

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**RULES SUBCOMMITTEE ON ETHICS AND ELECTIONS**  
**Senator Diaz de la Portilla, Chair**  
**Senator Detert, Vice Chair**

**MEETING DATE:** Monday, March 7, 2011  
**TIME:** 1:00 —3:00 p.m.  
**PLACE:** *Pat Thomas Committee Room, 412 Knott Building*

**MEMBERS:** Senator Diaz de la Portilla, Chair; Senator Detert, Vice Chair; Senators Alexander, Dockery, Evers, Gaetz, Joyner, Oelrich, Rich, Richter, Simmons, Smith, Sobel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
<p><b>A proposed committee substitute</b> for the following bill (SB 378) is expected to be considered:</p>			
1	<b>SB 378</b> Gaetz (Identical H 227)	Voting Methods and Procedure; Permits absent uniformed services voters or overseas voters to use the Official Federal Write-In Absentee Ballot to vote in any federal, state, or local election.	EE     03/07/2011 RC BC
2	<b>SB 532</b> Fasano (Identical H 249)	Public Corruption; Provides for the reclassification of criminal offenses committed under color of law.	EE     03/07/2011 RC CJ BC

**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.)

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Prepared By: The Professional Staff of the Rules Subcommittee on Ethics and Elections

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BILL: SB 532

INTRODUCER: Senator Fasano

SUBJECT: Public Corruption

DATE: March 2, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	<b>Pre-meeting</b>
2.			RC	
3.			CJ	
4.			BC	
5.				
6.				

**I. Summary:**

The bill reclassifies most criminal offenses committed “under color of law” up one degree of severity (2nd degree misdemeanor is reclassified as a 1st degree misdemeanor, 1<sup>st</sup> degree misdemeanor is reclassified as a 3<sup>rd</sup> degree felony, etc.); “under color of law” means conduct based on public authority or position, or the assertion of public authority or position. The bill, however, does not reclassify a life felony to a capital felony. Also, the reclassification does not apply to criminal offenses where the underlying offense requires acting “under color of law” as a necessary element of the crime (i.e., official misconduct, bid tampering). For purposes of the felony sentencing guidelines in Chapter 921, F.S., the bill also designates such reclassified offenses one level above their current ranking.

The bill takes effect July 1, 2011.

This bill creates section 775.0876 of the Florida Statutes.

**II. Present Situation:**

The Florida Criminal Code generally classifies felonies as criminal offenses punishable by more than one year in the state penitentiary; a misdemeanor is a criminal offense punishable by up to one year in a county correctional facility.<sup>1</sup>

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<sup>1</sup> Section 775.08, F.S.

Felonies are further classified as:

- Capital: punishable by death or life imprisonment without parole.
- Life: for most offenses, punishable by life imprisonment, and a fine of up to \$15K.
- 1<sup>st</sup> Degree: punishable by imprisonment for a term not exceeding 30 years, or when specified by statute not exceeding life imprisonment, and a fine of up to \$10K.
- 2<sup>nd</sup> Degree: punishable by imprisonment not exceeding 15 years, and a fine of up to \$10K.
- 3<sup>rd</sup> Degree: punishable by imprisonment not exceeding 5 years, and a fine of up to \$5K.

Misdemeanors are further classified as:

- 1<sup>st</sup> Degree: punishable by imprisonment not exceeding 1 year, and a fine of up to \$1K.
- 2<sup>nd</sup> Degree: punishable by imprisonment not exceeding 60 days, and a fine of up to \$500.

The Criminal Punishment Code applies to all but capital felonies, and contains an offense severity ranking chart that designates offenses into certain “levels” from 1 to 10 based on severity, that are then used to determine sentencing guidelines in a particular case.

Though there was a similar bill filed last year<sup>2</sup>, it was not adopted. Florida law does not enhance criminal classifications or felony sentencing penalties for criminal acts committed “under color of law” where the enhancements for wrongful conduct are based on public authority or position or the assertion of such that does not form an element of the underlying crime. It is noteworthy that the Nineteenth Statewide Grand Jury recently recommended that the Legislature consider reclassification of such offenses.<sup>3</sup>

### III. Effect of Proposed Changes:

The bill reclassifies felony and misdemeanor criminal offenses committed “under color of law” up one degree of severity, unless conduct committed “under color of law” is a necessary element of the underlying crime:

- 2<sup>nd</sup> degree misdemeanor → 1<sup>st</sup> degree misdemeanor
- 1<sup>st</sup> degree misdemeanor → 3<sup>rd</sup> degree felony
- 3<sup>rd</sup> degree felony → 2<sup>nd</sup> degree felony
- 2<sup>nd</sup> degree felony → 1<sup>st</sup> degree felony
- 1<sup>st</sup> degree felony → life felony

The bill, however, does not reclassify a life felony to a capital felony.

The term “under color of law” means conduct based on public authority or position or the assertion of such authority or position.

<sup>2</sup> SB 734 (2010).

<sup>3</sup> Nineteenth Statewide Grand Jury, First Interim Report (December 17, 2010). Available online at: [http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/\\$file/19thSWGJInterimReport.pdf](http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/$file/19thSWGJInterimReport.pdf)

So, for example, violating the criminal offense of official misconduct in s. 838.022, F.S., which necessarily requires corrupt conduct by a “public servant” in the performance of certain public duties, would not result in a reclassification while a public employee who uses his or her public position to aid or abet someone in the commission of Medicaid provider fraud in violation of s. 409.920, F.S., would be reclassified.

