

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 215 Federal Write-in Absentee Ballot  
**SPONSOR(S):** Ethics & Elections Subcommittee and Broxson  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 486

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ethics & Elections Subcommittee	10 Y, 0 N, As CS	Davison	Marino
2) Veteran & Military Affairs Subcommittee	11 Y, 0 N	Dugan	Kiner
3) State Affairs Committee			

### SUMMARY ANALYSIS

Absent uniformed services voters and overseas voters may vote via three different types of ballots: state absentee ballots, state write-in absentee ballots, or federal write-in absentee ballots.

Federal write-in absentee ballots (FWABs) are available to absent uniformed services voters and overseas voters who apply for, but do not receive, a state absentee ballot. FWABs can be used to vote in any general election for federal office, and in state or local elections involving two or more candidates. Approximately 2,268 voters used FWABs in Florida in the 2012 general election, which is approximately 2.6 percent of the total absentee ballots cast by uniformed services and overseas voters.

The bill expands the permitted uses of FWABs to include uncontested races, merit retention races, and ballot measures.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2014.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### *Current Situation*

##### Federal Write-in Absentee Ballots

The federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) requires each state to permit absent uniformed services and overseas voters who apply for, but do not receive, a state absentee ballot to use a federal write-in absentee ballot (FWAB) to vote in any general election for federal office.<sup>1</sup> Florida law expands the use of a FWAB to include federal races in any election, as well as state or local elections involving two or more candidates.<sup>2</sup> Therefore, FWABs are not permitted for an uncontested race, a merit retention race (where there is only one candidate), or a ballot measure (where there is no candidate).<sup>3</sup>

Absent uniformed services and overseas voters may obtain a FWAB through the Federal Voting Assistance Program (FVAP).<sup>4</sup> FVAP provides assistance for absent uniformed services and overseas voters. FVAP's website provides a step-by-step guide for voters to either request an absentee ballot or fill out a FWAB. The website includes information regarding how and where to mail the FWAB once completed.

In an election for federal office, the voter completes the FWAB by writing the name of the candidate in boxes designated for President/Vice President, U.S. Senator, and U.S. Representative.<sup>5</sup> In an election for state or local office, the voter completes the section designated as "addendum" for non-federal races by writing the title of each office and the name of the candidate for whom the voter is voting.<sup>6</sup>

Except for primary, special primary, or nonpartisan elections, the voter may write in the name of a political party as opposed to the name of the candidate. In both federal and state or local elections, a voter's designation of a political party must be counted as a vote for the candidate of that party if there is such a party candidate in the race.<sup>7</sup>

For races with joint candidacy, such as President/Vice President or Governor/Lieutenant Governor, a vote for one or both candidates on the same ticket constitutes a vote for the joint candidacy.<sup>8</sup> If a candidate in the election is affiliated with a political party whose name includes the word "Independent," "Independence," or a similar term, a voter's designation on the FWAB of "No Party Affiliation" or "Independent," or any other minor variation, misspelling, or abbreviation thereof is considered a designation for the candidate, except for a write-in candidate, who qualified to run with no party affiliation. If more than one candidate qualifies with no party affiliation, the voter's designation does not count for any candidate unless there is a valid, additional designation of the candidate's name.<sup>9</sup>

In determining the validity of a FWAB, any abbreviation, misspelling, or other minor variation in the form of the name of an office, the name of a candidate, or the name of a political party must be disregarded.<sup>10</sup>

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<sup>1</sup> 42 U.S.C.A. § 1973ff-1(a)(3) (2009).

<sup>2</sup> s. 101.6952(2), F.S. (2013).

<sup>3</sup> The FWAB was recently changed to permit the use of ballot measures, but Florida law currently precludes it.

<sup>4</sup> Federal Voting Assistance Program, available at: <http://www.fvap.gov/> (last viewed February 18, 2014).

<sup>5</sup> Residents of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands may vote for Delegate or Resident Commissioner to the Congress in the same part of the form.

<sup>6</sup> s. 101.6952(2)(b), F.S. (2013).

<sup>7</sup> Id.

<sup>8</sup> s. 101.6952(2)(c), F.S. (2013).

<sup>9</sup> s. 101.6952(2)(d), F.S. (2013).

<sup>10</sup> s. 101.6952(2)(e), F.S. (2013).

