

By the Committee on Ethics and Elections; and Senator King

313-1607-01

1 A bill to be entitled
2 An act relating to elections; creating the
3 "Military and Overseas Voter Protection Act;"
4 providing definitions; stating legislative
5 intent; providing for registration of certain
6 recently discharged or separated military
7 personnel and family members; requiring the
8 Department of State to adopt rules specifying
9 eligibility; providing for a state write-in
10 absentee ballot for overseas voters; providing
11 for absentee ballots for overseas voters;
12 providing for advance ballots; providing for
13 absentee ballot requests and voting via
14 electronic transmission by overseas voters
15 under certain circumstances; directing the
16 adoption of emergency rules to facilitate
17 voting by overseas voters; providing a
18 presumption that absentee ballots were mailed
19 on the date stated outside the absentee return
20 envelopes of absentee voters; authorizing the
21 Elections Canvassing Commission to adopt
22 emergency rules during crises to facilitate
23 absentee voting; amending s. 101.62, F.S., to
24 conform, amending s. 101.64, F.S.; modifying
25 absentee ballot certificates; amending s.
26 101.65, F.S.; modifying instructions to
27 absentee voters; amending s. 102.112, F.S.;
28 extending the deadline for submission of county
29 returns to the Department of State; amending s.
30 102.111, F.S., to conform; providing an
31 effective date.

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

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3 Section 1. This act may be cited as the "Military and
4 Overseas Voter Protection Act."

5 Section 2. Definitions.--As used in this act, the
6 term:

7 (1) "Uniformed services" means the Army, Navy, Air
8 Force, Marine Corps, and Coast Guard, the commissioned corps
9 of the Public Health Service, and the commissioned corps of
10 the National Oceanic and Atmospheric Administration.

11 (2) "Member of the Merchant Marine" means an
12 individual, other than a member of a uniformed service or an
13 individual employed, enrolled, or maintained on the Great
14 Lakes for the inland waterways, who is:

15 (a) Employed as an officer or crew member of a vessel
16 documented under the laws of the United States, a vessel owned
17 by the United States, or a vessel of foreign-flag registry
18 under charter to or control of the United States; or

19 (b) Enrolled with the United States for employment or
20 training for employment, or maintained by the United States
21 for emergency relief service, as an officer or crew member of
22 such vessel.

23 (3) "Overseas voter" means:

24 (a) Members of the uniformed services while in the
25 active service who are permanent residents of the state and
26 are temporarily residing outside the territorial limits of the
27 United States and the District of Columbia;

28 (b) Members of the Merchant Marine of the United
29 States who are permanent residents of the state and are
30 temporarily residing outside the territorial limits of the
31 United States and the District of Columbia; and

1 (c) Other citizens of the United States who are
2 permanent residents of the state and are temporarily residing
3 outside the territorial limits of the United States and the
4 District of Columbia,

5
6 who are qualified and registered to vote as provided by law.

7 Section 3. It is the intent of the Legislature to
8 facilitate the provisions in the federal Uniformed and
9 Overseas Citizens Absentee Voting Act.

10 Section 4. An individual or accompanying family member
11 who has been discharged or separated from the uniformed
12 services, Merchant Marine, or from employment outside the
13 territorial limits of the United States, after the book
14 closing for an election pursuant to section 97.055, Florida
15 Statutes, who is otherwise qualified, may register to vote in
16 such election until 5 p.m. on the Friday before that election.
17 Such persons must produce sufficient documentation showing
18 evidence of qualifying for late registration pursuant to this
19 section. The Department of State shall adopt rules specifying
20 documentation that is sufficient to determine eligibility.

21 Section 5. State write-in ballot.--

22 (1) An overseas voter may request, not earlier than
23 180 days before a general election, a state write-in absentee
24 ballot from the supervisor of elections in the county of
25 registration. In order to receive a state write-in ballot, the
26 voter shall state that due to military or other contingencies
27 that preclude normal mail delivery, the voter cannot vote an
28 absentee ballot during the normal absentee voting period.
29 State write-in absentee ballots shall be made available to
30 voters 90 to 180 days prior to a general election. The

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1 Department of State shall prescribe by rule the form of the
2 state write-in ballot.