For purposes of the felony sentencing guidelines in Chapter 921, such reclassified offenses are designated one level above their current ranking.

**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 Criminal Justice Impact Conference reviewed this bill on March 2, 2011, and found its impact to be indeterminate.

**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.)

None.

- B. **Amendments:**

None.

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

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**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.)

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Prepared By: The Professional Staff of the Rules Subcommittee on Ethics and Elections

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BILL: SB 378

INTRODUCER: Senator Gaetz

SUBJECT: Voting Methods and Procedures; Federal Write-In Absentee Ballot

DATE: March 3, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Roberts	EE	<b>Pre-meeting</b>
2.			RC	
3.			BC	
4.				
5.				
6.				

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**I. Summary:**

Senate Bill 378 permits absent military or overseas voters to use the Federal Write-In Absentee Ballot (FWAB) to vote in any federal, state, or local election.

This bill substantially amends section 101.6952 of the Florida Statutes.

**II. Present Situation:**

Currently, there are three different *general* election ballots that an absent uniformed services or overseas Florida voter can use for various federal, state, and local elections: the state write-in ballot, the official absentee ballot, and the federal write-in absentee ballot. The official absentee ballot is the only one that an elector can use in a *primary* election.

BALLOTS

***Official Florida Absentee Ballot***

An absent uniformed services or overseas voter who requests<sup>1</sup> an ***official Florida write-in absentee ballot*** may vote in any federal, state, or local primary election or general election --- including multi-candidate races, judicial retention elections, and state constitutional amendment/local referendum elections. The form of the ballot is the familiar one that voters going to the polls or voting early receive. It contains the name of offices, candidate names,

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<sup>1</sup> Pursuant to 101.62, F.S.

political party abbreviations, and either a bubble or arrow to be filled-in by the voter to designate choices. This is by far the most commonly-used ballot.

***Federal Write-In Absentee Ballot (FWAB)***

Federal law provides that an absent uniformed services or overseas voter who timely requests but does not receive an official state absentee ballot may use the ***federal write-in absentee ballot (FWAB)*** to vote for *candidates* in *federal general* elections only.<sup>2</sup> Electors may fill in either the candidate's name or the name of a political party under headings designated as:

- PRESIDENT/VICE PRESIDENT
- U.S. SENATOR
- U.S. REPRESENTATIVE/DELEGATE/RESIDENT COMMISSIONER

Absent specific state authorization, the FWAB may not be used for state or local elections. Other southern states, including Arkansas, Mississippi, South Carolina, Tennessee, and neighboring Georgia,<sup>3</sup> have authorized the use of the FWAB in certain state and local elections: Florida has not. While most military and overseas Florida voters utilize either the official absentee ballot or the state write-in absentee ballot, eligible electors have used the FWABs as a ballot of last resort in recent elections.<sup>4</sup>

Electors use the FWAB "ADDENDUM" to designate choices in state and local candidate races. The elector must write-in the name of each office for which he or she wishes to vote, along with the corresponding candidate's name or political party preference for the office. The form of the addendum is essentially as follows:

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<sup>2</sup> 42 U.S.C. § 1973ff-2.

<sup>3</sup> O.C.G.A. § 21-2-381.1 (2010).

<sup>4</sup> FWABs have been received in recent elections in military-rich Escambia and Okaloosa Counties. Escambia County received 34 FWABs in the 2010 general election. Okaloosa County received 162 FWABs in 2008 and 101 FWABs in 2010. Regarding the 2010 FWABs received by Okaloosa County, 63 of the 101 were not counted because their official absentee ballot arrived after (or in some cases before) the FWAB was received. E-mail from Nanci Watkins, Executive Assistant to the Florida State Association of Supervisors of Elections to John Seay, Legislative Intern, Rules Subcommittee on Ethics & Elections (Mar. 3, 2011).

**ADDENDUM**

Some states allow the Federal Write-In Absentee Ballot to be used by military and overseas civilian voters in elections other than general elections or for offices other than Federal offices. Consult your state section in the *Voting Assistance Guide* to determine your state’s policy. *If you are eligible to use this ballot to vote for offices/candidates other than those listed above*, please indicate in the spaces provided below, the office for which you wish to vote (for example: Governor, Attorney General, Mayor, State Senator, etc.) and the name and/or party affiliation of the candidate for whom you wish to vote.

OFFICE	CANDIDATE’S NAME or PARTY AFFILIATION
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

***State Write-In Absentee Ballot***

An overseas voter who states that, due to military or other contingencies that preclude normal mail delivery, he or she cannot vote an absentee ballot during the normal absentee voting period may request a “***state write-in absentee ballot***” not earlier than 180 days before a general election.<sup>5</sup> The state write-in absentee ballot *may not* be used in a primary election. The state write-in ballot contains all *offices* --- federal, state, and local --- for which the elector would otherwise be entitled to vote, including judicial retention elections; the elector, however, *cannot* use the ballot to vote in state constitutional amendment or local referendum elections.

The form of the state write-in absentee ballot includes the printed name of the office to be voted, along with a corresponding line for the elector to designate a candidate’s name or political party preference for that office.<sup>6</sup> The judicial retention questions are also printed on the form, including the names of the appellate justices or judges scheduled to be on the ballot for retention.

**BACKGROUND**

***Military/Overseas Voting in Florida Elections***

Florida has had a somewhat troubled past with respect to accommodating military and overseas voters, due primarily to the existence of the historical second primary election — which hindered the timely delivery of absentee ballots to overseas voters. The existence of the second primary meant that Florida had to conduct three elections in a 9-week period, with the first primary being

<sup>5</sup> Section 101.6952(1), F.S.

