

**STORAGE NAME:** h0189a.ree.doc  
**DATE:** March 26, 2001

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
RULES, ETHICS, & ELECTIONS  
ANALYSIS**

**BILL #:** HB 189  
**RELATING TO:** Absentee Ballots  
**SPONSOR(S):** Representative(s) Harrington, Needleman & Others

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) RULES, ETHICS, & ELECTIONS (PRC) YEAS 14 NAYS 0
  - (2) PROCEDURAL & REDISTRICTING COUNCIL
  - (3)
  - (4)
  - (5)
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I. SUMMARY:

HB 189 provides legislative intent to enact legislation to ensure the integrity of absentee ballots cast by, military personnel.

The bill has an indeterminate fiscal impact.

A "strike everything" amendment was adopted by the Committee on Rules, Ethics, & Elections on March 28, 2001. The provisions of the amendment are discussed in Section VI of this analysis. The amendment provides an effective date of January 1, 2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The Uniformed and Overseas Citizens Absentee Voting Act ("the Act")(42 U.S.C. 1973 ff *et seq.*) requires states to allow certain persons to register and vote absentee in federal elections. The Act covers citizens who are members of the Uniformed Services and Merchant Marine, and their spouses and dependents, and citizens residing outside of the United States. Members of the Armed Forces and Merchant Marine and their spouses and dependents are allowed to vote absentee while away from their place of voting residence, wherever stationed, either within or outside of the United States. Other U.S. citizens residing outside of the United States and its territories may vote in the state where they last resided prior to leaving the United States.

In addition, the Act requires states to accept a Federal Write-In Absentee Ballot from military and overseas voters under certain conditions:

- The voter must have requested a regular absentee ballot at least 30 days prior to the election and not have received the ballot;
- Voters must meet all of the regular requirements for voting in the state; and
- Voters must be overseas and have a foreign mailing address or an APO/FPO postmark.

Florida holds three elections in a nine-week period. The first primary election is held nine weeks prior to the second primary and the second primary election is held five weeks prior to the general election. In the early 1980's, the Federal Government sued the State of Florida claiming that the state's system of three elections in nine weeks violated the Uniformed and Overseas Citizens Voting Rights Act and the Federal Voting Assistance Act. The suit alleged that the nine-week span did not provide sufficient time for supervisors of elections to prepare absentee ballots, mail them to overseas voters, and have the voters return them by Election Day. A federal district court entered a temporary restraining order of November 6, 1980, extending by 10 days the deadline for receipt of the 1980 general election ballots cast pursuant to the federal acts.

In 1982, the State of Florida and the Federal Government entered into a consent decree covering federal contests. The decree required that overseas absentee ballots in the 1982 general election be counted if the ballots were postmarked by Election Day and received by the supervisors no later than 10 days after the election. In addition, the decree required that absentee ballots for the 1982 first primary be mailed to overseas electors at least 35 days before the first primary. Finally, the

consent decree directed that the plan of compliance be drawn to provide for the mailing of overseas ballots at least 35 days prior to the deadline for the receipt of ballots.

In 1984, the federal district court approved Florida's plan of compliance, which modified the election schedule and resulted in the adoption of Rule 1C-7.013, F.A.C. (subsequently renumbered as 1S-7.013 F.A.C.). This rule required the supervisors of election to mail overseas absentee ballots for federal office at least 35 days prior to the election. The rule also provided that, with respect to a presidential preference primary or general election for federal office, an otherwise proper overseas ballot postmarked **or** signed and dated no later than the date of the election must be counted if received up to 10 days after the election.

In an effort to further facilitate absentee voting by overseas electors, the 1989 Legislature adopted the advance ballot system still in use today. Under the Florida advance ballot system, supervisors of elections mail first primary absentee ballots to qualified overseas electors not less than 35 days before the first primary. Subsequently, the supervisors mail advance ballots for the second primary and general election at least 45 days prior to these elections, followed by regular second primary and general election ballots when they become available. If both ballots for the same election are returned, only the regular ballot is counted.

After the 2000 Presidential Election, allegations were made that a substantial number of absentee ballots from overseas had been challenged and rejected for lacking a postmark. Under s. 101.62(f)(c), marked ballots mailed by absent qualified electors overseas are considered valid only if the ballots are mailed with an APO, FPO, or foreign postmark. However, under Rule 1S-2.013(7), F.A.C., "any absentee ballot cast for a federal office by an overseas elector which is postmarked **or** signed and dated no later than the date of the election shall be counted if received no later than 10 days from the date of the Federal election as long as such absentee ballot is otherwise proper.

C. EFFECT OF PROPOSED CHANGES:

The bill provides legislative intent to enact legislation that ensures the integrity of absentee ballots cast by military personnel.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate.

2. Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate.

2. Expenditures:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Election laws are exempt from the mandates Article. VII, section 18, of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

See response above.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

See response above.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Representative Harrington offered a "strike everything" amendment to provide the creation of the Military and Overseas Voter Protection Act. The Act will facilitate the provisions of the federal Uniformed and Overseas Citizens Absentee Voting Act. Specifically, the bill provides:

- Persons recently discharged from service overseas are allowed to register after the book closing date for an election under certain circumstances;

- Overseas voters may request a state write-in ballot if they anticipate that they will not be able to receive and vote a regular absentee ballot for the election;
- Supervisors of elections are required to inform overseas voters of the names of candidates on the ballot, if the voter has provided an e-mail address;
- The date signed is added to the Voter's Certificate on absentee ballot envelopes;
- There is a presumption that an absentee ballot received from an overseas voter was mailed on the date stated on the Voter's Certificate, regardless of the absence of a postmark or the existence of a postmark that is later than the date of the election;
- The Department of State is required to adopt rules authorizing a supervisor of elections to receive requests for absentee ballots and voted ballots from overseas voters by facsimile transmission or other electronic means;
- The Elections Canvassing Commission is authorized to adopt rules to facilitate absentee voting by persons directly affected by a local or national emergency; and the deadline for certification of election results for the general election is changed to the 11<sup>th</sup> day following the election to allow for the inclusion of votes from overseas voters.

The amendment passed without objection and is traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON RULES, ETHICS, & ELECTIONS:

Prepared by:

Staff Director:

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R. Michael Paredes

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R. Philip Twogood, PhD.