

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1339 Envelopes Used to Conceal the Voter's Choices

**SPONSOR(S):** Chestnut IV

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 1720

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	13 Y, 0 N, As CS	Naf	Williamson
2) State Affairs Committee	15 Y, 0 N	Naf	Hamby

### SUMMARY ANALYSIS

Current law allows supervisors of elections to mail ballots to absentee voters and to voters in mail ballot elections. In most instances, mailed ballots are sent with a secrecy envelope and a return mailing envelope.

This bill creates a definition for "security-enhanced envelope" and authorizes supervisors of elections to send out only security-enhanced envelopes with such ballots, instead of secrecy envelopes and return mailing envelopes.

The bill makes changes to conform to such authorization.

The bill provides an effective date of July 1, 2012.

The bill may have an indeterminate fiscal impact on state and local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Absentee Voting

Current law allows a voter to vote with an absentee ballot in lieu of voting at the polls.<sup>1</sup> A voter may request an absentee ballot from his or her supervisor of elections<sup>2</sup> in person, in writing, or via telephone call.<sup>3</sup> Absentee ballots are mailed to those voters who request them within a specified time frame.<sup>4</sup>

When an absentee ballot is mailed to a voter, it is generally sent<sup>5</sup> with a secrecy envelope<sup>6</sup>, a mailing envelope, and instructions to the voter.<sup>7</sup> The voter must enclose the completed ballot in the secrecy envelope, and then enclose the secrecy envelope in the mailing envelope for return to the supervisor of elections.<sup>8</sup>

##### Mail Ballot Elections

Certain elections may be conducted only by mail ballot and are not required to include polling places.<sup>9</sup> In mail ballot elections, the supervisor of elections mails all official ballots with a secrecy envelope, a mailing envelope, and instructions to the voter.<sup>10</sup> The voter must enclose the completed ballot in the secrecy envelope, and then enclose the secrecy envelope in the mailing envelope for return to the supervisor of elections.<sup>11</sup>

#### Effect of Proposed Changes

The bill creates a definition for “security-enhanced envelope” in the Electronic Voting Systems Act to mean a device with a tinted pattern on the inside, used in lieu of a secrecy envelope for enclosing a marked ballot, which conceals the voter’s choices.

The bill authorizes<sup>12</sup> supervisors of elections to send out only security-enhanced envelopes instead of both secrecy envelopes and mailing envelopes with:

- Absentee ballots; and
- Ballots for mail ballot elections.

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<sup>1</sup> See s. 101.62, F.S.

<sup>2</sup> Supervisors of elections are county constitutional elected officers whose duties include, but are not limited to, registration and education of voters, and administration of elections. See art. VIII, s. 1(d) of the Fla. Const., and ch. 98-105, F.S. (responsibilities of supervisors of elections are delineated throughout those chapters).

<sup>3</sup> See s. 101.62(1), F.S.

<sup>4</sup> See s. 101.62(4), F.S.

<sup>5</sup> A slightly different process applies to certain first-time voters. Voters who have never voted in the state and who have not been issued a current and valid Florida driver’s license, Florida identification card, or social security number must provide one of other specified forms of identification before voting. If such voter does not provided the required identification by the time his or her absentee ballot is mailed, the supervisor of elections must include with the ballot a secrecy envelope (into which the voter must enclose his or her marked ballot), an envelope containing the Voter’s Certificate (into which the voter must place the secrecy envelope), and a mailing envelope (into which the voter must place the envelope containing the Voter’s Certificate and a copy of the required identification). See s. 101.6921, F.S.

<sup>6</sup> Section 101.5603(6), F.S., defines “secrecy envelope” to mean an opaque device, used for enclosing a marked ballot, which conceals the voter’s choices. Although that definition is contained in the Electronic Voting Systems Act (ss. 101.5601-101.5614, F.S.), the term is used throughout the Election Code (ch. 97-106, F.S.).

<sup>7</sup> See ss. 101.64(1) and 101.65, F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Such elections include referendums in which only qualified electors of certain local governments may vote, and annexation referendums in which only qualified electors of one county may vote. See s. 101.6102(1), F.S.

<sup>10</sup> See s. 101.6103(1), F.S.

<sup>11</sup> See s. 101.6103(2), F.S.

<sup>12</sup> Such authorization does not impose a requirement on the supervisors of elections to use security-enhanced envelopes.

The bill makes changes to conform to such authorization in provisions relating to:

- The challenge of votes;
- Instructions to absentee voters;
- The canvassing of absentee ballots; and
- The return of an absentee ballot when the voter elects to vote in person.

The bill provides an effective date of July 1, 2012.

**B. SECTION DIRECTORY:**

Section 1 amends s. 101.5603, F.S., relating to definitions for the Electronic Voting Systems Act.

Section 2 amends s. 101.6103, F.S., relating to mail ballot election procedures.

Section 3 amends s. 101.6104, F.S., relating to the challenge of votes.

Section 4 amends s. 101.64, F.S., relating to the delivery of absentee ballots.

Section 5 amends s. 101.65, F.S., relating to instructions to absent electors.

Section 6 amends s. 101.68, F.S., relating to the canvassing of absentee ballots.

