

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 Committee on Rules

BILL: SB 112

INTRODUCER: Senator Thompson

SUBJECT: Absentee Voting

DATE: December 1, 2015

REVISED: _____

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

I. Summary:

SB 112 changes the phrase “absentee” to “vote-by-mail” where it appears in the Florida Statutes, most frequently in the context of the phrase “absentee ballot(s).”

The bill has no fiscal impact on state government.

The bill takes effect July 1, 2016.

II. Present Situation:

Originally, casting a ballot without going to the polls on election day was the province of the military; widespread absentee balloting in America had its origins during the Civil War,¹ as a means for both sides to afford soldiers in the field — a not insignificant portion of the electorate at the time — the opportunity to vote.² By 1924, all but a handful of states had absentee ballot

¹ Pennsylvania appears to have been the only state with an absentee ballot law pre-dating the Civil War (1813), allowing military personnel stationed more than two miles from their homes to cast an absentee ballot. See, Aaron Marshall, *Special Voting Access for the Military Nothing New, Dates from the Civil War, Mike DeWine Says* (Oct. 1, 2012), available on PolitifactOhio’s web site at <http://www.politifact.com/ohio/statements/2012/oct/01/mike-dewine/special-voting-access-military-nothing-new-dates-c/> (last accessed 10.12.2015) (citing, generally, John C. Fortier & Norman J. Ornstein, *The Absentee Ballot and the Secret Ballot: Challenges for Election Reform*, 36 U. MICH. J.L. REFORM 483 (2003)) [hereinafter, Marshall, *Special Military Voting*].

² *Voting Integrity Project, Inc. v. Keisling*, 259 F.3d 1169, 1175 (9th Cir. 2001); Marshall, *Special Military Voting*, *supra* at note 1. Nineteen of the 25 Union states (including the Border States) and 7 of 11 Confederate states had absentee voting laws for soldiers during the Civil War. *Id.* Though many states repealed their laws after the War — with only 6 states retaining them on the books as of 1915 — the advent of World War I ushered in a decade of new state absentee ballot laws. Daniel P. Tokaji & Ruth Colter, *Absentee Voting by People with Disabilities: Promoting Access and Integrity*, 38 MCGEORGE L.REV. 1015, 1020 (2007), reprinted at http://www.americanbar.org/content/dam/aba/migrated/aging/voting/pdfs/tokaji_authcheckdam.pdf (last accessed 10.12.2015) [hereinafter, Tokaji, *Absentee Voting*].

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

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

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

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

³ *Id.*

⁴ 42 U.S.C. ss. 1973ff-1973ff-7.

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

⁶ Tokaji, *Absentee Voting* supra note 3 at 1021; see, Enrijeta Shino, *Absentee Voting: A Cross State Analysis* at pp. 3-5 (University of Florida, Mar. 8, 2014) (2000 general election signaled the turning point in easing legal requirements for absentee voting), available at The Florida Political Science Association web site at http://www.fpsanet.org/uploads/8/8/7/3/8873825/2014_nominee_shino.pdf (last accessed 10.12.2015).

⁷ National Conference of State Legislatures, *Absentee and Early Voting* (February 11, 2015), available at <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx> (last accessed 10.12.2015).

⁸ See e.g., Escambia Co. Supervisor of Elections web site at <http://www.escambiavotes.com/vote-by-mail> and <http://www.escambiavotes.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 10.12.2015); Pasco Co. Supervisor of Elections web site at <http://www.pascovotes.com/Vote-by-Mail/About-Voting-by-Mail#mil> (referring to most ballots, including military, as vote-by mail ballots); Leon Co. Supervisor of Elections web site at <http://www.leonvotes.org/Request-an-Absentee-Ballot> and Sarasota Co. Supervisor of Elections web site at <http://www.sarasotavotes.com/content.aspx?id=19> (using both terms, “vote-by-mail” and “absentee,” interchangeably and simultaneously) (last accessed 10.12.2015).

⁹ See Cal Elec. Code s. 3000-3024 and 3101-3123 (detailing “vote by mail” requirements and procedures for all California voters, including UOCAVA military and overseas voters); see also, Cal. SOS web site at <http://www.sos.ca.gov/elections/voter-registration/military-overseas-voters/> and <http://www.sos.ca.gov/elections/voter-registration/vote-mail/> (using the phrase “vote-by-mail” to refer to all military and civilian voting) (last accessed 10.12.2015).