<sup>6</sup> See Rule 1S-2.028, FLA. ADMIN. CODE (detailing the form of the state write-in absentee ballot).



held nine weeks prior to the general election and the second primary (or “runoff”) held five weeks prior to the general election.<sup>7</sup> Many of these problems, however, have been overcome by: eliminating the second primary;<sup>8</sup> mandating that official absentee ballots be provided to uniformed services and overseas voters at least 45 days before each primary and general election where requests have been received; and, providing for the electronic (e-mail) delivery of unvoted ballots, as mandated by the federal Military and Overseas Voter Empowerment (MOVE) Act.

The former election schedule prompted the federal government to sue the State of Florida in the early 1980’s. The suit alleged that Florida’s system of conducting three elections in nine weeks disenfranchised military and overseas voters by not providing sufficient time for supervisors of elections to prepare absentee ballots, mail them to overseas voters, and have the voters return them by election day. To resolve the suit, Florida entered into a consent decree with the federal government, which ultimately required the State to count votes from such electors in the presidential preference primary and federal general election contests that are received up to 10 days after the date of the election.<sup>9</sup> Florida is still bound by the terms of this consent decree, having never sought relief from the courts.

In 1989, the Legislature attempted to further accommodate absentee voting by military and overseas electors by adopting an advance ballot system.<sup>10</sup> Under the advance ballot system, supervisors of elections mailed first primary absentee ballots to qualified overseas electors no later than 35 days before the primary.<sup>11</sup> Subsequently, the supervisors would mail *advance* ballots for the second primary and general election if the regular absentee ballots for the second primary and general election were not available 45 days before the respective elections.<sup>12</sup> Advance ballots for the second primary and general election could necessarily contain candidates who may have been eliminated in the prior election. In 2005, the Legislature permanently ended the second primary system but did not change the number of days in advance to send absentee ballots.<sup>13</sup> Beginning in 2010, supervisors of elections were required to mail absentee ballots to absent uniformed services and overseas electors no later than 45 days before each election.<sup>14</sup> The 45-day period currently required under Florida law is in compliance with the federal Military and Overseas Voter Empowerment (MOVE) Act.<sup>15</sup>

On a related note, there were numerous legal challenges to the validity of overseas military ballots in Florida during the 2000 presidential election.<sup>16</sup> In response, the 2001 Legislature

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<sup>7</sup> Section 100.091, F.S. (2000).

<sup>8</sup> The year 2000 was the last time Florida conducted a second primary. The second primary was suspended for the 2002 and 2004 election cycles, and permanently eliminated prior to the 2006 cycle.

<sup>9</sup> Rule 1S-2.013, FLA. ADMIN. CODE.

<sup>10</sup> Section 28, ch. 89-338, LAWS OF FLA.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> In 2005, the ballot schedule was revised to require supervisors of elections to mail absentee ballots to overseas voters no later than 35 days before the primary or general election. Section 16, ch. 2005-286, LAWS OF FLA. In 2007, the Legislature again revised the ballot schedule to require absentee ballots to overseas voters to be mailed no later than 35 days prior to a primary election and no later than 45 days prior to a general election. Section 30, ch. 2007-30, LAWS OF FLA.

<sup>14</sup> Section 101.62(4)(a), F.S. *See also* Section 7, ch. 2010-167, LAWS OF FLA.

<sup>15</sup> The MOVE Act requires ballots for uniformed services and overseas citizen voters be sent at least 45 days prior to a general election for federal office. Pub. L. 111-84; 42 U.S.C. § 1971.

<sup>16</sup> *See e.g., Congress Muzzling the Military*, FLORIDA TIMES-UNION, Dec. 13, 2000, at B6. Many of the challenges of the ballot validity stemmed from the fact that many ballots lacked a postmark. Florida law required that ballots mailed by absent

created the state write-in absentee ballot system. Overseas voters who anticipate that they will not be able to vote an absentee ballot during the regular absentee ballot voting period may request a state write-in absentee ballot. A date line was also added to the absentee ballot return envelope, and a presumption was created in law that absentee ballots received from overseas electors were mailed on the date stated on the envelope — regardless of the absence of a postmark or a postmark which is dated later than the date of election.<sup>17</sup>

### ***Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)***

In 1986, Congress passed the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).<sup>18</sup> The Act created an emergency back-up ballot, the Federal Write-In Absentee Ballot (FWAB), which can be cast by voters who make timely application for but do not receive an official absentee ballot.<sup>19</sup> The Act covers citizens who are members of the Armed Forces 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 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, UOCAVA requires states to accept and canvass an FWAB from military and overseas voters under certain conditions. The voter:

- Must be absent from his or her voter residence;
- Must have applied for a regular ballot early enough so the request is received by the appropriate local election official not later than the state deadline;<sup>20</sup> and,
- Must not have received the requested regular absentee ballot from the State.

UOCAVA also allows overseas electors who have submitted an FWAB and later receive an official absentee ballot to submit the official absentee ballot.<sup>21</sup> The FWAB is also required to clearly state that an overseas elector who submits an FWAB and later receives and submits an absentee ballot must make every reasonable effort to inform the appropriate election official that the elector has submitted more than one ballot.<sup>22</sup>

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qualified electors overseas were considered valid *only* if the ballot were mailed with an APO, FPO, or foreign postmark. *See also Bush v. Hillsborough County Canvassing Bd.*, 123 F.Supp.2d 1305 (N.D. Fla. 2000).