An absent uniformed services or overseas voter who submits a FWAB and later receives an official absentee ballot may still submit the official absentee ballot. A voter in this situation should make every reasonable effort to inform the local supervisor of elections that he or she has submitted more than one ballot.<sup>11</sup> If both an official absentee ballot and a FWAB are received by 7 p.m. on election day, the FWAB is invalid and the official absentee ballot is canvassed.<sup>12</sup>

Absent voters must mail FWABs to the supervisor of elections of the county where they reside. FWABs may be canvassed beginning at 7 p.m. on the day of the election.<sup>13</sup>

FWABs must be submitted and processed in the same manner provided by law for state absentee ballots for the state the voter is voting in. A FWAB is not valid if the voter is an overseas voter (*not* an absent uniformed services voter) who submits the ballot from any location in the United States. A FWAB is not counted if the application for an absentee ballot is received by the state election official after a certain deadline. An application for an absentee ballot must be timely received in order for a FWAB to count.<sup>14</sup>

Approximately 2,268 voters used FWABs in Florida in the 2012 general election, which is approximately 2.6 percent of the total absentee ballots cast by uniformed services and overseas voters.<sup>15</sup>

### State Absentee Ballots

The UOCAVA requires each state to permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for federal office.<sup>16</sup> Florida law also permits the use of state absentee ballots for all state and local elections, merit retention, and ballot measures. Any voter may obtain an absentee ballot by submitting a request to his or her supervisor of elections in person, by phone, or in writing (online or by mail, fax, or e-mail).<sup>17</sup> Absent uniformed services and overseas voters may receive their state absentee ballots by forwardable mail, e-mail, or fax machine transmission.<sup>18</sup> The voter may designate in the absentee ballot request the preferred method of transmission.<sup>19</sup> If the voter does not designate the method of transmission, the ballot must be delivered by mail.<sup>20</sup>

The timing of the delivery of an absentee ballot to a uniformed services or overseas voter depends on when the supervisor of elections receives the voter's absentee ballot request. The following table describes the timing of the delivery of state absentee ballots to absent uniformed services and overseas voters prior to each presidential preference primary, primary election, and general election:

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<sup>11</sup> s. 101.6952(3)(a), F.S. (2013); 42 U.S.C.A. § 1973ff-2(b) (2009).

<sup>12</sup> s. 101.6952(3)(b), F.S. (2013).

<sup>13</sup> *Id.*

<sup>14</sup> 42 U.S.C.A. § 1973ff-2(b) (2009).

<sup>15</sup> U.S. Election Assistance Commission, *2012 Uniformed and Overseas Citizens Absentee Voting Act Report*, July 2013, available at: [http://www.eac.gov/research/uocava\\_studies.aspx](http://www.eac.gov/research/uocava_studies.aspx) (last viewed February 18, 2014).

<sup>16</sup> 42 U.S.C.A. § 1973ff-1(a)(1) (2009).

<sup>17</sup> s. 101.62(1)(a)-(b), F.S. (2013).

<sup>18</sup> s. 101.62(4)(c)2., F.S. (2013).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

## Delivery of State Absentee Ballots to Absent Uniformed Services and Overseas Voters

Days Before Election	Delivery Method Requested	Time Request Must Be Received Prior to Election	Time of Delivery
45 days or more before each election	Mail, fax, or e-mail	More than 45 days before the election	Must be sent at least 45 days before the election <sup>21</sup>
Less than 45 days before each election	Mail	No later than 5 p.m. on the sixth day before the election <sup>22</sup>	Must be mailed no later than 4 days before the election <sup>23</sup>
	Fax or e-mail	Any time before the polls close	May be sent at any time before the polls close

State absentee ballots for uniformed services and overseas voters may only be returned by mail, by fax, in person, or through someone else on behalf of the voter.<sup>24</sup> To be accepted and counted, the ballots must be received by the supervisor of elections by 7 p.m. on election day.<sup>25</sup> For state absentee ballots returned by absent uniformed services and overseas voters in a presidential preference primary or general election, the ballot is counted if it is postmarked or dated no later than the date of the election, and it is received by the supervisor of elections no later than 10 days after the date of the election.<sup>26</sup>

Approximately 83,231 uniformed services voters and overseas voters used state absentee ballots in Florida in the 2012 general election.<sup>27</sup> As of 2013, more than 450,000 U.S. Department of Defense employees are stationed overseas.<sup>28</sup>

### State Write-in Absentee Ballots

An overseas voter may also request, no earlier than 180 days before a general election, a state write-in absentee ballot (SWAB) from his or her supervisor of elections. The voter must state that due to military or “other contingencies” that preclude normal delivery, the voter cannot vote a state absentee ballot during the normal absentee voting period. SWABs must be made available to voters 90 to 180 days prior to a general election.<sup>29</sup> The SWAB must contain all offices (federal, state, and local) for which the voter would otherwise be entitled to vote.<sup>30</sup> On the SWAB, the voter may indicate the name of the candidate or a political party, in which case the ballot is counted for the candidate of that political party, if there is such a party candidate on the ballot.<sup>31</sup> Any abbreviation, misspelling, or other minor variation in the form of a candidate or a political party must be disregarded in determining the validity of the ballot if there is a clear indication on the ballot that the voter has made a definite choice.<sup>32</sup> For the retention of justices of the Supreme Court and judges of a district court of appeal, the supervisor must print the names of the incumbent justices and judges scheduled to be on the ballot for retention in the election on the SWAB.<sup>33</sup>

<sup>21</sup> s. 101.62(4)(a), F.S. (2013); 42 U.S.C.A. § 1973ff-1(a)(8) (2009).

