

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Transportation, Tourism, and Economic Development

BILL: SB 894

INTRODUCER: Senator Thompson

SUBJECT: Absentee Voting

DATE: April 7, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Roberts</u>	<u>EE</u>	Favorable
2.	<u>Sneed</u>	<u>Miller</u>	<u>ATD</u>	Favorable
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

I. Summary:

SB 894 changes the phrase “absentee” to “vote-by-mail” where it appears in the Florida Statutes, most frequently in the context of the phrase “absentee ballot(s).”

The bill has no fiscal impact on state government.

The bill takes effect July 1, 2015.

II. Present Situation:

Originally, casting a ballot without going to the polls on election day was the province of the military; widespread¹ absentee balloting in America had its origins during the Civil War, as a means for both sides to afford soldiers in the field — a not insignificant portion of the electorate at the time — the opportunity to vote.² By 1924, all but a handful of states had absentee ballot

¹ Pennsylvania appears to have been the only state with an absentee ballot law pre-dating the Civil War (1813), allowing military personnel stationed more than 2 miles from their homes to cast an absentee ballot. See, Aaron Marshall, *Special Voting Access for the Military Nothing New, Dates from the Civil War, Mike DeWine Says* (Oct. 1, 2012), available on PolitifactOhio’s web site at <http://www.politifact.com/ohio/statements/2012/oct/01/mike-dewine/special-voting-access-military-nothing-new-dates-c/> (last accessed Mar. 27, 2014) (citing, generally, John C. Fortier & Norman J. Ornstein, *The Absentee Ballot and the Secret Ballot: Challenges for Election Reform*, 36 U. MICH. J.L. REFORM 483 (2003))[hereinafter, Marshall, *Special Military Voting*].

² *Voting Integrity Project, Inc. v. Keisling*, 259 F.3d 1169, 1175 (9th Cir. 2001); Marshall, *Special Military Voting* supra at note 2. Nineteen of the 25 Union states (including the Border States) and 7 of 11 Confederate states had absentee voting laws for soldiers during the Civil War. *Id.* Though many states repealed their laws after the War — with only 6 states retaining them on the books as of 1915 — the advent of World War I ushered in a decade of new state absentee ballot laws. Daniel P. Tokaji & Ruth Colter, *Absentee Voting by People with Disabilities: Promoting Access and Integrity*, 38 MCGEORGE L.REV. 1015, 1020 (2007), reprinted at http://www.americanbar.org/content/dam/aba/migrated/aging/voting/pdfs/tokaji_authcheckdam.pdf (last accessed Mar. 27, 2015)[hereinafter, Tokaji, *Absentee Voting*].

laws for members of the military, with many of them extending the franchise to civilians who could not attend the polls on account of illness or other physical disability.³

In 1986, the federal government codified the right of absent military and civilian overseas voters to cast an absentee ballot in federal races in the Uniformed Overseas Citizens Absentee Voting Act (“UOCAVA”).⁴ Through the 1990’s and especially the 2000’s, numerous states (including Florida)⁵ amended their absentee laws to allow for even greater absentee ballot participation by voters — removing the reasons that voters traditionally had to give in order to vote an absentee ballot.⁶ Today, a slim majority of states have some form of what the National Conference of State Legislatures refers to as “no-excuse absentee voting.”⁷

There seems, however, to be a lack of uniformity regarding what to call the current concepts of absentee voting. An Internet search of various statutes, federal and state executive agency sites for election administrators, and other professional organizations involved with voting indicates that the terms “absentee voting/balloting,” “no-excuse absentee balloting/voting,” “vote-by-mail,” and “all-mail balloting” are all quite common.

Often, terms are used interchangeably; several Florida supervisor of elections websites, for example, refer to the process as both “vote-by-mail” and “absentee.”⁸ In other cases, multiple terms are used to refer to the same thing depending on who’s doing the characterizing. For example, the California statutes and its Secretary of State’s web site refer to the absentee process for UOCAVA (absent military/overseas) voters as “vote by mail;”⁹ the U.S. Department of Defense’s Federal Voting Assistance Program (“FVAP”) materials, designed to aid Californians in the military and citizens overseas cast valid ballots, refer to the California process as

³ *Id.*

⁴ 42 U.S.C. ss. 1973ff-1973ff-7.

