

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 Transportation and Economic Development Appropriations Committee

BILL: CS/CS/SB 900

INTRODUCER: Transportation and Economic Development Appropriations Committee; Ethics and Elections Committee; and Senator Thrasher

SUBJECT: Elections

DATE: April 19, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kruse	Rubinas	EE	Fav/CS
2.	Belcher	Noble	TA	Fav/CS
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill is an elections measure that contains various changes to the election code, most of which implement the Military and Overseas Voter Empowerment Act recently signed into federal law.

Some of the major provisions include:

- Revising the definition of “overseas voter” and defining “absent uniformed services voter.”
- Extending the 2012 paper ballot requirement for disabled voters to 2016.
- Revising the absentee ballot process for overseas voters and absent uniformed services voters in accordance with the Military and Overseas Voter Empowerment Act.

The bill requires no additional expenditure of state funds. Current law requires statewide transition from touch screens for disability voting equipment to a system using a marksense ballot by 2012. According to the Florida State Association of Supervisors of Elections, the current estimated cost to counties is between \$35-\$45 million. This includes estimates from two counties to replace their entire voting system if their current vendor does not produce disability equipment using a marksense ballot. The bill (Section 3) delays the implementation and therefore the cost to 2016.

Except as provided, the bill takes effect upon becoming a law.

This bill substantially amends the following sections of the Florida Statutes: 97.021, 98.0981, 101.56075, 101.62, 101.694, 101.6952, and 379.352.

II. Present Situation:

Definition of Overseas Voter

Currently, an overseas voter is defined as:

- anyone who is an active service member of the uniformed services and a permanent resident of Florida temporarily residing outside the United States; or
- a United States citizen or merchant marine who is a permanent resident of Florida temporarily residing outside the United States.¹

Voting Machines for the Disabled

Currently, the law provides that in 2012, persons with disabilities must vote on a voter interface device that uses a paper ballot.²

Absentee Ballots

Currently, a request for an absentee ballot is automatically good for all elections occurring during the next two generally scheduled election cycles unless the voter specifically designates the elections for which he or she would like to receive an absentee ballot. The automatic request is cancelled when first-class mail is sent to the voter and returned to the supervisor as undeliverable.³

The deadline for mailing absentee ballots to overseas voters is 35 days before the primary and 45 days before the general election.⁴ If the Elections Canvassing Commission is unable to certify the results of an election for state office in time for supervisors to mail absentee ballots within these time frames, the department has rule making authority to provide for a ballot to be sent to absent overseas voters.⁵

Military and Overseas Voter Empowerment Act

The Military and Overseas Voter Empowerment (MOVE) Act was signed into law on October 28, 2009, as part of the National Defense Authorization Act for Fiscal Year 2010.⁶ The Act made sweeping changes to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).⁷ A few of the more significant changes affecting states are listed below:

- MOVE requires absent uniformed service voters and overseas voters to be able to request electronically voter registration applications, absentee ballot applications, and blank absentee ballots for all federal elections, including primary and special elections.

¹ § 97.011(22), F.S.

² § 101.56075, F.S.

³ § 101.62(1), F.S.

⁴ § 101.62(4)(a), F.S.

⁵ § 101.62(5), F.S.

⁶ Military and Overseas Voter Empowerment Act, Pub. L. No. 111-84, 2009.

⁷ Uniformed and Overseas Citizens Absentee Voting Act, Pub. L. No. 99-410, 42 U.S.C. § 1973 (2008).

- MOVE requires states to allow these voters to individually designate his or her preference for receiving an application and ballot, either by mail or electronically and requires states to send the requested application and blank ballot by the method designated. If a voter does not designate a preference, a state must transfer the requested information by a delivery method allowed by state law.
- MOVE provides that if a request for a ballot is received 45 days before an election, the ballot must be transmitted to the voter 45 days before an election. If a request is received less than 45 days before an election, the ballot must be transmitted as set forth in state law, but in a manner that expedites the transmission process.
- MOVE requires states to develop a free access system which would allow an absent uniformed services voter or overseas voter to determine whether his or her ballot has been received by the appropriate State election official.
- MOVE repeals the requirement applicable to absent uniformed services voters and overseas voters of “one absentee ballot application is good for all federal elections through the next two regularly scheduled general elections for federal office.” This repealed requirement is currently found in s. 101.694, F.S.⁸

III. Effect of Proposed Changes:

The following is a section by section analysis of CS for CS for SB 900:

Section 1 defines absent uniformed services voter and overseas voter. An absent uniformed services voter is a uniformed service member or his or her spouse, who by reason of active duty, is absent from the place where he or she is qualified to vote. This definition also includes a Merchant Marine or his or her spouse, who, because of service in the Merchant Marine, is absent from the place where he or she is qualified to vote.

