

STORAGE NAME: h0037.ree.doc

DATE: March 26, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
RULES, ETHICS, & ELECTIONS (PRC)
ANALYSIS**

BILL #: HM 37

RELATING TO: A Memorial to Congress - Overseas Absentee Voters

SPONSOR(S): Representative(s) Paul & Others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) RULES, ETHICS, & ELECTIONS (PRC)
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HM 37 urges the United State's Congress to adopt legislation to ensure fair voting consideration for absentee ballots cast in federal elections by overseas electors authorized to vote under the Uniformed and Overseas Citizens Voting Act.

Specifically, the memorial requests the adoption of legislation which:

- Ensures that each absentee ballot cast in a federal election by an individual authorized to vote under the Uniformed and Overseas Citizens Voting Act is counted as long as the elector is registered, the ballot is signed by the elector and received by the appropriate election official not later than 5 p.m. on the 10th day after the date of the election, regardless of the manner of delivery or the presence or absence of a postmark.
- Prohibits the enactment of any local ordinance, state statute or rule, or other federal code, law, or rule that hinders or denies the consideration of absentee ballots cast by overseas electors.

The memorial provides that the legislation adopted by the United States Congress would supersede all laws to the contrary and would direct the various states to amend or repeal all laws and rules to the contrary.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

The Uniformed and Overseas Citizens Absentee Voting Act (“the Act”)(42 U.S.C. 1973 ff *et seq.*) requires states to allow certain persons to register and vote absentee in federal elections. The Act covers citizens who are members of the Uniformed Services and Merchant Marine, and their spouses and dependents, and citizens residing outside of the United States. Members of the Armed Forces and Merchant Marine and their spouses and dependents are allowed to vote absentee while away from their place of voting residence, wherever stationed, either within or outside of the United States. Other U.S. citizens residing outside of the United States and its territories may vote in the state where they last resided prior to leaving the United States.

In addition, the Act requires states to accept a Federal Write-In Absentee Ballot from military and overseas voters under certain conditions:

- The voter must have requested a regular absentee ballot at least 30 days prior to the election and not have received the ballot;
- Voters must meet all of the regular requirements for voting in the state; and
- Voters must be overseas and have a foreign mailing address or an APO/FPO postmark.

Florida holds three elections in a nine-week period. The first primary election is held nine weeks prior to the second primary and the second primary election is held five weeks prior to the general election. In the early 1980’s, the Federal Government sued the State of Florida claiming that the state’s system of three elections in nine weeks violated the Uniformed and Overseas Citizens Voting Rights Act and the Federal Voting Assistance Act. The suit alleged that the nine-week span did not provide sufficient time for supervisors of elections to prepare absentee ballots, mail them to overseas voters, and have the voters return them by Election Day. A federal district court entered a temporary restraining order of November 6, 1980, extending by 10 days the deadline for receipt of the 1980 general election ballots cast pursuant to the federal acts.

In 1982, the State of Florida and the Federal Government entered into a consent decree covering federal contests. The decree required that overseas absentee ballots in the 1982 general election be counted if the ballots were postmarked by Election Day and received by the supervisors no later than 10 days after the election. In addition, the decree required that absentee ballots for the 1982 first primary be mailed to overseas electors at least 35 days before the first primary. Finally, the consent decree directed that the plan of compliance be drawn to provide for the mailing of overseas ballots at least 35 days prior to the deadline for the receipt of ballots.

In 1984, the federal district court approved Florida's plan of compliance, which modified the election schedule and resulted in the adoption of Rule 1C-7.013, F.A.C. (subsequently renumbered as 1S-7.013 F.A.C.). This rule required the supervisors of election to mail overseas absentee ballots for federal office at least 35 days prior to the election. The rule also provided that, with respect to a presidential preference primary or general election for federal office, an otherwise proper overseas ballot postmarked **or** signed and dated no later than the date of the election must be counted if received up to 10 days after the election.

In an effort to further facilitate absentee voting by overseas electors, the 1989 Legislature adopted the advance ballot system still in use today. Under the Florida advance ballot system, supervisors of elections mail first primary absentee ballots to qualified overseas electors not less than 35 days before the first primary. Subsequently, the supervisors mail advance ballots for the second primary and general election at least 45 days prior to these elections, followed by regular second primary and general election ballots when they become available. If both ballots for the same election are returned, only the regular ballot is counted.

C. EFFECT OF PROPOSED CHANGES:

HM 37 urges that Congress adopt legislation to ensure that each absentee ballot cast in a federal election by an overseas elector, authorized to vote under the Uniformed and Overseas Citizens Voting Act, is counted as long as it meets certain criteria regardless of the manner of delivery or the presence or absence of a postmark. Further, it is urged that the legislation also prohibit any federal, state or local law, code or rule that in any way would hinder or deny the consideration of absentee ballots cast by overseas electors. The legislation would, in turn, supersede all laws to the contrary.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. 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.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Election laws are exempt from the mandates of Article VII, S. 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Election laws are exempt from the mandates of Article VII, S. 18 of the Florida Constitution.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

Election laws are exempt from the mandates of Article VII, S. 18 of the Florida Constitution.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

After the 2000 Presidential Election, allegations were made that a substantial number of absentee ballots from overseas had been challenged and rejected for lacking a postmark. Under s. 101.62(f)(c), marked ballots mailed by absent qualified electors overseas are considered valid only if the ballots are mailed with an APO, FPO, or foreign postmark. However, under Rule 1S-2.013(7), F.A.C., "any absentee ballot cast for a federal office by an overseas elector which is postmarked **or** signed and dated no later than the date of the election shall be counted if received no later than 10 days from the date of the Federal election as long as such absentee ballot is otherwise proper.

A memorial is a "resolution" expressing the opinion of the Legislature to the Federal Government. A memorial is in the nature of a petition requesting action or expressing an opinion or a desire respecting a matter that is within the jurisdiction of the Federal Government. It may be initiated by either the House or the Senate and must be adopted by both houses. A memorial is not subject to veto by the Governor and upon its passage, is sent directly to the specified congressional officials.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

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VII. SIGNATURES:

COMMITTEE ON RULES, ETHICS, & ELECTIONS (PRC):

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