3 (2) In completing the ballot, the overseas voter may
4 designate his or her choice by writing in the name of the
5 candidate or by writing in the name of a political party, in
6 which case the ballot must be counted for the candidate of
7 that political party, if there is such a party candidate on
8 the ballot.

9 (3) Any abbreviation, misspelling, or other minor
10 variation in the form of the name of a candidate or a
11 political party must be disregarded in determining the
12 validity of the ballot if there is a clear indication that the
13 voter has made a definite choice.

14 (4) The state write-in ballot shall contain all
15 offices, federal, state, and local, for which the voter would
16 otherwise be entitled to vote.

17 Section 6. Absentee ballots for overseas voters.--

18 (1) Not fewer than 35 days prior to the first primary
19 and not fewer than 45 days prior to the second primary and the
20 general election, the supervisor of elections shall mail an
21 absentee ballot to each overseas voter who has made a request
22 for an absentee ballot.

23 (2) If the regular absentee ballots for the second
24 primary or general election are not available for mailing by
25 the times prescribed in subsection (1), the supervisor of
26 elections shall mail an advance ballot.

27 (a) The advance ballot for the second primary must be
28 the same as the first primary ballot as to the names of
29 candidates, except that for any offices where there are only
30 two candidates, those offices and all political party
31 executive committee offices shall be omitted.

1 (b) Except as provided in section 99.063(4), Florida
2 Statutes, the advance absentee ballot for the general election
3 shall include the same information as the general election
4 ballot, except that in the case of candidates of political
5 parties when nominations were not made in the first primary,
6 the names of the candidates placing first and second in the
7 first primary election must be printed on the advance absentee
8 ballot.

9 (c) The advance absentee ballot shall be a different
10 color for each election and also a different color from the
11 absentee ballots for the first primary, second primary, and
12 general election.

13 (d) The supervisor shall enclose with the advance
14 ballot an explanation stating that the absentee ballot for the
15 election will be mailed as soon as it is printed; and, if both
16 the advance absentee ballot and the absentee ballot for the
17 election are returned in time to be counted, only the absentee
18 ballot will be counted.

19 (e) If the Elections Canvassing Commission is unable
20 to certify the results of an election for a state office in
21 time to comply with the provisions of this subsection, the
22 Department of State is authorized to prescribe rules for a
23 ballot to be sent to overseas voters.

24 (3) If an overseas voter's request for an absentee
25 ballot includes an e-mail address, the supervisor of elections
26 shall inform the voter of the names of candidates who will be
27 on the ballots via electronic transmission. The supervisor of
28 elections shall e-mail to the voter the list of candidates for
29 the first primary not later than 30 days before the first
30 primary; the list of candidates for the second primary not
31 later than 8 days after the first primary; and the list of

1 candidates for the general election not later than 4 days
2 after the second primary.

3 (4) For absentee ballots received from overseas
4 voters, there is a presumption that the envelope was mailed on
5 the date stated and witnessed on the outside of the return
6 envelope, regardless of the absence of a postmark on the
7 mailed envelope or the existence of a postmark date that is
8 later than the date of the election.

9 Section 7. Electronic transmission of election
10 materials.--The Department of State shall adopt rules to
11 authorize a supervisor of elections to accept a request for an
12 absentee ballot and a voted absentee ballot by facsimile
13 machine or other electronic means from overseas voters. The
14 rules must provide that in order to accept a voted ballot, the
15 verification of the voter must be established, the security of
16 the transmission must be established, and each ballot received
17 must be recorded.