<sup>17</sup> Section 101.6952(2), F.S.

<sup>18</sup> Pub. L. 99-410.

<sup>19</sup> 42 U.S.C. § 1973ff-2.

<sup>20</sup> Florida law provides that the supervisor must receive a request for an absentee ballot by 5 p.m. on the 6<sup>th</sup> day before an election. Section 101.62(2), F.S. While this used to be an impracticable deadline for overseas voters given mailing delays, the newly-authorized electronic transmission of unvoted absentee ballots makes this deadline applicable to absent military and overseas voters.

<sup>21</sup> 42 U.S.C. § 1973ff-2(d).

<sup>22</sup> *Id.*

**III. Effect of Proposed Changes:**

Senate Bill 378 allows for absent military or overseas voters to use the Official Federal Write-In Absentee Ballot (FWAB) to vote in any federal, state, or local election; Florida law currently restricts the use of FWABs to federal *general* elections only.

The bill takes effect July 1, 2011.

**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:**

None.

**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.)

None.

- B. **Amendments:**

None.

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

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**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 Rules Subcommittee on Ethics and Elections

BILL: PCS/SB 378 (501412)

INTRODUCER: Rules Subcommittee on Ethics and Elections

SUBJECT: Voting Methods and Procedures; Federal Write-In Absentee Ballot

DATE: March 3, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Roberts	EE	<b>Pre-meeting</b>
2.			RC	
3.			BC	
4.				
5.				
6.				

**I. Summary:**

Proposed Committee Substitute for Senate Bill 378 allows absent uniformed services or overseas electors to use the federal write-in absentee ballot (FWAB) in any federal, state or local election involving two or more candidates. The bill adopts specific procedures to duplicate an FWAB when canvassed, similar to when an absentee ballot is duplicated when received physically damaged. It allows the voter to designate candidate choices by name or political party preference for each office. It requires the Department of State to adopt rules to determine voter intent on an FWAB. The bill requires that all races on each FWAB received by a county supervisor of elections by 7 p.m. on election day be canvassed, unless an elector’s official absentee ballot is received by that time — in which case the official absentee ballot is counted in lieu of the FWAB. The bill maintains that the FWAB may only be used by eligible electors as a last resort, that is, when the elector has timely requested but has not received an official state absentee ballot.

This bill substantially amends and reenacts ss. 101.5614, 101.6952, 102.166 and 104.18 of the Florida Statutes.

**II. Present Situation:**

Currently, there are three different *general* election ballots that an absent uniformed services or overseas Florida voter can use for various federal, state, and local elections: the state write-in ballot, the official absentee ballot, and the federal write-in absentee ballot. The official absentee ballot is the only one that an elector can use in a *primary* election.

## BALLOTS

### ***Official Florida Absentee Ballot***

An absent uniformed services or overseas voter who requests<sup>1</sup> an ***official Florida write-in absentee ballot*** may vote in any federal, state, or local primary election or general election — including multi-candidate races, judicial retention elections, and state constitutional amendment/local referendum elections. The form of the ballot is the familiar one that voters going to the polls or voting early receive. It contains the name of offices, candidate names, political party abbreviations, and either a bubble or arrow to be filled-in by the voter to designate choices. This is by far the most commonly-used ballot.

### ***Federal Write-In Absentee Ballot (FWAB)***

Federal law provides that an absent uniformed services or overseas voter who timely requests but does not receive an official state absentee ballot may use the ***federal write-in absentee ballot (FWAB)*** to vote for *candidates* in *federal general* elections only.<sup>2</sup> Electors may fill in either the candidate's name or the name of a political party under headings designated as:

- PRESIDENT/VICE PRESIDENT
- U.S. SENATOR
- U.S. REPRESENTATIVE/DELEGATE/RESIDENT COMMISSIONER

Absent specific state authorization, the FWAB may not be used for state or local elections. Other southern states, including Arkansas, Mississippi, South Carolina, Tennessee, and neighboring Georgia,<sup>3</sup> have authorized the use of the FWAB in certain state and local elections: Florida has not. While most military and overseas Florida voters utilize either the official absentee ballot or the state write-in absentee ballot, eligible electors have used the FWABs as a ballot of last resort in recent elections.<sup>4</sup>

Electors use the FWAB “ADDENDUM” to designate choices in state and local candidate races. The elector must write-in the name of each office for which he or she wishes to vote, along with the corresponding candidate's name or political party preference for the office. The form of the addendum is essentially as follows:

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<sup>1</sup> Pursuant to 101.62, F.S.

<sup>2</sup> 42 U.S.C. § 1973ff-2.

<sup>3</sup> O.C.G.A. § 21-2-381.1 (2010).

<sup>4</sup> FWABs have been received in recent elections in military-rich Escambia and Okaloosa Counties. Escambia County received 34 FWABs in the 2010 general election. Okaloosa County received 162 FWABs in 2008 and 101 FWABs in 2010. Regarding the 2010 FWABs received by Okaloosa County, 63 of the 101 were not counted because their official absentee ballot arrived after (or in some cases before) the FWAB was received. E-mail from Nanci Watkins, Executive Assistant to the Florida State Association of Supervisors of Elections to John Seay, Legislative Intern, Rules Subcommittee on Ethics & Elections (Mar. 3, 2011).

