

By the Committee on Rules Subcommittee on Ethics and Elections;  
and Senator Gaetz

582-02144-11

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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 to vote in any  
6           federal and certain state or local elections, under  
7           certain circumstances; prescribing requirements for  
8           designating candidate choices; providing for the  
9           disposition of valid votes involving joint  
10          candidacies; allowing for abbreviations, misspellings,  
11          and other minor variations in the name of an office,  
12          candidate, or political party; authorizing the  
13          submission of multiple ballots under certain  
14          circumstances; detailing circumstances under which  
15          votes in federal, state, and local races on the  
16          federal write-in absentee ballot will be canvassed;  
17          amending s. 101.5614, F.S.; establishing certain  
18          canvassing procedures for federal write-in absentee  
19          ballots; amending s. 102.166, F.S.; directing the  
20          Department of State to adopt rules to determine what  
21          constitutes a valid vote on a federal write-in  
22          absentee ballot; providing restrictions; providing  
23          minimum requirements; reenacting s. 102.166(5), F.S.,  
24          to incorporate the amendment to s. 101.5614, F.S., in  
25          a reference thereto; amending s. 104.18, F.S.;  
26          conforming provisions to changes made by the act;  
27          providing an effective date.

28  
29   Be It Enacted by the Legislature of the State of Florida:

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Section 1. Section 101.6952, Florida Statutes, is amended to read:

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

(1) If an absent uniformed services voter's or an overseas voter's request for an official absentee ballot pursuant to s. 101.62 includes an e-mail address, the supervisor of elections shall:

(a) Record the voter's e-mail address in the absentee ballot record;

(b) Confirm by e-mail that the absentee ballot request was received and include in that e-mail the estimated date the absentee ballot will be sent to the voter; and

(c) Notify the voter by e-mail when the voted absentee ballot is received by the supervisor of elections.

(2) (a) An absent uniformed services voter or an overseas voter who makes timely application for but does not receive an official absentee ballot may use the federal write-in absentee ballot to vote in any federal election and any state or local election involving two or more candidates.

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

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59       2. In an election for a state or local office, an elector  
60 may vote in the section of the federal write-in absentee ballot  
61 designated for nonfederal races by writing on the ballot the  
62 title of each office and by writing on the ballot the name of  
63 the candidate for whom the elector is voting. Except for a  
64 primary, special primary, or nonpartisan election, the elector  
65 may alternatively designate a candidate by writing the name of a  
66 political party on the ballot. A written designation of the  
67 political party shall be counted as a vote for the candidate of  
68 that party if there is such a party candidate in the race.

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

73       (d) For purposes of this subsection and except where the  
74 context clearly indicates otherwise, such as where a candidate  
75 in the election is affiliated with a political party whose name  
76 includes the word "Independent," "Independence," or similar  
77 term, a voter designation of "No Party Affiliation" or  
78 "Independent," or any minor variation, misspelling, or  
79 abbreviation thereof, shall be considered a designation for the  
80 candidate, other than a write-in candidate, who qualified to run  
81 in the race with no party affiliation. If more than one  
82 candidate qualifies to run as a candidate with no party  
83 affiliation, the designation shall not count for any candidate  
84 unless there is a valid, additional designation of the  
85 candidate's name.

86       (e) Any abbreviation, misspelling, or other minor variation  
87 in the form of the name of an office, the name of a candidate,

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88 or the name of a political party must be disregarded in  
89 determining the validity of the ballot.

90 (3) (a) An absent uniformed services voter or an overseas  
91 voter who submits a federal write-in absentee ballot and later  
92 receives an official absentee ballot may submit the official  
93 absentee ballot. An elector who submits a federal write-in  
94 absentee ballot and later receives and submits an official  
95 absentee ballot should make every reasonable effort to inform  
96 the appropriate supervisor of elections that the elector has  
97 submitted more than one ballot.

98 (b) A federal write-in absentee ballot may not be canvassed  
99 until 7 p.m. on the day of the election. Each federal write-in  
100 absentee ballot received by 7 p.m. on the day of the election  
101 shall be canvassed pursuant to ss. 101.5614(5) and 101.68,  
102 unless the elector's official absentee ballot is received by 7  
103 p.m. on election day. If the elector's official absentee ballot  
104 is received by 7 p.m. on election day, the federal write-in  
105 absentee ballot is invalid and the official absentee ballot  
106 shall be canvassed. The time shall be regulated by the customary  
107 time in standard use in the county seat of the locality.

108 (4) ~~(2)~~ For absentee ballots received from absent uniformed  
109 services voters or overseas voters, there is a presumption that  
110 the envelope was mailed on the date stated on the outside of the  
111 return envelope, regardless of the absence of a postmark on the  
112 mailed envelope or the existence of a postmark date that is  
113 later than the date of the election.

