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CS/HB 227

2011 Legislature

1 A bill to be entitled
2 An act relating to the federal write-in absentee ballot;
3 amending s. 101.6952, F.S.; authorizing absent uniformed
4 services voters and overseas voters to use the federal
5 write-in absentee ballot to vote in any federal and
6 certain state or local elections, under certain
7 circumstances; prescribing requirements for designating
8 candidate choices; providing for the disposition of valid
9 votes involving joint candidacies; allowing for
10 abbreviations, misspellings, and other minor variations in
11 the name of an office, candidate, or political party;
12 authorizing the submission of multiple ballots under
13 certain circumstances; detailing circumstances under which
14 votes in federal, state, and local races on the federal
15 write-in absentee ballot will be canvassed; amending s.
16 101.5614, F.S.; establishing certain canvassing procedures
17 for federal write-in absentee ballots; amending s.
18 102.166, F.S.; directing the Department of State to adopt
19 rules to determine what constitutes a valid vote on a
20 federal write-in absentee ballot; providing restrictions;
21 providing minimum requirements; reenacting s. 102.166(5),
22 F.S., to incorporate the amendment to s. 101.5614, F.S.,
23 in a reference thereto; amending s. 104.18, F.S.;
24 conforming provisions to changes made by the act;
25 providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:
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29 Section 1. Section 101.6952, Florida Statutes, is amended
30 to read:

31 101.6952 Absentee ballots for absent uniformed services
32 and overseas voters.—

33 (1) If an absent uniformed services voter's or an overseas
34 voter's request for an official absentee ballot pursuant to s.
35 101.62 includes an e-mail address, the supervisor of elections
36 shall:

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

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

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

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

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

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

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

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

84 (e) Any abbreviation, misspelling, or other minor

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85 variation in the form of the name of an office, the name of a
86 candidate, or the name of a political party must be disregarded
87 in determining the validity of the ballot.

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

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

107 (4)-(2) For absentee ballots received from absent uniformed
108 services voters or overseas voters, there is a presumption that
109 the envelope was mailed on the date stated on the outside of the
110 return envelope, regardless of the absence of a postmark on the
111 mailed envelope or the existence of a postmark date that is
112 later than the date of the election.

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

115 101.5614 Canvass of returns.—

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

132 (b) A true duplicate copy shall be made of each federal
133 write-in absentee ballot in the presence of witnesses and
134 substituted for the federal write-in absentee ballot. The
135 duplicate ballot must include all valid votes as determined by
136 the canvassing board based on rules adopted by the division
137 pursuant to s. 102.166(4). All duplicate ballots shall be
138 clearly labeled "duplicate," bear a serial number that shall be
139 recorded on the federal write-in absentee ballot, and be counted
140 in lieu of the federal write-in absentee ballot. After a ballot

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141 has been duplicated, the federal write-in absentee ballot shall
 142 be placed in an envelope provided for that purpose, and the
 143 duplicate ballot shall be tallied with other ballots for that
 144 precinct.

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

150 102.166 Manual recounts of overvotes and undervotes.—

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

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

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

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

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

167 1. The appropriate lines or spaces for designating a
 168 candidate choice and, for state and local races, the office to

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169 be voted, including the proximity of each to the other and the
170 effect of intervening blank lines.

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

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

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

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

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

196 7. Situations where an elector designates the name of a

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197 qualified candidate for an incorrect office.

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

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

201 (a) The county canvassing board shall appoint as many
202 counting teams of at least two electors as is necessary to
203 manually recount the ballots. A counting team must have, when
204 possible, members of at least two political parties. A candidate
205 involved in the race shall not be a member of the counting team.

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

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

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

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

224 Section 4. Section 104.18, Florida Statutes, is amended to

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225 read:

226 104.18 Casting more than one ballot at any election.—

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

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