Section 7 amends s. 101.69, F.S., relating to the return of an absentee ballot when the voter elects to vote in person.

Section 8 amends s. 101.6921, F.S., relating to the delivery of special-absentee ballots to certain first-time voters.

Section 9 amends s. 101.6923, F.S., relating to special absentee ballot instructions for certain first-time voters.

Section 10 provides an effective date of July 1, 2012.

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

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

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

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

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

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

None.

#### D. FISCAL COMMENTS:

The Department of State may incur costs associated with rule changes to conform to statutory changes made by the bill. However, such costs are likely to be insignificant and would probably be absorbed within existing agency resources.

The office of the Miami-Dade County Supervisor of Elections (supervisor) states the authorization to mail absentee ballots with only security-enhanced envelopes instead of both secrecy envelopes and return mailing envelopes would allow the use of machines for automated separation of ballots from envelopes.<sup>13</sup> A cost estimate for such machines was not provided. The supervisor estimates that the total reduction in costs for Miami-Dade County from reduced envelope supplies and, if machines were used, from reduced labor needs, would be approximately \$82,000 per election.<sup>14</sup>

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill would require the Department of State (department) to amend current rules to conform to the bill's statutory changes.<sup>15</sup> The department appears to have sufficient authority to do so.<sup>16</sup>

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### Drafting Comments

The bill creates a definition for "security-enhanced envelope" in the section of law that contains definitions for the Electronic Voting Systems Act.<sup>17</sup> The Electronic Voting Systems Act does not contain the provisions governing absentee voting and mail ballot elections. However, the only definition for "secrecy envelope" is in the Electronic Voting Systems Act, and that term is used throughout the provisions governing absentee voting and mail ballot elections. The Legislature may wish to consider locating both terms within the general definitions for the Election Code<sup>18</sup> contained in s. 97.021, F.S.

The Legislature also may wish to consider adding conforming language about the use of security-enhanced envelopes to provisions relating to the public inspection of ballots<sup>19</sup> and to referendums to implement a special residential or business neighborhood improvement district.<sup>20</sup>

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<sup>13</sup> See "Memorandum: Security-Enhanced Envelopes for Absentee Ballots," Office of the Miami-Dade County Supervisor of Elections (on file with the Government Operations Subcommittee).

<sup>14</sup> *Id.*

<sup>15</sup> See, for example, Rule 1S-2.022 (Mail Ballot Elections), and Rule 1S-2.030 (Electronic Transmission of Absentee Ballots).

<sup>16</sup> See general authority in s. 97.012(1), F.S., to implement ch. 97-102 and 105, F.S., as well as specific authority in, for example, ss. 101.6107 and 101.697, F.S.

<sup>17</sup> The Electronic Voting Systems Act contains ss. 101.5601-101.5614, F.S. Definitions for the Electronic Voting Systems Act are contained in s. 101.5603, F.S.

<sup>18</sup> The Election Code consists of ch. 97-106, F.S.

<sup>19</sup> Section 101.572, F.S.

<sup>20</sup> Section 163.511, F.S.

#### Other Comments: Voting Systems

Current law requires voting systems to meet certain certification requirements prior to use.<sup>21</sup>

Department of State staff states machines used to separate ballots from envelopes would not require such certification.<sup>22</sup>

#### Other Comments: Preclearance

Under section 5 of the Voting Rights Act, new statewide legislation that implements a voting change, including but not limited to, a change in the manner of voting, change in candidacy requirements and qualifications, change in the composition of the electorate that may vote for a candidate, or change affecting the creation or abolition of an elective office is subject to preclearance review before it can be legally enforced.<sup>23</sup> Preclearance review may be obtained through submission to the U.S. Department of Justice or through a declaratory judgment action filed in the U.S. District Court for the District of Columbia.<sup>24</sup> The preclearance review is conducted to determine if the change has a discriminatory purpose or effect that denies or abridges the right to vote on account of race, color, or membership in a language minority group in a covered jurisdiction. Florida has five covered jurisdictions subject to preclearance: Collier, Hardee, Hendry, Hillsborough, and Monroe counties. Until precleared by the U.S. Attorney General or the U.S. District Court for the District of Columbia, legislation that implements a voting change is unenforceable in Florida's five covered jurisdictions.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 31, 2012, the Government Operations Subcommittee adopted a strike-all amendment and passed HB 1339 as a committee substitute. The strike-all amendment differs from the originally-filed bill in that instead of amending the definition for "secrecy envelope," it explicitly authorizes supervisors of elections to send out only security-enhanced envelopes with mailed ballots, instead of both secrecy envelopes and return mailing envelopes.

The analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.

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<sup>21</sup> The Department of State is required to adopt and routinely update rules containing minimum standards for hardware and software for electronic and electromechanical voting systems. See s. 101.015, F.S. An "electronic or electromechanical voting system" is a system of casting votes by use of voting devices or marking devices and counting ballots by employing automatic tabulating equipment or data processing equipment. See s. 101.5603, F.S.

<sup>22</sup> Phone call between Government Operations Subcommittee staff and Department of State staff (February 2, 2012).

<sup>23</sup> 42 U.S.C. s. 1973c.

<sup>24</sup> *Id.*