114 Section 2. Subsection (5) of section 101.5614, Florida  
115 Statutes, is amended to read:

116 101.5614 Canvass of returns.—

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117           (5) (a) If any absentee ballot is physically damaged so that  
118 it cannot properly be counted by the automatic tabulating  
119 equipment, a true duplicate copy shall be made of the damaged  
120 ballot in the presence of witnesses and substituted for the  
121 damaged ballot. Likewise, a duplicate ballot shall be made of an  
122 absentee ballot containing an overvoted race or a marked  
123 absentee ballot in which every race is undervoted which shall  
124 include all valid votes as determined by the canvassing board  
125 based on rules adopted by the division pursuant to s.  
126 102.166(4). All duplicate ballots shall be clearly labeled  
127 "duplicate," bear a serial number which shall be recorded on the  
128 defective ballot, and be counted in lieu of the defective  
129 ballot. After a ballot has been duplicated, the defective ballot  
130 shall be placed in an envelope provided for that purpose, and  
131 the duplicate ballot shall be tallied with the other ballots for  
132 that precinct.

133           (b) A true duplicate copy shall be made of each federal  
134 write-in absentee ballot in the presence of witnesses and  
135 substituted for the federal write-in absentee ballot. The  
136 duplicate ballot must include all valid votes as determined by  
137 the canvassing board based on rules adopted by the division  
138 pursuant to s. 102.166(4). All duplicate ballots shall be  
139 clearly labeled "duplicate," bear a serial number that shall be  
140 recorded on the federal write-in absentee ballot, and be counted  
141 in lieu of the federal write-in absentee ballot. After a ballot  
142 has been duplicated, the federal write-in absentee ballot shall  
143 be placed in an envelope provided for that purpose, and the  
144 duplicate ballot shall be tallied with other ballots for that  
145 precinct.

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146 Section 3. Subsection (4) of section 102.166, Florida  
147 Statutes, is amended, and, for the purpose of incorporating the  
148 amendment made by the act to section 101.5614, Florida Statutes,  
149 in a reference thereto, subsection (5) of section 102.166,  
150 Florida Statutes, is reenacted, to read:

151 102.166 Manual recounts of overvotes and undervotes.—

152 (4) (a) A vote for a candidate or ballot measure shall be  
153 counted if there is a clear indication on the ballot that the  
154 voter has made a definite choice.

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

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

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

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

168 1. The appropriate lines or spaces for designating a  
169 candidate choice and, for state and local races, the office to  
170 be voted, including the proximity of each to the other and the  
171 effect of intervening blank lines.

172 2. The sufficiency of designating a candidate's first or  
173 last name when no other candidate in the race has the same or a  
174 similar name.

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175       3. The sufficiency of designating a candidate's first or  
176 last name when an opposing candidate has the same or a similar  
177 name, notwithstanding generational suffixes and titles such as  
178 "Jr.," "Sr.," or "III." The rule should contemplate the  
179 sufficiency of additional first names and first initials, middle  
180 names and middle initials, generational suffixes and titles,  
181 nicknames, and, in general elections, the name or abbreviation  
182 of a political party.

183       4. Candidate designations containing both a qualified  
184 candidate's name and a political party, including where the  
185 party designated is the candidate's party, is not the  
186 candidate's party, has an opposing candidate in the race, or  
187 does not have an opposing candidate in the race.

188       5. Situations where the abbreviation or name of a candidate  
189 is the same as the abbreviation or name of a political party to  
190 which the candidate does not belong, including where the party  
191 designated has another candidate in the race or does not have a  
192 candidate in the race.

193       6. The use of marks, symbols, or language, such as arrows,  
194 quotation marks, or the word "same" or "ditto," to indicate that  
195 the same political party designation applies to all listed  
196 offices.

197       7. Situations where an elector designates the name of a  
198 qualified candidate for an incorrect office.

199       8. Situations where an elector designates an otherwise  
200 correct office name that includes an incorrect district number.

201       (5) Procedures for a manual recount are as follows:

202       (a) The county canvassing board shall appoint as many  
203 counting teams of at least two electors as is necessary to

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204 manually recount the ballots. A counting team must have, when  
205 possible, members of at least two political parties. A candidate  
206 involved in the race shall not be a member of the counting team.

207 (b) Each duplicate ballot prepared pursuant to s.  
208 101.5614(5) or s. 102.141(7) shall be compared with the original  
209 ballot to ensure the correctness of the duplicate.

210 (c) If a counting team is unable to determine whether the  
211 ballot contains a clear indication that the voter has made a  
212 definite choice, the ballot shall be presented to the county  
213 canvassing board for a determination.

214 (d) The Department of State shall adopt detailed rules  
215 prescribing additional recount procedures for each certified  
216 voting system which shall be uniform to the extent practicable.  
217 The rules shall address, at a minimum, the following areas:

- 218 1. Security of ballots during the recount process;
- 219 2. Time and place of recounts;
- 220 3. Public observance of recounts;
- 221 4. Objections to ballot determinations;
- 222 5. Record of recount proceedings; and
- 223 6. Procedures relating to candidate and petitioner  
224 representatives.

225 Section 4. Section 104.18, Florida Statutes, is amended to  
226 read:

227 104.18 Casting more than one ballot at any election.—Except  
228 as provided in s. 101.6952, whoever willfully votes more than  
229 one ballot at any election commits ~~is guilty of~~ a felony of the  
230 third degree, punishable as provided in s. 775.082, s. 775.083,  
231 or s. 775.084.

232 Section 5. This act shall take effect July 1, 2011.