<sup>22</sup> s. 101.62(2), F.S. (2013). This provision also applies to absentee ballot requests submitted by voters who are not absent uniformed services or overseas voters.

<sup>23</sup> s. 101.62(2), F.S. (2013). This provision also applies to absentee ballot requests submitted by voters who are not absent uniformed services or overseas voters.

<sup>24</sup> 1S-2.030(4), F.A.C. (2012).

<sup>25</sup> Id.

<sup>26</sup> s. 101.6952(5), F.S. (2013).

<sup>27</sup> U.S. Election Assistance Commission, *2012 Uniformed and Overseas Citizens Absentee Voting Act Report*, July 2013, available at: [http://www.eac.gov/research/uocava\\_studies.aspx](http://www.eac.gov/research/uocava_studies.aspx) (last viewed February 18, 2014).

<sup>28</sup> USDOD website, available at: <http://www.defense.gov/about/> (last viewed February 18, 2014).

<sup>29</sup> s. 101.6951(1), F.S. (2013). The SWAB form is established by Rule 1S-2.028, F.A.C.

<sup>30</sup> s. 101.6951(4), F.S. (2013).

<sup>31</sup> s. 101.6951(2), F.S. (2013).

<sup>32</sup> s. 101.6951(3), F.S. (2013).

<sup>33</sup> 1S-2.028, F.A.C. (2003).

## Department of State Rulemaking Authority

The Department of State (DOS) is generally authorized to adopt rules to obtain and maintain uniformity in the interpretation and implementation of the election laws.<sup>34</sup> Section 102.166(4)(b), F.S., requires DOS to adopt rules for FWABs and specifies the minimum issues the rules must address. DOS has adopted by rule the standards for determining a voter's choice on a FWAB.<sup>35</sup>

### *Effect of Proposed Changes*

The bill expands the permitted uses of FWABs to include uncontested races, merit retention races,<sup>36</sup> and ballot measures.

For uncontested races, a voter would indicate the uncontested race in the first blank of the FWAB. In the second blank, the voter would indicate the candidate's name or political party.

For ballot measures, a voter would indicate in the first blank the ballot measure, and in the second blank, the voter would indicate a yes or no vote. The bill requires that any abbreviation, misspelling, or other minor variation in the form of the ballot measure be disregarded in determining the validity of the ballot. The bill does not explicitly specify what methods a voter can use to indicate which ballot measure he or she intends to vote on (i.e., "Ballot Measure 1," "Tax Measure," etc.).

A vote cast in a judicial merit retention election would be treated in the same manner as a vote cast for a ballot measure. In the second blank of the FWAB, the voter may only indicate "yes" or "no." The bill does not explicitly specify by what methods a voter would use to indicate which judicial officer he or she intends to vote for or against (i.e., "Florida Supreme Court Justice," "John Smith," "Supreme Court Justice/John Smith," etc.). It appears that DOS has sufficient rulemaking authority to address these issues.

The bill also expands required rulemaking to include the changes made by the bill.

The bill is effective on July 1, 2014.

### B. SECTION DIRECTORY:

Section 1: amends s. 101.6952, F.S., authorizing absent uniformed services voters and overseas voters to use the federal write-in absentee ballot in any state or local election; providing that an eligible elector may vote on any ballot measure in an election using the federal write-in absentee ballot.

Section 2: amends s. 102.166, F.S., revising minimum requirements for DOS rules used in determining what constitutes a valid vote on a federal write-in absentee ballot involving manual recounts.

Section 3: provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

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<sup>34</sup> s. 97.012(1), F.S. (2013).

<sup>35</sup> See 1S-2.051, F.A.C. (2003).

<sup>36</sup> See art. V, sec. 10, Fla. Const.

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.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill also expands required rulemaking to include the changes made by the bill.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 8, 2014, the Ethics and Elections Subcommittee adopted an amendment, the effect of which was to conform the bill to SB 486. The amendment specifies that on FWABs, a vote cast in a judicial merit retention election must be treated in the same manner as a ballot measure.