18 Section 8. If a national or local emergency or other
19 situation arises which makes substantial compliance with the
20 provisions of state or federal law relating to the methods of
21 voting for overseas voters impossible or unreasonable, such as
22 an armed conflict involving United States Armed Forces or
23 mobilization of those forces, including state National Guard
24 and reserve components, the Elections Canvassing Commission
25 may adopt by emergency rules, such special procedures or
26 requirements necessary to facilitate absentee voting by those
27 persons directly affected who are otherwise eligible to vote
28 in the election.

29 Section 9. Subsections (4), (5), (6), and (7) of
30 section 101.62, Florida Statutes, are amended to read:

31 101.62 Request for absentee ballots.--

1 ~~(4)(a) To each absent qualified elector overseas who~~
2 ~~has requested an absentee ballot, the supervisor of elections~~
3 ~~shall, not fewer than 35 days before the first primary~~
4 ~~election, mail an absentee ballot. Not fewer than 45 days~~
5 ~~before the second primary and general election, the supervisor~~
6 ~~of elections shall mail an advance absentee ballot to those~~
7 ~~persons requesting ballots for such elections. The advance~~
8 ~~absentee ballot for the second primary shall be the same as~~
9 ~~the first primary absentee ballot as to the names of~~
10 ~~candidates, except that for any offices where there are only~~
11 ~~two candidates, those offices and all political party~~
12 ~~executive committee offices shall be omitted. Except as~~
13 ~~provided in s. 99.063(4), the advance absentee ballot for the~~
14 ~~general election shall be as specified in s. 101.151, except~~
15 ~~that in the case of candidates of political parties where~~
16 ~~nominations were not made in the first primary, the names of~~
17 ~~the candidates placing first and second in the first primary~~
18 ~~election shall be printed on the advance absentee ballot. The~~
19 ~~advance absentee ballot or advance absentee ballot information~~
20 ~~booklet shall be of a different color for each election and~~
21 ~~also a different color from the absentee ballots for the first~~
22 ~~primary, second primary, and general election. The supervisor~~
23 ~~shall mail an advance absentee ballot for the second primary~~
24 ~~and general election to each qualified absent elector for whom~~
25 ~~a request is received until the absentee ballots are printed.~~
26 ~~The supervisor shall enclose with the advance second primary~~
27 ~~absentee ballot and advance general election absentee ballot~~
28 ~~an explanation stating that the absentee ballot for the~~
29 ~~election will be mailed as soon as it is printed; and, if both~~
30 ~~the advance absentee ballot and the absentee ballot for the~~
31

1 ~~election are returned in time to be counted, only the absentee~~
2 ~~ballot will be counted.~~

3 ~~(b)~~ As soon as ~~the remainder~~ of the absentee ballots
4 are printed, the supervisor shall provide an absentee ballot
5 to each elector by whom a request for that ballot has been
6 made by one of the following means:

7 (a)1. By nonforwardable, return-if-undeliverable mail
8 to the elector's current mailing address on file with the
9 supervisor, unless the elector specifies in the request that:

10 1.a. The elector is absent from the county and does
11 not plan to return before the day of the election;

12 2.b. The elector is temporarily unable to occupy the
13 residence because of hurricane, tornado, flood, fire, or other
14 emergency or natural disaster; or

15 3.c. The elector is in a hospital, assisted-living
16 facility, nursing home, short-term medical or rehabilitation
17 facility, or correctional facility,

18
19 in which case the supervisor shall mail the ballot by
20 nonforwardable, return-if-undeliverable mail to any other
21 address the elector specifies in the request.

22 (b)2. By forwardable mail to voters who are entitled
23 to vote by absentee ballot under the Uniformed and Overseas
24 Citizens Voting Act.

25 (c)3. By personal delivery to the elector, upon
26 presentation of the identification required in s. 101.657.

