

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 361 Vote-by-mail Voting

SPONSOR(S): State Affairs Committee; Lee, Jr., Williams and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 112

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N	Toliver	Williamson
2) Transportation & Economic Development Appropriations Subcommittee	10 Y, 0 N	Cobb	Davis
3) State Affairs Committee	14 Y, 0 N, As CS	Toliver	Camechis

SUMMARY ANALYSIS

Prior to 2001, a voter was required to show cause in order to vote using an absentee ballot. In 2001, the Legislature adopted the Florida Election Reform Act of 2001, which eliminated the requirement that a voter show cause to vote using an absentee ballot. Now, a voter using an absentee ballot is only required to affirm that he or she:

- Is a qualified and registered voter of the county;
- Has not and will not vote more than one ballot in the election; and
- Understands that committing or attempting to commit fraud in connection with voting is a felony of the third degree.

According to the National Conference of State Legislatures, 27 states have some form of “no-excuse absentee voting.” However, there seems to be a lack of uniformity regarding what to call the current concepts of absentee voting. For instance, several Florida Supervisors of Elections’ websites use the terms “vote-by-mail” and “absentee” interchangeably.

The bill amends the Florida Statutes to replace the phrase “absentee ballot” with the phrase “vote-by-mail ballot.”

The bill appears to have an indeterminate fiscal impact to the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Prior to 2001, a voter was required to show cause in order to vote using an absentee ballot.¹ To vote by absentee ballot, a voter had to attest that one of the following reasons prevented him or her from voting in person at a polling place:

- The voter is unable to vote without another's assistance;
- The voter may not be in the precinct of residence during the hours the polls are open for voting on election day;
- The voter is an inspector, a poll worker, a deputy voting machine custodian, a deputy sheriff, a supervisor of elections, or a deputy supervisor of elections who is assigned to a different precinct than the one in which he or she is registered;
- The voter cannot attend the polls on election day because of the tenets of his or her religion;
- The voter changed his or her residency to another county in Florida within the time period during which the registration books are closed for the election;
- The voter changed his or her permanent residency to another state and he or she is unable under the laws of that state to vote in the general election; or
- The voter is unable to attend the polls on election day and is voting in person at the office of the supervisor of elections.²

In 2001, the Legislature adopted the Florida Election Reform Act of 2001, which eliminated the requirement that a voter show cause to vote using an absentee ballot.³ Now, a voter using an absentee ballot is only required to affirm that he or she:

- Is a qualified and registered voter of the county;
- Has not and will not vote more than one ballot in the election; and
- Understands that committing or attempting to commit fraud in connection with voting is a felony of the third degree.⁴

Numerous states have amended their absentee voting laws to allow for greater absentee ballot participation by voters by removing the reasons that voters traditionally had to give in order to vote an absentee ballot.⁵ According to the National Conference of State Legislatures, 27 states have some form of "no-excuse absentee voting."⁶ However, there seems to be a lack of uniformity regarding what to call the current concepts of absentee voting. For instance, several Florida supervisors of elections' websites use the terms "vote-by-mail" and "absentee" interchangeably.⁷

¹ Section 101.64, F.S. (2000).

² *Id.*

³ Chapter 2001-40, s. 1, L.O.F.

⁴ Section 101.64(1), F.S.

⁵ Tokaji & Ruth Colter, *Absentee Voting by People with Disabilities: Promoting Access and Integrity*, 38 MCGEORGE L.REV. 1015, 1021 (2007), reprinted at <http://www.americanbar.org/content/dam/aba/migrated/aging/voting/pdfs/tokaji.authcheckdam.pdf> (last accessed Nov. 18, 2015); 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 website at http://www.fpsanet.org/uploads/8/8/7/3/8873825/2014_nominee_shino.pdf (last accessed Nov. 18, 2015).

⁶ National Conference of State Legislatures, *Absentee and Early Voting* (Feb. 11, 2015), available at <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx> (last accessed Nov. 18, 2015).

⁷ See e.g., Escambia County Supervisor of Elections website at <http://www.escambiovotes.com/vote-by-mail> and <http://www.escambiovotes.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 Nov. 18, 2015); Pasco County Supervisor of Elections website at <http://www.pascovotes.com/Vote-by-Mail/About-Voting-by-Mail#mil> (referring to most ballots, including military, as vote-by mail ballots)(last accessed Nov. 18, 2015); Leon County Supervisor of Elections website at <http://www.leonvotes.org/Request-an-Absentee-Ballot> and Sarasota County Supervisor of Elections website at <http://www.sarasotavotes.com/Request-an-Absentee-Ballot>

Effect of the Bill

The bill amends the Florida Statutes to replace the phrase “absentee ballot” with the phrase “vote-by-mail ballot.”

B. SECTION DIRECTORY:

Sections 1 through 43 amend ss. 97.012, 97.021, 97.026, 98.065, 98.077, 98.0981, 98.255, 100.025, 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, 101.663, 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, 104.0515, 104.0616, 104.17, 117.05, 394.459, 741.406, and 916.107, F.S., replacing the phrase “absentee ballot” with “vote-by-mail ballot.”

Section 44 provides an effective date of July 1, 2016.

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:

According to the Department of State, the change in terminology will require the Division of Elections to revise documentation and may require coding changes to the Florida Voter Registration System. The department indicates the changes will likely be absorbed into the division’s current operating budget.⁸

Additionally, supervisors of elections will need to make changes to documentation, forms, procedures, and websites to conform to the change in terminology. The cost of these changes is indeterminate since the level of changes required will differ from county to county.

<http://www.sarasotavotes.com/content.aspx?id=19> (using both terms, “vote-by-mail” and “absentee” interchangeably and simultaneously)(last accessed Nov. 18, 2015).

⁸ Department of State 2016 Agency Legislative Bill Analysis for HB 361, Oct. 27, 2015, at pg. 3 (on file with the Government Operations Subcommittee).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Art. VII, s. 18 of the State Constitution because it is an election law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Delivery of Ballots

In the past, some have expressed concern that changing the term “absentee ballot” to “vote-by-mail ballot” could result in a delay in the United States Postal Service’s processing, transmitting, and delivering of ballots. However, U.S. Postal Service Regulation 703 Nonprofit Standard Mail and Other Unique Eligibility provides the following:

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)...⁹

Therefore, using different terms with similar meanings, such as “vote-by-mail ballot,” would appear to be contemplated by the U.S. Postal Service’s regulations.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2016, the State Affairs Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment adds three sections to the bill and amends those sections to replace references to “absentee ballot” with references to “vote-by-mail ballot.”

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.

⁹ U.S Postal Service Regulation 703.8.2.5, available at <http://pe.usps.com/text/dmm300/703.htm#1174014> (last accessed Nov. 18, 2015).