

**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 Committee on Fiscal Policy

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BILL: SB 184

INTRODUCER: Senators Evers and Gaetz

SUBJECT: Federal Write-in Absentee Ballot

DATE: March 25, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Roberts</u>	<u>EE</u>	<b>Favorable</b>
2.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	<b>Favorable</b>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Favorable</b>

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## I. Summary:

SB 184 eliminates the restriction that a Federal Write-In Absentee Ballot (FWAB) can only be used for state and local elections involving two or more candidates. This allows absent uniformed services and overseas voters to use a FWAB as a “back-up” ballot for all federal, state, and local elections.

The bill also delays the canvassing of a FWAB until 10 days after the presidential preference primary or general election. This will allow the voter’s official absentee ballot to be canvassed (in lieu of a FWAB) if it is received during that 10-day window.

## II. Present Situation:

### **The Uniformed and Overseas Citizen Absentee Voting Act**

In 1986 Congress passed the Uniformed and Overseas Citizen Absentee Voting Act (Act) pertaining to absentee voting for overseas citizens, and active-duty military members, merchant marines, and their families.<sup>1</sup> The Act required the creation of a Federal Write-In Absentee Ballot (FWAB), which is a “back-up” ballot for voters under the Act, who have made a timely application for, but do not receive, an official absentee ballot. The FWAB can be used in all federal elections.<sup>2</sup>

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<sup>1</sup> The U.S. Department of Justice, Civil Rights Division, *The Uniformed and Overseas Citizen Absentee Voting Act*, available at [http://www.justice.gov/crt/about/vot/misc/activ\\_uoc.php](http://www.justice.gov/crt/about/vot/misc/activ_uoc.php) (last visited March 20, 2015).

<sup>2</sup> *Id.* In 2010, the federal Military and Overseas Voter Empowerment Act expanded the required use of the FWAB to all federal elections, including primaries. *See also* 42 U.S.C. s 1973ff-2(a).

## The Use of the FWAB in Florida

The Act only requires states and territories to accept a FWAB for federal elections. In 2011, Florida allowed for the use of a FWAB for absent uniformed services and overseas voters (voter) in all state and local elections involving two or more candidates.<sup>3</sup>

Section 101.6952, F.S., specifies the accepted methods a voter can use when selecting candidates on a FWAB. For federal elections, a voter may designate a candidate by writing the name of the candidate on the ballot or by writing the name of a political party on the ballot. The later method is not accepted in primary or special election and otherwise will be counted as a vote for the candidate of that party if there is one in that race.<sup>4</sup>

In a state or local election a voter can use the section of the FWAB designated for nonfederal races. A voter can vote for a candidate by writing the title of each office and the name of the candidate for which here or she is voting. Alternatively, a voter may designate a candidate by writing the name of a political party on the ballot. This method is not accepted in a primary, special primary, or nonpartisan election.<sup>5</sup>

Any abbreviation, misspelling, or other minor variation of in the form of the name of an office, candidate, or political party does not affect the validity of the ballot.<sup>6</sup> Section 102.166(4)(a), F.S., requires that a vote for a candidate or ballot measure must be counted if there is a “clear indication on the ballot that the voter had made a definite choice.” The Department of State is required to make rules regarding FWABs and for prescribing what constitutes a “clear indication on the ballot that the voter had made a definite choice.”<sup>7</sup> The rules have to address a multitude of issues including the:

- Appropriate lines or spaces for designating a candidate and, for state and local, the office; and
- Use of marks, symbols, or language, such as arrows, quotation marks, or the word “same” or “ditto” to indicate that the same political party designation applies to all listed offices.<sup>8</sup>

If a voter uses a FWAB and then later receives an official absentee ballot, he or she may submit the official absentee ballot. However, the voter must make every reasonable effort to inform the supervisor of elections that he or she submitted more than one ballot.<sup>9</sup>

FWABs are not allowed to be canvassed (inspected and ballot validity determined) until 7 p.m. on the day of the election. All FWABs received by 7 p.m. on Election Day must be canvassed unless a supervisor of elections receives both the FWAB and the official absentee ballot by 7 p.m. on Election Day, in which case the FWAB is considered invalid and the official absentee ballot is canvassed.<sup>10</sup>

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<sup>3</sup> Chapter 2011-162, L.O.F.

<sup>4</sup> Section 101.6952(2)(b)1., F.S.

<sup>5</sup> Section 101.6952(2)(b)2., F.S.

<sup>6</sup> Section 101.6952(2)(e), F.S.

<sup>7</sup> Section 102.166(4)(b), F.S.

<sup>8</sup> Section 102.166(4)(c), F.S.

<sup>9</sup> Section 101.6952(3)(a), F.S.

<sup>10</sup> Section 101.6952(3)(b), F.S.

However, an absentee ballot from a voter in any presidential preference primary or general election is treated differently. Such an absentee ballots that is postmarked or dated no later than the day of the election and received not later than 10 days after the election by the supervisor of elections is counted as long as the absentee ballot is otherwise proper.<sup>11</sup>

### **III. Effect of Proposed Changes:**

SB 184 eliminates the restriction that FWAB's can only be used for state and local elections involving two or more candidates. This allows absent uniformed services and overseas voters (voter) to use a FWAB as a "back-up" ballot for all federal, state, and local elections.

The bill allows a voter in a state or local election to vote on any ballot measure in the election by identifying the ballot measure on which he or she wants to vote and specifying his or her vote on the measure. The bill specifies that a vote cast in judicial retention elections be treated in the same manner as ballot measures requiring a "yes" or "no" vote.

The bill also provides that any abbreviation, misspelling, or other minor variation in a ballot measure does not affect the validity of the ballot. The bill requires the Department of State to adopt rules to specify the:

- Appropriate lines or spaces for ballot measures; and
- Use of marks, symbols or language, such as arrows, quotation marks, or the word "same" or "ditto" to indicate the voter's approval or disapproval of all listed ballot measures.

The bill delays the canvassing of a FWAB until 10 days after the presidential preference primary or general election, so that the voter's official absentee ballot can be canvassed (in lieu of the FWAB) if it is received during that 10-day window. This should allow for the canvassing board to better determine the voter's intent and more accurately canvass the votes.

The bill is effective on July 1, 2015.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

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<sup>11</sup> Section 101.6952(5), F.S. The voter's FWAB still counts because it was the only ballot received by the supervisor of elections on Election Day.

**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:**

The bill authorizes the Department of State to adopt rules for the FWABs to include ballot measures.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 101.6952 and 102.166.

**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.