⁵ Florida officially did away with reasons for voting absentee back in 2001, though voters had for years been able to obtain an absentee ballot by simply attesting to the fact that they might not be in their precincts on Election Day. Ch. 2001-40, s. 53, LAWS OF FLA.

⁶ Tokaji, *Absentee Voting* supra note 3 at 1021; see, Enrijeta Shino, *Absentee Voting: A Cross State Analysis* at pp. 3-5 (University of Florida, Mar. 8, 2014) (2000 general election signaled the turning point in easing legal requirements for absentee voting), available at The Florida Political Science Association web site at

http://www.fpsanet.org/uploads/8/8/7/3/8873825/2014_nominee_shino.pdf (last accessed Mar. 27, 2015).

⁷ National Conference of State Legislatures, *Absentee and Early Voting* (February 11, 2015), available at <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx> (last accessed Mar. 27, 2015).

⁸ See e.g., Escambia Co. Supervisor of Elections web site at <http://www.escambivotes.com/vote-by-mail> and <http://www.escambivotes.com/absentee-voting-and-registration> (generally, using the term “absentee ballot” to refer to military and overseas ballots and the phrase “vote-by-mail” to refer to other ballots)(last accessed Mar. 27, 2015); Pasco Co. Supervisor of Elections web site at <http://www.pascovotes.com/Vote-by-Mail/About-Voting-by-Mail#mil> (referring to most ballots, including military, as vote-by mail ballots); Leon Co. Supervisor of Elections web site at <http://www.leonvotes.org/Request-an-Absentee-Ballot> and Sarasota Co. Supervisor of Elections web site at <http://www.sarasotavotes.com/content.aspx?id=19> (using both terms, “vote-by-mail” and “absentee,” interchangeably and simultaneously).

⁹ See Cal Elec. Code s. 3000-3024 and 3101-3123 (detailing “vote by mail” requirements and procedures for all California voters, including UOCAVA military and overseas voters); see also, Cal. SOS web site at <http://www.sos.ca.gov/elections/voter-registration/military-overseas-voters/> and <http://www.sos.ca.gov/elections/voter-registration/vote-mail/> (using the phrase “vote-by-mail” to refer to all military and civilian voting) (last accessed Mar. 27, 2015).

“absentee” voting.¹⁰ In still other cases, the absentee balloting process *itself* is bifurcated and referred to using multiple terms. For example, Oregon conducts so-called “*all-mail-ballot*” elections (no polling places).¹¹ While the statutes don’t specifically use *either* term, the Oregon Secretary of State’s web site refers to ballots mailed to a voter’s *in-state* home address as “*vote-by-mail ballots*,” while those mailed outside the state (or to in-state voters who will be away from their home address during an election) are called “*absentee ballots*.”¹²

It’s also worth noting that Florida law currently includes the “*Mail Ballot Election Act*,” authorizing **all-mail-ballot** voting in certain local referenda elections.¹³ This could serve as a possible source of confusion with the term “vote-by-mail.”

III. Effect of Proposed Changes:

The bill changes the term “absentee” and “absentee ballot” to “vote-by-mail” and “vote-by-mail ballot,” respectively, where those terms appear in the Florida Statutes.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁰ See, FVAP California web site at <http://www.fvap.gov/california> and <http://www.fvap.gov/vao/vag/chapter2/california> (describing California’s voting process for UOCAVA voters as “absentee voting guidelines,” providing links to the State’s vote by mail information, and providing information on how to receive an “absentee ballot”) (last accessed Mar. 27, 2015).

¹¹ See, Or. Rev. Stat. s. 254.465(1) (2013) (county clerks must conduct all elections by mail).

¹² See Oregon Secretary of State web site at <http://sos.oregon.gov/voting/Pages/voteinor.aspx>; see also, Oregon’s Absentee Ballot Request form for in-state voters away from home, available at <http://sos.oregon.gov/elections/Documents/SEL111.pdf> (last accessed Mar. 27, 2015); E-mail from Brian Corley, Legislative Liaison for the Florida State Assn. of Supervisors of Elections and Supervisor of Pasco County to Jonathan Fox, Senate Ethics and Elections Chief Attorney (March 25, 2015) (Q&A’s about Oregon’s Vote-by-Mail/Absentee Balloting).