**ADDENDUM**

Some states allow the Federal Write-In Absentee Ballot to be used by military and overseas civilian voters in elections other than general elections or for offices other than Federal offices. Consult your state section in the *Voting Assistance Guide* to determine your state’s policy. *If you are eligible to use this ballot to vote for offices/candidates other than those listed above*, please indicate in the spaces provided below, the office for which you wish to vote (for example: Governor, Attorney General, Mayor, State Senator, etc.) and the name and/or party affiliation of the candidate for whom you wish to vote.

OFFICE	CANDIDATE’S NAME or PARTY AFFILIATION
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

***State Write-In Absentee Ballot***

An overseas voter who states that, due to military or other contingencies that preclude normal mail delivery, he or she cannot vote an absentee ballot during the normal absentee voting period may request a “***state write-in absentee ballot***” not earlier than 180 days before a general election.<sup>5</sup> The state write-in absentee ballot *may not* be used in a primary election. The state write-in ballot contains all *offices* --- federal, state, and local --- for which the elector would otherwise be entitled to vote, including judicial retention elections; the elector, however, *cannot* use the ballot to vote in state constitutional amendment or local referendum elections.

The form of the state write-in absentee ballot includes the printed name of the office to be voted, along with a corresponding line for the elector to designate a candidate’s name or political party preference for that office.<sup>6</sup> The judicial retention questions are also printed on the form, including the names of the appellate justices or judges scheduled to be on the ballot for retention.

**BACKGROUND**

***Military/Overseas Voting in Florida Elections***

Florida has had a somewhat troubled past with respect to accommodating military and overseas voters, due primarily to the existence of the historical second primary election — which hindered the timely delivery of absentee ballots to overseas voters. The existence of the second primary meant that Florida had to conduct three elections in a 9-week period, with the first primary being

<sup>5</sup> Section 101.6952(1), F.S.

<sup>6</sup> See Rule 1S-2.028, FLA. ADMIN. CODE (detailing the form of the state write-in absentee ballot).

held nine weeks prior to the general election and the second primary (or “runoff”) held five weeks prior to the general election.<sup>7</sup> Many of these problems, however, have been overcome by: eliminating the second primary;<sup>8</sup> mandating that official absentee ballots be provided to uniformed services and overseas voters at least 45 days before each primary and general election where requests have been received; and, providing for the electronic (e-mail) delivery of unvoted ballots, as mandated by the federal Military and Overseas Voter Empowerment (MOVE) Act.

The former election schedule prompted the federal government to sue the State of Florida in the early 1980’s. The suit alleged that Florida’s system of conducting three elections in nine weeks disenfranchised military and overseas voters by not providing sufficient time for supervisors of elections to prepare absentee ballots, mail them to overseas voters, and have the voters return them by election day. To resolve the suit, Florida entered into a consent decree with the federal government, which ultimately required the State to count votes from such electors in the presidential preference primary and federal general election contests that are received up to 10 days after the date of the election.<sup>9</sup> Florida is still bound by the terms of this consent decree, having never sought relief from the courts.

In 1989, the Legislature attempted to further accommodate absentee voting by military and overseas electors by adopting an advance ballot system.<sup>10</sup> Under the advance ballot system, supervisors of elections mailed first primary absentee ballots to qualified overseas electors no later than 35 days before the primary.<sup>11</sup> Subsequently, the supervisors would mail *advance* ballots for the second primary and general election if the regular absentee ballots for the second primary and general election were not available 45 days before the respective elections.<sup>12</sup> Advance ballots for the second primary and general election could necessarily contain candidates who may have been eliminated in the prior election. In 2005, the Legislature permanently ended the second primary system but did not change the number of days in advance to send absentee ballots.<sup>13</sup> Beginning in 2010, supervisors of elections were required to mail absentee ballots to absent uniformed services and overseas electors no later than 45 days before each election.<sup>14</sup> The 45-day period currently required under Florida law is in compliance with the federal Military and Overseas Voter Empowerment (MOVE) Act.<sup>15</sup>

On a related note, there were numerous legal challenges to the validity of overseas military ballots in Florida during the 2000 presidential election.<sup>16</sup> In response, the 2001 Legislature

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<sup>7</sup> Section 100.091, F.S. (2000).

<sup>8</sup> The year 2000 was the last time Florida conducted a second primary. The second primary was suspended for the 2002 and 2004 election cycles, and permanently eliminated prior to the 2006 cycle.

<sup>9</sup> Rule 1S-2.013, FLA. ADMIN. CODE.

<sup>10</sup> Section 28, ch. 89-338, LAWS OF FLA.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> In 2005, the ballot schedule was revised to require supervisors of elections to mail absentee ballots to overseas voters no later than 35 days before the primary or general election. Section 16, ch. 2005-286, LAWS OF FLA. In 2007, the Legislature again revised the ballot schedule to require absentee ballots to overseas voters to be mailed no later than 35 days prior to a primary election and no later than 45 days prior to a general election. Section 30, ch. 2007-30, LAWS OF FLA.

<sup>14</sup> Section 101.62(4)(a), F.S. *See also* Section 7, ch. 2010-167, LAWS OF FLA.

<sup>15</sup> The MOVE Act requires ballots for uniformed services and overseas citizen voters be sent at least 45 days prior to a general election for federal office. Pub. L. 111-84; 42 U.S.C. § 1971.