An overseas voter is defined as either an absent uniformed service voter who is absent on election day from the U.S. because of active duty or a person residing outside the U.S. who is qualified to vote or who would be qualified to vote, but for such residence, in the last place the person lived before leaving the U.S.

Section 2 conforms a cross-reference.

Section 3 extends the 2012 paper ballot requirement for disabled voters to 2016.

Section 4 makes changes to the absentee ballot process for overseas voters and absent uniformed services voters. These changes are in response to the Military and Overseas Voter Empowerment Act (MOVE Act) recently passed by Congress and signed into law by the President of the United States as part of the National Defense Authorization Act for Fiscal Year 2010. The changes include:

- Requiring a supervisor, upon receipt of a request for an absentee ballot from an overseas voter or an absent uniformed services voter, to notify the voter of the free access system available to the voter so he or she can determine the status of his or her absentee ballot.

⁸ See *infra*, note 6.

- Requiring supervisors to send an absentee ballot 45 days before *each election* to each absent uniformed services voter and overseas voter who has requested such ballot. The ballot must be sent by forwardable mail, e-mail, or fax machine transmission. The absent uniformed services voter or overseas voter may designate a preferred method of transmission; however, if no designation is made, the ballot will be mailed.
- Revising language with regard to the Election Canvassing Commission certifying the results of the election. Currently, if the ECC is unable to certify the election in time for supervisors to meet the ballot deadline of 45 days prior to an election, the Department of State has rule making authority to provide a ballot to send to absent uniformed services voters and overseas voters. The proposed language removes the ECC from this specific provision by providing that if the *department* is unable to *certify candidates* for an election to meet the 45-day deadline for ballots, then the department has rule making authority to provide a ballot to send to absent uniformed services voters and overseas voters.

Section 5 removes the “one absentee ballot request is sufficient for all elections through the next two regularly scheduled general elections” requirement for persons using the federal postcard application to request an absentee ballot, since the federal MOVE Act repealed this requirement from federal law. However, section 101.62(1), F.S., still provides that one absentee ballot request “shall be deemed sufficient to receive an absentee ballot request for all elections through the next two regularly scheduled general elections.”

Section 6 requires that if an absentee ballot request from an overseas voter or an absent uniformed services voter includes an e-mail address, the supervisor must: record that e-mail address in the voter’s ballot record, confirm via e-mail that the request was received along with an estimated date that the ballot will be sent to the voter, and notify the voter via e-mail when the voted ballot is received by the supervisor. Section 6 also removes a requirement that the supervisor inform the overseas voter of candidates in the election 30 days before the election occurs. This section takes effect on July 1, 2010.

Section 7 conforms a cross-reference.

Section 8 provides that the bill takes effect upon becoming a law, except as otherwise provided in the bill.

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.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of State has allocated up to \$525,000 from current year federal (Help America Vote Act grant) funds to be distributed to the counties to implement the MOVE Act provisions, specifically the free access system for absentee ballot tracking. These funds are distributed to local governments.

Local Government Impact:

Voting Equipment

Current law requires statewide transition from touch screens for disability voting equipment to a system using a marksense ballot by 2012. According to the Florida State Association of Supervisors of Elections, the current estimated cost is between \$35 - \$45 million. This includes estimates from two counties to replace their entire voting system if their current vendor does not produce disability equipment using a marksense ballot. The bill (Section 3) delays the implementation and therefore the cost to 2016.

Absentee Ballots

The supervisors of elections will incur some costs relating to notifying voters of the free access system. Costs will vary depending on whether the county has a web-based request system that could display the information to the voter or whether the county must use a different means of notifying the voter. The Department of State is providing up to \$525,000 from current year HAVA funds to be distributed to the counties to implement this provision.

