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HOUSE OF REPRESENTATIVES
PROCEDURAL AND REDISTRICTING COUNCIL
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 AND REDISTRICTING COUNCIL YEAS 17 NAYS 0
 - (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.

The Committee on Rules, Ethics, & Elections adopted a “strike-everything” amendment to HB 189 on March 28, 2001. The Procedural & Redistricting Council adopted two amendments to the “strike-everything” amendment to HB 189 on April 19, 2001. The amendments are traveling with the bill. [See, Section VI. of the analysis for an explanation of the amendment].

The bill has an effective date of January 1, 2002

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. [*United States v. State of Florida*, CA. N. 80-1055 (N.D. Fla.)].

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 temporary restraining order was entered on 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), F.S., 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 ensuring the integrity of absentee ballots cast by military personnel.

[See, Section VI. of the analysis for an explanation of the amendments].

D. SECTION-BY-SECTION ANALYSIS:

The Section-By-Section Analysis is drafted to the bill as amended as this is the substance of the bill.

Section 1: Provides a short title.

Section 2: Provides definitions.

Section 3: Provides legislative intent to facilitate provisions of the federal Uniform and Overseas Citizens Absentee Voting Act.

Section 4: Provides that any person (and accompanying family member), who after the official book closing date has been discharged from the military or overseas employment, may register to vote up to 5 p.m. on the Friday prior to the election.

- Section 5:** Provides for a state write-in ballot for use by an overseas voter who, due to military or other contingencies which precludes normal mail delivery, cannot vote an absentee ballot during the normal period for such voting.
- Section: 6:** Provides for an advanced absentee ballot for overseas voters. The provision tracks federal requirements provided under the Uniform and Overseas Citizens Absentee Voting Act. Requires Supervisors of Elections to provide e-mail updates of candidates to those voters who have provided an e-mail address with their absentee ballot request. Creates a presumption that an overseas voters' absentee ballot was mailed on the date signed and witnessed, the absence of a postmark notwithstanding, or if the postmark indicates a date after the election.
- Section: 7** Provides the Division of Elections with rulemaking authority to provide for the acceptance of an absentee ballot request or a voted absentee ballot by facsimile transmission or other electronic means. The rules must include the establishment of voter verification, security of transmission, and the recording of each ballot.
- Section: 8** Provides the Elections Canvassing Commission with emergency rulemaking authority under certain urgent situations which make substantial compliance with overseas voting under federal or state law impossible or unreasonable.
- Section: 9** Amends s. 101.62, F.S., to remove language relating to advanced absentee ballots and procedures which are now contained in other sections of the "strike-everything" amendment.
- Section 10:** Amends s. 101.64, F.S., to conform to changes in the "strike-everything" amendment and conform to current practice for ballot requirements as a result of the the U.S. Department of Justice's failure to preclear changes effectuated by Ch. 98-129, Laws of Florida.
- Section 11:** Amends s. 101.65, F.S., to provide changes to absentee voter instructions to conform to other changes made by the "strike-everything" amendment.
- Section 12:** Amends s. 102.111, F.S., to remove redundant language already contained in s. 102.112, F.S., relating to county returns not received by the Department of State.
- Section 13:** Amends s. 102.112, F.S., to move certification deadlines required to be filed with the Secretary of State from 5 p.m. on the 7th day following the general election to 5 p.m. on the 11th day, thereby ensuring that all votes cast by overseas absentee ballots are included in county totals.
- Section 14:** Provides for an effective date, January 1, 2002.

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:

Authorizes the Department of State to adopt rules. See Section-by-Section analysis above.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Rules, Ethics, & Elections adopted a “strike-everything” amendment to HB 189 on March 28, 2001. The amendment is traveling with the bill. [For an explanation please refer to **Section II. D.** of this analysis.].

The Procedural & Redistricting Council adopted two amendments to HB 189 on April 19, 2001.

- Amendment # 1: A technical amendment correcting a scrivener’s error.
- Amendment # 2: Specifies that any person (and accompanying family member) who after the official book closing date has been discharged from the military or overseas employment may register to vote up to 5 p.m. on the Friday prior to the election. The “strike-everything” amendment in its original form required the person to have previously been registered in order to register after the book closing date under the provisions of the act.

VII. SIGNATURES:

COMMITTEE ON RULES, ETHICS, & ELECTIONS:

Prepared by:

R. Michael Paredes

Staff Director:

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AS REVISED BY THE PROCEDURAL AND REDISTRICTING COUNCIL:

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