27 (d)4. By delivery to a designee on election day or up
28 to 4 days prior to the day of an election. Any elector may
29 designate in writing a person to pick up the ballot for the
30 elector; however, the person designated may not pick up more
31 than two absentee ballots per election, other than the

1 designee's own ballot, except that additional ballots may be
2 picked up for members of the designee's immediate family. For
3 purposes of this section, "immediate family" means the
4 designee's spouse or the parent, child, grandparent, or
5 sibling of the designee or of the designee's spouse. The
6 designee shall provide to the supervisor the written
7 authorization by the elector and a picture identification of
8 the designee and must complete an affidavit. The designee
9 shall state in the affidavit that the designee is authorized
10 by the elector to pick up that ballot and shall indicate if
11 the elector is a member of the designee's immediate family
12 and, if so, the relationship. The department shall prescribe
13 the form of the affidavit. If the supervisor is satisfied that
14 the designee is authorized to pick up the ballot and that the
15 signature of the elector on the written authorization matches
16 the signature of the elector on file, the supervisor shall
17 give the ballot to that designee for delivery to the elector.

18 ~~(5) In the event that the Elections Canvassing~~
19 ~~Commission is unable to certify the results of an election for~~
20 ~~a state office in time to comply with subsection (4), the~~
21 ~~Department of State is authorized to prescribe rules for a~~
22 ~~ballot to be sent to absent electors overseas.~~

23 (5)(6) Nothing other than the materials necessary to
24 vote absentee shall be mailed or delivered with any absentee
25 ballot.

26 ~~(7)(a) For the purposes of this section, "absent~~
27 ~~qualified elector overseas" means:~~

28 ~~1. Members of the Armed Forces while in the active~~
29 ~~service who are permanent residents of the state and are~~
30 ~~temporarily residing outside the territorial limits of the~~
31 ~~United States and the District of Columbia;~~

1 ~~2. Members of the Merchant Marine of the United States~~
2 ~~who are permanent residents of the state and are temporarily~~
3 ~~residing outside the territorial limits of the United States~~
4 ~~and the District of Columbia; and~~

5 ~~3. Other citizens of the United States who are~~
6 ~~permanent residents of the state and are temporarily residing~~
7 ~~outside the territorial limits of the United States and the~~
8 ~~District of Columbia;~~

9
10 ~~who are qualified and registered as provided by law.~~

11 ~~(b) Notwithstanding any other provision of law to the~~
12 ~~contrary, there shall appear on the ballots sent to absent~~
13 ~~qualified electors overseas, in addition to the names of the~~
14 ~~candidates for each office, the political party affiliation of~~
15 ~~each candidate for each office, other than a nonpartisan~~
16 ~~office.~~

17 ~~(c) With respect to marked ballots mailed by absent~~
18 ~~qualified electors overseas, only those ballots mailed with an~~
19 ~~APO, FPO, or foreign postmark shall be considered valid.~~

20 Section 10. Subsection (1) of section 101.64, Florida
21 Statutes, is amended to read:

22 101.64 Delivery of absentee ballots; envelopes;
23 form.--

24 (1) The supervisor shall enclose with each absentee
25 ballot two envelopes: a secrecy envelope, into which the
26 absent elector shall enclose his or her marked ballot; and a
27 mailing envelope, into which the absent elector shall then
28 place the secrecy envelope, which shall be addressed to the
29 supervisor and also bear on the back side a certificate in
30 substantially the following form:

31

1 Note: Please Read Instructions Carefully Before
2 Marking Ballot and Completing Voter's Certificate.

3 VOTER'S CERTIFICATE

4 I, , am a qualified and registered voter of
5 County, Florida. I understand that if I commit or attempt to
6 commit any fraud in connection with voting, vote a fraudulent
7 ballot, or vote more than once in an election, I can be
8 convicted of a felony of the third degree and fined up to
9 \$5,000 and/or imprisoned for up to 5 years. I also understand
10 that failure to sign this certificate and have my signature
11 witnessed will invalidate my ballot. I am entitled to vote an
12 absentee ballot for one of the following reasons:

- 13
- 14 1. I am unable without another's assistance to attend
15 the polls.
 - 16 2. I may not be in the precinct of my residence during
17 the hours the polls are open for voting on election day.
 - 18 3. I am an inspector, a poll worker, a deputy voting
19 machine custodian, a deputy sheriff, a supervisor of
20 elections, or a deputy supervisor who is assigned to a
21 different precinct than that in which I am registered.
 - 22 4. On account of the tenets of my religion, I cannot
23 attend the polls on the day of the general, special, or
24 primary election.
 - 25 5. I have changed my permanent residency to another
26 county in Florida within the time period during which the
27 registration books are closed for the election. I understand
28 that I am allowed to vote only for national and statewide
29 offices and on statewide issues.
 - 30 6. I have changed my permanent residency to another
31 state and am unable under the laws of such state to vote in

1 the general election. I understand that I am allowed to vote
2 only for President and Vice President.

3 7. I am unable to attend the polls on election day and
4 am voting this ballot in person at the office of, and under
5 the supervision of, the county supervisor of elections.

6
7 ...(Date)... ...(Voter's Signature)...

8
9 ~~...(Last four digits of voter's social security number)...~~

10 Note: Your Signature Must Be Witnessed By ~~Either~~:

11 a. ~~A Notary or Officer Defined in Item 6.b. of the~~
12 ~~Instruction Sheet.~~

13
14 Sworn to ~~(or affirmed)~~ and subscribed before me this
15 ~~.... day of, ... (year)...., by ... (name of person~~
16 ~~making statement).... My commission expires this day of~~
17 ~~....., ... (year)....~~

18 ~~..... (Signature of Official)...~~

19 ~~..... (Print, Type, or Stamp Name)...~~

20 ~~..... (State or Country of Commission)...~~

21 Personally Known OR Produced Identification
22 ~~.....~~

23 ~~Type of Identification Produced.....~~

24
25 OR

26
27 ~~b. One Witness 18 years of age or older, who is a~~
28 ~~registered voter in the State.~~

29
30 I swear or affirm that the voter signed this Voter's
31 Certificate in my presence ~~and that, unless certified as an~~

1 ~~absentee ballot coordinator, I have not witnessed more than 5~~
2 ~~ballots for this election.~~

3

4 WITNESS:

5

6 ...(Signature of Witness)...

7

~~...(Printed Name of Witness)...~~

8

9 ~~...(Voter I.D. Number of Witness and County of~~
10 ~~Registration)...~~

11

12 ...(Address)...

13

...(City/State)...

14

15 Section 11. Section 101.65, Florida Statutes, is
16 amended to read:

17 101.65 Instructions to absent electors.--The
18 supervisor shall enclose with each absentee ballot separate
19 printed instructions in substantially the following form:

20

21 READ THESE INSTRUCTIONS CAREFULLY BEFORE MARKING BALLOT.

22 1. VERY IMPORTANT. In order to ensure that your
23 absentee ballot will be counted, it should be completed and
24 returned as soon as possible so that it can reach the
25 supervisor of elections of the county in which your precinct
26 is located no later than 7 p.m. on the day of the election.

27 2. Mark your ballot in secret as instructed on the
28 ballot. You must mark your own ballot unless you are unable to
29 do so because of blindness, disability, or inability to read
30 or write.

31

- 1 3. Place your marked ballot in the enclosed secrecy
2 envelope.
- 3 4. Insert the secrecy envelope into the enclosed
4 mailing envelope which is addressed to the supervisor.
- 5 5. Seal the mailing envelope and completely fill out
6 the Voter's Certificate on the back of the mailing envelope.
- 7 6. VERY IMPORTANT. In order for your absentee ballot
8 to be counted, you must sign your name on the line above
9 (Voter's Signature).
- 10 7. VERY IMPORTANT. If you are an overseas voter, you
11 must include the date you signed the Voter's Certificate on
12 the line above (Date) or your ballot may not be counted.
13 ~~place the last four digits of your Social Security number in~~
14 ~~the space provided, and your ballot must be witnessed in~~
15 ~~either of the following manners:~~
- 16 a. ~~One witness, who is a registered voter in the~~
17 ~~state, must affix his or her signature, printed name, address,~~
18 ~~voter identification number, and county of registration on the~~
19 ~~voter's certificate. Each witness is limited to witnessing~~
20 ~~five ballots per election unless certified as an absentee~~
21 ~~ballot coordinator. A candidate may not serve as an attesting~~
22 ~~witness.~~
- 23 b. ~~Any notary or other officer entitled to administer~~
24 ~~oaths or any Florida supervisor of elections or deputy~~
25 ~~supervisor of elections, other than a candidate, may serve as~~
26 ~~an attesting witness.~~
- 27 8. VERY IMPORTANT. In order for your absentee ballot
28 to be counted, it must include the signature and address of a
29 witness 18 years of age or older affixed to the Voter's
30 Certificate. No candidate may serve as an attesting witness.
31