¹³ Sections 101.6101-101.6107, F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Some have expressed concern that changing the statutes from “absentee” balloting to “vote-by-mail” could potentially violate a U.S. Postal Service (“USPS”) Regulation¹⁴ requiring the use of specific words on the ballot mailing envelope, thereby possibly delaying the transmission and delivery of overseas ballots in both directions.

In brief, even if the statutory phraseology were changed from “absentee balloting” to “vote-by-mail,” there appears to be no legal impediment to the supervisors continuing to word their UOCAVA mailing envelopes with the term “Official Absentee Balloting Material” to meet the requirements of the USPS regulations at issue. In fact, the law as amended by the bill would arguably even *require* it. Further, the USPS regulations specifically authorize the use of *other* terms — such as “Vote-By-Mail” — if required by State law. Each of these points is discussed in detail in the following paragraphs.

First and foremost, the law *currently* requires that all “absentee envelopes” for UOCAVA voters comply with FVAP and USPS requirements.¹⁵ The current bill amends the law to require that “vote-by-mail” envelopes sent to such voters meet those same USPS requirements.¹⁶ Thus, if USPS regulations were read to require the mailing envelope to say “Official Absentee Balloting Material,” the revised law would sanction (and arguably even mandate) that wording.

Second, many supervisors currently market absentee balloting to voters as “vote-by-mail”— *notwithstanding that the statute says “absentee ballot.”* If this bill passes, envelopes for UOCAVA ballots could arguably be prepared with the phrase “Official Absentee Balloting

¹⁴ See U.S.P.S. Regulations, DMM 703.8.0, available at <http://pe.usps.com/text/dmm300/703.htm> (last accessed 3.26.2015) (requiring the term “Official Absentee Balloting Material—First-Class Mail” (or similar language required by state law) on the exterior of the envelope as one requirement for postage-free delivery of ballots to military and overseas citizens).

¹⁵ Section 101.694(3), F.S. Although housed in a section of the statutes entitled “Mailing of ballots upon receipt of federal postcard application,” a 2005 change to the law clarified that the requirements were applicable to ALL envelopes printed for UOCAVA voters — not just those ballots requested with the federal postcard application. See Ch. 2005-277, s. 50, at 2664, LAWS OF FLA. (codified at s. 101.694(3), F.S.) (striking language limiting the section to federal postcard applicants); see also, Florida House of Representatives, Bill Analysis - CS/HB 1567 (2005), at p. 13 (Apr. 20, 2005) (discussing changes to s. 101.694 as impacting envelope requirements for “absent electors overseas,” without reference to federal postcard applicants), available at <http://archive.flsenate.gov/data/session/2005/House/bills/analysis/pdf/h1567e.SAC.pdf> (last accessed Mar. 26, 2015).

¹⁶ Section 27 (amending s. 101.694(3), F.S.).

Material” so as to avoid delays in mailing or other confusion — *notwithstanding that the statute would say “vote-by-mail.”*

Third, the pertinent part of the USPS regulation at issue *actually* states:

8.2.5 Envelope

The envelope used to send balloting material and the envelope supplied for return of the ballots must have printed across the face the words “Official Absentee Balloting Material—First-Class Mail” **(or similar language required by state law)** in a rectangular box. Immediately below, the words “No Postage Necessary in the U.S. Mail—DMM 703.8.0” must be printed.¹⁷

(emphasis added). The postal regulation *on its face* appears to sanction a ballot envelope that reads something like, “Official Vote-By-Mail Balloting Material — First Class Mail.”

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 97.012, 97.021, 97.026, 98.065, 98.077, 98.0981, 98.255, 101.051, 101.151, 101.5612, 101.5614, 101.572, 101.591, 101.6105, 101.62, 101.64, 101.65, 101.655, 101.661, 101.662, 101.67, 101.68, 101.69, 101.6921, 101.6923, 101.6925, 101.694, 101.6951, 101.6952, 101.697, 102.031, 102.141, 102.168, 104.047, 104.0616, 104.17, 117.05, 394.459, 741.406, and 916.107.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁷ U.S.P.S. Regulations, DMM 703.8.2.5, available at <http://pe.usps.com/text/dmm300/703.htm> (last accessed 3.26.2015).