<sup>16</sup> *See e.g., Congress Muzzling the Military*, FLORIDA TIMES-UNION, Dec. 13, 2000, at B6. Many of the challenges of the ballot validity stemmed from the fact that many ballots lacked a postmark. Florida law required that ballots mailed by absent



created the state write-in absentee ballot system. Overseas voters who anticipate that they will not be able to vote an absentee ballot during the regular absentee ballot voting period may request a state write-in absentee ballot. A date line was also added to the absentee ballot return envelope, and a presumption was created in law that absentee ballots received from overseas electors were mailed on the date stated on the envelope — regardless of the absence of a postmark or a postmark which is dated later than the date of election.<sup>17</sup>

### ***Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)***

In 1986, Congress passed the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).<sup>18</sup> The Act created an emergency back-up ballot, the Federal Write-In Absentee Ballot (FWAB), which can be cast by voters who make timely application for but do not receive an official absentee ballot.<sup>19</sup> The Act covers citizens who are members of the Armed Forces 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 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, UOCAVA requires states to accept and canvass an FWAB from military and overseas voters under certain conditions. The voter:

- Must be absent from his or her voter residence;
- Must have applied for a regular ballot early enough so the request is received by the appropriate local election official not later than the state deadline;<sup>20</sup> and,
- Must not have received the requested regular absentee ballot from the State.

UOCAVA also allows overseas electors who have submitted an FWAB and later receive an official absentee ballot to submit the official absentee ballot.<sup>21</sup> The FWAB is also required to clearly state that an overseas elector who submits an FWAB and later receives and submits an absentee ballot must make every reasonable effort to inform the appropriate election official that the elector has submitted more than one ballot.<sup>22</sup>

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qualified electors overseas were considered valid *only* if the ballot were mailed with an APO, FPO, or foreign postmark. *See also Bush v. Hillsborough County Canvassing Bd.*, 123 F.Supp.2d 1305 (N.D. Fla. 2000).

<sup>17</sup> Section 101.6952(2), F.S.

<sup>18</sup> Pub. L. 99-410.

<sup>19</sup> 42 U.S.C. § 1973ff-2.

<sup>20</sup> Florida law provides that the supervisor must receive a request for an absentee ballot by 5 p.m. on the 6<sup>th</sup> day before an election. Section 101.62(2), F.S. While this used to be an impracticable deadline for overseas voters given mailing delays, the newly-authorized electronic transmission of unvoted absentee ballots makes this deadline applicable to absent military and overseas voters.

<sup>21</sup> 42 U.S.C. § 1973ff-2(d).

<sup>22</sup> *Id.*

### III. Effect of Proposed Changes:

The PCS fleshes out and incorporates into Florida's electoral voting scheme the concept in the original bill — expanding use of the FWAB by absent uniformed services and overseas voters to state and local elections.

Specifically, the PCS:

- Authorizes an eligible elector to use the FWAB to cast a voter in any state or local election involving two or more candidates.<sup>23</sup>
- Authorizes an eligible elector to use the FWAB *only* as a ballot of last resort under the same limitations as apply in federal races; an elector must have made timely application for an official state absentee ballot and not received it.
- Allows the elector to designate a candidate choice by writing the candidate's name or, in many elections,<sup>24</sup> the name of a political party.
- Clarifies that, in many cases, a candidate designation of "Independent" shall be ascribed to the candidate in the race who has registered to run with no party affiliation (NPA), provided there is only one such candidate.
- Requires supervisors to canvass all races on each FWAB received by 7:00 p.m. on election day, unless the supervisor has also received an official absentee ballot from an elector to substitute for the FWAB by that time — in which case the FWAB shall be invalid and the official absentee ballot is canvassed.
- Establishes specific procedures for duplicating an FWAB to be canvassed, mirroring the current procedures for duplicating a ripped, torn, or otherwise damaged official absentee ballot that cannot be processed by the voting equipment.
- Requires the Department of State to adopt specific rules to prescribe what constitutes a "clear indication on the ballot that the voter has made a definite choice" on the FWAB, such that local canvassing boards will use the same rules for duplicating ballots at the front-end of the canvassing process as will be used later in the case of a manual recount. The rules must be consistent with other ballots for certified voting systems, to the extent practicable. The rules must include, but are not limited to, addressing the following issues: opposing candidates who have the same or similar names; the use of marks, symbols, or language to indicate that the same political party designation applies to all listed offices; designating a qualified candidate for the wrong office; and, the appropriate lines or spaces for designating a candidate choice.
- Mirrors UOCAVA's provision allowing an elector who submits an FWAB and later receives an official absentee ballot to also submit the official absentee ballot, and encourages the elector to make every reasonable effort to inform the appropriate supervisor of elections that they have submitted more than one ballot.
- Removes criminal penalties for electors who have cast more than one ballot in an election in the limited circumstance of an elector who has submitted an FWAB, and later received and submitted an official absentee ballot, to conform.
- Provides an effective date of July 1, 2011.

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<sup>23</sup> The FWAB is not designed to accommodate choices in issue elections such as constitutional amendments and referendums or judicial retention elections, both of which are foreign to the federal electoral system.

<sup>24</sup> Excludes primary, special primary, and nonpartisan elections.

**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:

None.

**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.)

None.

## B. Amendments:

None.



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Proposed Committee Substitute by the Committee on Rules  
Subcommittee on Ethics and Elections

A bill to be entitled

An act relating to the federal write-in absentee ballot; amending s. 101.6952, F.S.; authorizing absent uniformed services voters and overseas voters to use the federal write-in absentee ballot to vote in any federal and certain state or local elections, under certain circumstances; prescribing requirements for designating candidate choices; providing for the disposition of valid votes involving joint candidacies; allowing for abbreviations, misspellings, and other minor variations in the name of an office, candidate, or political party; authorizing the submission of multiple ballots under certain circumstances; detailing circumstances under which votes in federal, state, and local races on the federal write-in absentee ballot will be canvassed; amending s. 101.5614, F.S.; establishing certain canvassing procedures for federal write-in absentee ballots; amending s. 102.166, F.S.; directing the Department of State to adopt rules to determine what constitutes a valid vote on a federal write-in absentee ballot; providing restrictions; providing minimum requirements; amending s. 104.18, F.S., to conform; re-adopting subsection (5) of s. 102.166, F.S., to incorporate a cross-reference; providing an effective date.