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

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

III. Effect of Proposed Changes:

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

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁰ See, FVAP California web site at <http://www.fvap.gov/california> and <http://www.fvap.gov/vao/vag/chapter2/california> (describing California’s voting process for UOCAVA voters as “absentee voting guidelines,” providing links to the State’s vote by mail information, and providing information on how to receive an “absentee ballot”) (last accessed 10.12. 2015).

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

¹² See Oregon Secretary of State web site at <http://sos.oregon.gov/voting/Pages/voteinor.aspx>; see also, Oregon’s Absentee Ballot Request form for in-state voters away from home, available at <http://sos.oregon.gov/elections/Documents/SEL111.pdf> (last accessed 10.12.2015); E-mail from Brian Corley, Legislative Liaison for the Florida State Assn. of Supervisors of Elections and Supervisor of Pasco County to Jonathan Fox, Senate Ethics and Elections Chief Attorney (March 25, 2015) (information from Oregon indicates that the term “absentee ballot” is placed on the mailing envelopes for out-of-state voters requesting ballots).

¹³ Sections 101.6101-101.6107, F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Department of State, Division of Elections, the terminology changes would need to be reflected on various agency documentation and may require coding changes to the Florida Voter Registration System. The department will absorb these costs, which are expected to be minimal, in its operating budget.

At the local level county supervisors of elections will, at a minimum, have to print and distribute new absentee ballot instructions and absentee ballot affidavits that include the term “vote-by-mail.” They may choose to re-design and revise other related absentee ballot and election materials to conform. To the extent that any of these items have already been printed, the supervisors will incur additional printing costs. As each county’s situation will differ, the cost is indeterminate but expected to be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

When this bill was heard for the 2015 Regular Session¹⁴, some expressed concerns that changing the statutes from “absentee balloting” to “vote-by-mail” could potentially: violate a U.S. Postal Service (“USPS”) regulation requiring the use of specific words on overseas absentee ballot mailing envelopes; and/or, create postal confusion, thereby delaying ballot processing, transmission and delivery in both directions. The USPS regulations, however, specifically authorize the use of terms other than the prescribed “Official Absentee Balloting Material” — such as “Vote-By-Mail” — *if required by State law*.¹⁵

¹⁴ See SB 894 (2015 Reg. Session).

¹⁵ U.S.P.S. Regulations, DMM 703.8.2.5, available at <http://pe.usps.com/text/dmm300/703.htm> (last accessed 10.12.2015). The postal regulation at issue provides as follows:

8.2.5 Envelope

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

(emphasis added).

Furthermore, nothing in the bill would prohibit the supervisors of elections from continuing to use the term “Official Absentee Balloting Material” on their overseas ballots to minimize confusion within their local post offices; indeed, the law would still require that overseas ballot envelopes meet USPS and other federal requirements.¹⁶ On balance, the postal concerns don’t appear to be a significant legal or practical impediment to moving forward with the bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 97.012, 97.021, 97.026, 98.065, 98.077, 98.0981, 98.255, 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, 916.107 .

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

¹⁶ The current Florida law, which is not materially changed by this bill, provides that all “absentee envelopes” for UOCAVA voters comply with the specifications mandated by the U.S. Department of Defense’s Federal Voting Assistance Program and the USPS. Section 101.694(3), F.S. (NOTE: Although housed in a section of the statutes entitled “Mailing of ballots upon receipt of federal postcard application,” a 2005 change to the law clarified that the requirements were applicable to ALL envelopes printed for UOCAVA voters — not just those ballots requested with the federal postcard application. See Ch. 2005-277, s. 50, at 2664, LAWS OF FLA. (codified at s. 101.694(3), F.S.) (striking language limiting the section to federal postcard applicants); see also, Florida House of Representatives, Bill Analysis - CS/HB 1567 (2005), at p. 13 (Apr. 20, 2005) (discussing changes to s. 101.694 as impacting envelope requirements for “absent electors overseas,” without reference to federal postcard applicants), available at <http://archive.flsenate.gov/data/session/2005/House/bills/analysis/pdf/h1567e.SAC.pdf> [last accessed 10.12.2015].)