1 9.7. Mail, deliver, or have delivered the completed
2 mailing envelope. Be sure there is sufficient postage if
3 mailed.

4 10.8. FELONY NOTICE. It is a felony under Florida law
5 to accept any gift, payment, or gratuity in exchange for your
6 vote for a candidate. It is also a felony under Florida law to
7 vote in an election using a false identity or false address,
8 or under any other circumstances making your ballot false or
9 fraudulent.

10 Section 12. Subsection (1) of section 102.111, Florida
11 Statutes, is amended to read:

12 102.111 Elections Canvassing Commission.--

13 (1) Immediately after certification of any election by
14 the county canvassing board, the results shall be forwarded to
15 the Department of State concerning the election of any federal
16 or state officer. The Governor, the Secretary of State, and
17 the Director of the Division of Elections shall be the
18 Elections Canvassing Commission. The Elections Canvassing
19 Commission shall, as soon as the official results are compiled
20 from all counties, certify the returns of the election and
21 determine and declare who has been elected for each office. In
22 the event that any member of the Elections Canvassing
23 Commission is unavailable to certify the returns of any
24 election, such member shall be replaced by a substitute member
25 of the Cabinet as determined by the Director of the Division
26 of Elections. ~~If the county returns are not received by the~~
27 ~~Department of State by 5 p.m. of the seventh day following an~~
28 ~~election, all missing counties shall be ignored, and the~~
29 ~~results shown by the returns on file shall be certified.~~

30 Section 13. Subsection (1) of section 102.112, Florida
31 Statutes, is amended to read:

1 102.112 Deadline for submission of county returns to
2 the Department of State; penalties.--

3 (1) The county canvassing board or a majority thereof
4 shall file the county returns for the election of a federal or
5 state officer with the Department of State immediately after
6 certification of the election results. Returns must be filed
7 by 5 p.m. on the 7th day following the first primary, by 5
8 p.m. on the 11th day following the ~~and~~ general election and by
9 3 p.m. on the 3rd day following the second primary. If the
10 returns are not received by the department by the time
11 specified, such returns may be ignored and the results on file
12 at that time may be certified by the department.

13 Section 14. This act shall take effect January 1,
14 2002.

15
16 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
17 COMMITTEE SUBSTITUTE FOR
18 SB 200

19 The committee substitute creates the Military and Overseas
20 Voter Protection Act to facilitate the provisions of federal
21 law. The bill contains the following main components: late
22 registration for certain persons returning from overseas;
23 state write-in ballots for overseas voters; electronic
24 transmission of names of candidates on the ballot to overseas
25 voters who have provided an e-mail address; addition of a
26 place for a voter to indicate the date the Voter's Certificate
27 on the absentee ballot envelope was signed; a presumption that
28 an absentee ballot received from an overseas voter was mailed
29 on the date stated on the Voter's Certificate; requirement for
30 rules authorizing a supervisor of elections to receive
31 requests for absentee ballots and voted ballots from overseas
voters under certain conditions; authorization for the
Elections Canvassing Commission to adopt rules to facilitate
absentee voting by persons directly affected by a local or
national emergency; and certification deadline change for
general elections to allow for the certification to include
votes from overseas voters.