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28 Be It Enacted by the Legislature of the State of Florida:

29

30 Section 1. Section 101.6952, Florida Statutes, is amended  
31 to read:

32 101.6952 Absentee ballots for absent uniformed services and  
33 overseas voters.—

34 (1) If an absent uniformed services voter's or an overseas  
35 voter's request for an official absentee ballot pursuant to s.  
36 101.62 includes an e-mail address, the supervisor of elections  
37 shall:

38 (a) Record the voter's e-mail address in the absentee  
39 ballot record;

40 (b) Confirm by e-mail that the absentee ballot request was  
41 received and include in that e-mail the estimated date the  
42 absentee ballot will be sent to the voter; and

43 (c) Notify the voter by e-mail when the voted absentee  
44 ballot is received by the supervisor of elections.

45 (2) (a) An absent uniformed services voter or an overseas  
46 voter who makes timely application for but does not receive an  
47 official absentee ballot may use the federal write-in absentee  
48 ballot to vote in any federal election and any state or local  
49 election involving two or more candidates.

50 (b)1. In an election for federal office, an elector may  
51 designate a candidate by writing in the name of a candidate.  
52 Except for a primary or special primary election, the elector  
53 may alternatively designate a candidate by writing in the name  
54 of a political party. A written designation of the political  
55 party shall be counted as a vote for the candidate of that  
56 party, if there is such a party candidate in the race.



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57       2. In an election for a state or local office, an elector  
58 may vote in the section of the federal write-in absentee ballot  
59 designated for nonfederal races by writing in the title of each  
60 office and by writing in the name of the candidate for whom the  
61 elector is voting. Except for a primary, special primary, or  
62 nonpartisan election, the elector may alternatively designate a  
63 candidate by writing in the name of a political party. A written  
64 designation of the political party shall be counted as a vote  
65 for the candidate of that party, if there is such a party  
66 candidate in the race.

67       (c) In the case of a joint candidacy, such as for the  
68 offices of President/Vice President or Governor/Lieutenant  
69 Governor, a valid vote for one or both qualified candidates on  
70 the same ticket shall constitute a vote for the joint candidacy.

71       (d) For purposes of this subsection and except where the  
72 context clearly indicates otherwise, such as where a candidate  
73 in the election is affiliated with a political party whose name  
74 includes the word "Independent," "Independence," or similar  
75 term, a voter designation of "No Party Affiliation" or  
76 "Independent," or any minor variation, misspelling, or  
77 abbreviation thereof, shall be considered a designation for the  
78 candidate, other than a write-in candidate, who qualified to run  
79 in the race with no party affiliation. If more than one  
80 candidate has qualified to run as a no party affiliation  
81 candidate, the designation shall not count for any candidate  
82 unless there is a valid, additional designation of the  
83 candidate's name.

84       (e) Any abbreviation, misspelling, or other minor variation  
85 in the form of the name of an office, the name of a candidate,



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86 or the name of a political party must be disregarded in  
87 determining the validity of the ballot.

88 (3) (a) An absent uniformed services voter or an overseas  
89 voter who submits a federal write-in absentee ballot and later  
90 receives an official absentee ballot may submit the official  
91 absentee ballot. An elector who submits a federal write-in  
92 absentee ballot and later receives and submits an official  
93 absentee ballot should make every reasonable effort to inform  
94 the appropriate supervisor of elections that the elector has  
95 submitted more than one ballot.

96 (b) A federal write-in absentee ballot may not be canvassed  
97 until 7:00 p.m. on the day of the election. Each federal write-  
98 in absentee ballot received by 7:00 p.m. on the day of the  
99 election will be canvassed pursuant to s. 101.5614(5) and s.  
100 101.68, unless the elector's official absentee ballot is  
101 received by 7:00 p.m. on election day. If the elector's official  
102 absentee ballot is received by 7:00 p.m. on election day, the  
103 federal write-in absentee ballot shall be invalid and the  
104 official absentee ballot shall be canvassed. The time shall be  
105 regulated by the customary time in standard use in the county  
106 seat of the locality.

107 (4) ~~(2)~~ For absentee ballots received from absent uniformed  
108 services voters or overseas voters, there is a presumption that  
109 the envelope was mailed on the date stated on the outside of the  
110 return envelope, regardless of the absence of a postmark on the  
111 mailed envelope or the existence of a postmark date that is  
112 later than the date of the election.

113 Section 2. Subsection (5) of section 101.5614, Florida  
114 Statutes, is amended to read:



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115 101.5614 Canvass of returns.-

116 (5) (a) If any absentee ballot is physically damaged so that  
117 it cannot properly be counted by the automatic tabulating  
118 equipment, a true duplicate copy shall be made of the damaged  
119 ballot in the presence of witnesses and substituted for the  
120 damaged ballot. Likewise, a duplicate ballot shall be made of an  
121 absentee ballot containing an overvoted race or a marked  
122 absentee ballot in which every race is undervoted which shall  
123 include all valid votes as determined by the canvassing board  
124 based on rules adopted by the division pursuant to s.

