
 3           ballot; amending s. 101.6952, F.S.; authorizing absent  
 4           uniformed services voters and overseas voters to use  
 5           the federal write-in absentee ballot in any state or  
 6           local election; providing that an eligible elector may  
 7           vote on any ballot measure in an election using the  
 8           federal write-in absentee ballot; specifying that a  
 9           vote cast in a judicial merit retention election be  
 10          treated in the same manner as a vote on certain ballot  
 11          measures; making technical changes; amending s.  
 12          102.166, F.S.; revising minimum requirements for  
 13          Department of State rules used in determining what  
 14          constitutes a valid vote on a federal write-in  
 15          absentee ballot; providing an effective date.

16  
 17   Be It Enacted by the Legislature of the State of Florida:

18  
 19           Section 1. Subsection (2) of section 101.6952, Florida  
 20   Statutes, is amended to read:

21           101.6952 Absentee ballots for absent uniformed services  
 22   and overseas voters.—

23           (2)(a) An absent uniformed services voter or an overseas  
 24   voter who makes timely application for but does not receive an  
 25   official absentee ballot may use the federal write-in absentee  
 26   ballot to vote in any federal, election and any state, or local

27 | election ~~involving two or more candidates.~~

28 |       (b)1. In an election for federal office, an elector may  
29 | designate a candidate by writing the name of a candidate on the  
30 | ballot. Except for a primary or special primary election, the  
31 | elector may alternatively designate a candidate by writing the  
32 | name of a political party on the ballot. A written designation  
33 | of the political party shall be counted as a vote for the  
34 | candidate of that party if there is such a party candidate in  
35 | the race.

36 |       2. In ~~an election for~~ a state or local election ~~office~~, an  
37 | elector may vote in the section of the federal write-in absentee  
38 | ballot designated for nonfederal races by writing on the ballot  
39 | the title of each office and by writing on the ballot the name  
40 | of the candidate for whom the elector is voting. Except for a  
41 | primary, special primary, or nonpartisan election, the elector  
42 | may alternatively designate a candidate by writing the name of a  
43 | political party on the ballot. A written designation of the  
44 | political party shall be counted as a vote for the candidate of  
45 | that party if there is such a party candidate in the race. In  
46 | addition, the elector may vote on any ballot measure presented  
47 | in such election by identifying the ballot measure on which he  
48 | or she desires to vote and specifying his or her vote on the  
49 | measure. For purposes of this section, a vote cast in a judicial  
50 | merit retention election shall be treated in the same manner as  
51 | a ballot measure where the only allowable responses are "Yes"  
52 | and "No."

53 (c) In the case of a joint candidacy, such as for the  
 54 offices of President/Vice President or Governor/Lieutenant  
 55 Governor, a valid vote for one or both qualified candidates on  
 56 the same ticket shall constitute a vote for the joint candidacy.

57 (d) For purposes of this subsection and except where the  
 58 context clearly indicates otherwise, such as where a candidate  
 59 in the election is affiliated with a political party whose name  
 60 includes the word "Independent," "Independence," or a similar  
 61 term, a voter designation of "No Party Affiliation" or  
 62 "Independent," or any minor variation, misspelling, or  
 63 abbreviation thereof, shall be considered a designation for the  
 64 candidate, other than a write-in candidate, who qualified to run  
 65 in the race with no party affiliation. If more than one  
 66 candidate qualifies to run as a candidate with no party  
 67 affiliation, the designation does ~~shall~~ not count for any  
 68 candidate unless there is a valid, additional designation of the  
 69 candidate's name.

70 (e) Any abbreviation, misspelling, or other minor  
 71 variation in the form of the name of an office, the name of a  
 72 candidate, the ballot measure, or the name of a political party  
 73 must be disregarded in determining the validity of the ballot.

74 Section 2. Subsection (4) of section 102.166, Florida  
 75 Statutes, is amended to read:

76 102.166 Manual recounts of overvotes and undervotes.—

77 (4)(a) A vote for a candidate or ballot measure shall be  
 78 counted if there is a clear indication on the ballot that the

79 voter has made a definite choice.

80 (b) The Department of State shall adopt specific rules for  
 81 the federal write-in absentee ballot and for each certified  
 82 voting system prescribing what constitutes a "clear indication  
 83 on the ballot that the voter has made a definite choice." The  
 84 rules shall be consistent, to the extent practicable, and may  
 85 not:

86 1. Exclusively provide that the voter must properly mark  
 87 or designate his or her choice on the ballot; or

88 2. Contain a catch-all provision that fails to identify  
 89 specific standards, such as "any other mark or indication  
 90 clearly indicating that the voter has made a definite choice."

91 (c) The rule for the federal write-in absentee ballot must  
 92 address, at a minimum, the following issues:

93 1. The appropriate lines or spaces for designating a  
 94 candidate choice and, for state and local races, the office or  
 95 ballot measure to be voted, including the proximity of each to  
 96 the other and the effect of intervening blank lines.

97 2. The sufficiency of designating a candidate's first or  
 98 last name when no other candidate in the race has the same or a  
 99 similar name.

100 3. The sufficiency of designating a candidate's first or  
 101 last name when an opposing candidate has the same or a similar  
 102 name, notwithstanding generational suffixes and titles such as  
 103 "Jr.," "Sr.," or "III." The rule should contemplate the  
 104 sufficiency of additional first names and first initials, middle

105 names and middle initials, generational suffixes and titles,  
 106 nicknames, and, in general elections, the name or abbreviation  
 107 of a political party.

108 4. Candidate designations containing both a qualified  
 109 candidate's name and a political party, including those in which  
 110 ~~where~~ the party designated is the candidate's party, is not the  
 111 candidate's party, has an opposing candidate in the race, or  
 112 does not have an opposing candidate in the race.

113 5. Situations where the abbreviation or name of a  
 114 candidate is the same as the abbreviation or name of a political  
 115 party to which the candidate does not belong, including those in  
 116 which ~~where~~ the party designated has another candidate in the  
 117 race or does not have a candidate in the race.

118 6. The use of marks, symbols, or language, such as arrows,  
 119 quotation marks, or the word "same" or "ditto," to indicate that  
 120 the same political party designation applies to all listed  
 121 offices or the elector's approval or disapproval of all listed  
 122 ballot measures.

123 7. Situations in which ~~where~~ an elector designates the  
 124 name of a qualified candidate for an incorrect office.

125 8. Situations in which ~~where~~ an elector designates an  
 126 otherwise correct office name that includes an incorrect  
 127 district number.

128 Section 3. This act shall take effect July 1, 2014.