Some minimal additional costs may be incurred by the supervisor of elections notifying overseas voters and absent uniformed services voters by e-mail of the status of their absentee ballots. This will depend on the number of these voters and whether the county sets up an automatic e-mail response.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation and Economic Development Appropriations Committee on April 19, 2010:

Committee Substitute for CS/SB 900 is an abridged version of CS/SB 900. It defines “absent uniformed services voter” and redefines “overseas voter.” The bill extends the 2012 paper ballot requirement for disabled voters to 2016. The bill makes changes to the absentee ballot process for overseas voters and absent uniformed services voters by:

- Requiring a supervisor, upon receipt of a request for an absentee ballot from an overseas voter or an absent uniformed services voter, to notify the voter of the free access system available to the voter so he or she can determine the status of his or her absentee ballot.
- Requiring supervisors to send an absentee ballot 45 days before *each election* to each absent uniformed services voter and overseas voter who has requested such ballot. The ballot must be sent by forwardable mail, e-mail, or fax machine transmission. The absent uniformed services voter or overseas voter may designate a preferred method of transmission; however, if no designation is made, the ballot will be mailed.
- Revising language with regard to the Election Canvassing Commission certifying the results of the election. Currently, if the ECC is unable to certify the election in time for supervisors to meet the ballot deadline of 45 days prior to an election, the has rule making authority to provide a ballot to send to absent uniformed services voters and overseas voters. The proposed language removes the ECC from this specific provision by providing that if the is unable to *certify candidates* for an election to meet the 45-day deadline for ballots, then the has rule making authority to provide a ballot to send to absent uniformed services voters and overseas voters.

The bill removes the “one absentee ballot request is sufficient for all elections through the next two regularly scheduled general elections” requirement for persons using the federal postcard application to request an absentee ballot, since the federal MOVE Act repealed this requirement from federal law.

Effective on July 1, 2010, the bill requires that if an absentee ballot request from an overseas voter or an absent uniformed services voter includes an e-mail address, the supervisor must: record that e-mail address in the voter’s ballot record, confirm via e-mail that the request was received along with an estimated date that the ballot will be sent to the voter, and notify the voter via e-mail when the voted ballot is received by the supervisor.

Committee Substitute for CS/SB 900 takes effect upon becoming a law, except as otherwise provided in the bill.

CS by Ethics and Elections Committee on February 17, 2010:

Committee Substitute for Senate Bill 900 is an elections measure that contains numerous changes to the Florida Election Code, most of which were recommended by the Division of Elections. Some of the major differences from the original bill include:

- Providing that chapters 97-105, F.S., preempt any other election law within the state unless specified otherwise in federal or state law.
- Revising the definition of “overseas voter” and defining “absent uniformed services voter.”
- Providing an opportunity for a challenged voter challenged on the basis of address to update his or her address information in order to vote a regular ballot in the precinct.
- Increasing the penalty for a frivolous voter challenge to a third degree felony.
- Revising the 2012 paper ballot requirement for disabled voters to 2016.
- Requiring supervisors to use actual ballots when testing tabulating equipment prior to an election.
- Requiring supervisors to post notice of the testing of tabulating equipment on his or her website.
- Revising absentee ballot procedures.
- Revising the procedures and requirements for co-locating polling place precincts.
- Requiring the supervisor to post notice of a change in polling place on his or her website.
- Providing that Election Canvassing Commission members shall serve ex officio and providing a time certain for the commission to meet after elections.
- Requiring the supervisor to post notice on his or her website of where and when the county canvassing board will meet to canvass absentee and provisional ballots.
- Providing that the Secretary of State must order recounts in federal, state, and multicounty races, while recounts in all other races must be ordered by the local board responsible for certifying the election in those races.
- Providing that the Secretary of State must order manual recounts of the overvotes and undervotes in federal, state, and multicounty races, while manual recounts of the overvotes and undervotes in all other races must be ordered by the local board responsible for certifying the election in those races.
- Requiring political committees to reports all changes in information within 10 days of the change.
- Clarifying the authority of the division to dissolve political committees for failing to file certain information or meet certain requirements.
- Providing for numerous changes to statutory provisions regarding committees of continuous existence.
- Revising notice requirements for incomplete campaign finance reports filed by political committees and candidates.
- Requiring political committees participating in certain county or municipal elections to file campaign finance reports at the same time and with the same local filing officer as county or municipal candidates.
- Revising notice requirements for late-filing fines for campaign finance reports.
- Requiring campaign finance reports to include transaction information from each credit card purchase.

- Providing that a candidate may obtain reimbursement for a loan made to his or her campaign if there are sufficient funds in the campaign account to cover the reimbursement and all other obligations.
- Shortening the candidate disclaimers that are circulated prior to an election.
- Clarifying that a nonpartisan candidate must omit any reference to party affiliation in his or her political advertisements.

Except as provided, the bill takes effect on January 1, 2011.

B. Amendments:

None.