125 102.166(4). All duplicate ballots shall be clearly labeled  
126 "duplicate," bear a serial number which shall be recorded on the  
127 defective ballot, and be counted in lieu of the defective  
128 ballot. After a ballot has been duplicated, the defective ballot  
129 shall be placed in an envelope provided for that purpose, and  
130 the duplicate ballot shall be tallied with the other ballots for  
131 that precinct.

132 (b) A true duplicate copy shall be made of each federal  
133 write-in absentee ballot in the presence of witnesses and  
134 substituted for the federal write-in absentee ballot. The  
135 duplicate ballot must include all valid votes as determined by  
136 the canvassing board based on rules adopted by the division  
137 pursuant to s. 102.166(4). All duplicate ballots shall be  
138 clearly labeled "duplicate," bear a serial number which shall be  
139 recorded on the federal write-in absentee ballot, and be counted  
140 in lieu of the federal write-in absentee ballot. After a ballot  
141 has been duplicated, the federal write-in absentee ballot shall  
142 be placed in an envelope provided for that purpose, and the  
143 duplicate ballot shall be tallied with other ballots for that





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144 precinct.

145 Section 3. Subsection (4) of section 102.166, Florida  
146 Statutes, is amended to read:

147 102.166 Manual recounts of overvotes and undervotes.—

148 (4) (a) A vote for a candidate or ballot measure shall be  
149 counted if there is a clear indication on the ballot that the  
150 voter has made a definite choice.

151 (b) The Department of State shall adopt specific rules for  
152 the federal write-in absentee ballot and for each certified  
153 voting system prescribing what constitutes a "clear indication  
154 on the ballot that the voter has made a definite choice." The  
155 rules shall be consistent, to the extent practicable, and may  
156 not:

157 1. Exclusively provide that the voter must properly mark or  
158 designate his or her choice on the ballot; or

159 2. Contain a catch-all provision that fails to identify  
160 specific standards, such as "any other mark or indication  
161 clearly indicating that the voter has made a definite choice."

162 (c) The rule for the federal write-in absentee ballot must  
163 address, at a minimum, the following issues:

164 1. The appropriate lines or spaces for designating a  
165 candidate choice and, for state and local races, the office to  
166 be voted, including the proximity of each to the other and the  
167 effect of intervening blank lines.

168 2. The sufficiency of designating a candidate's first or  
169 last name when no other candidate in the race has the same or a  
170 similar name.

171 3. The sufficiency of designating a candidate's first or  
172 last name when an opposing candidate has the same or a similar



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173 name, notwithstanding generational suffixes and titles such as  
174 "Jr.," "Sr.," or "III." The rule should contemplate the  
175 sufficiency of additional first names and first initials, middle  
176 names and middle initials, generational suffixes and titles,  
177 nicknames, and, in general elections, the name or abbreviation  
178 of a political party.

179 4. Candidate designations containing both a qualified  
180 candidate's name and a political party, including where the  
181 party designated is the candidate's party, is not the  
182 candidate's party, has an opposing candidate in the race, or  
183 does not have an opposing candidate in the race.

184 5. Situations where the abbreviation or name of a candidate  
185 is the same as the abbreviation or name of a political party to  
186 which the candidate does not belong, including where the party  
187 designated has another candidate in the race or does not have a  
188 candidate in the race.

189 6. The use of marks, symbols, or language, such as arrows,  
190 quotation marks, or the word "same" or "ditto," to indicate that  
191 the same political party designation applies to all listed  
192 offices.

193 7. Situations where an elector designates the name of a  
194 qualified candidate for an incorrect office.

195 8. Situations where an elector designates an otherwise  
196 correct office name that includes an incorrect district number.

197 Section 4. Section 104.18, Florida Statutes, is amended to  
198 read:

199 104.18 Casting more than one ballot at any election.—Except  
200 as provided in s. 101.6952, whoever willfully votes more than  
201 one ballot at any election commits ~~is guilty of~~ a felony of the



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202 third degree, punishable as provided in s. 775.082, s. 775.083,  
203 or s. 775.084.

204 Section 5. Subsection (5) of section 102.166, Florida  
205 Statutes, is reenacted to read:

206 102.166 Manual recounts of overvotes and undervotes.—

207 (5) Procedures for a manual recount are as follows:

208 (a) The county canvassing board shall appoint as many  
209 counting teams of at least two electors as is necessary to  
210 manually recount the ballots. A counting team must have, when  
211 possible, members of at least two political parties. A candidate  
212 involved in the race shall not be a member of the counting team.

213 (b) Each duplicate ballot prepared pursuant to s.  
214 101.5614(5) or s. 102.141(7) shall be compared with the original  
215 ballot to ensure the correctness of the duplicate.

216 (c) If a counting team is unable to determine whether the  
217 ballot contains a clear indication that the voter has made a  
218 definite choice, the ballot shall be presented to the county  
219 canvassing board for a determination.

220 (d) The Department of State shall adopt detailed rules  
221 prescribing additional recount procedures for each certified  
222 voting system which shall be uniform to the extent practicable.

223 The rules shall address, at a minimum, the following areas:

- 224 1. Security of ballots during the recount process;  
225 2. Time and place of recounts;  
226 3. Public observance of recounts;  
227 4. Objections to ballot determinations;  
228 5. Record of recount proceedings; and  
229 6. Procedures relating to candidate and petitioner  
230 representatives.



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Section 6. This act shall take effect July 1, 2011.