

**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 Military and Veterans Affairs, Space, and Domestic Security

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BILL: SB 184

INTRODUCER: Senators Evers and Gaetz

SUBJECT: Federal Write-in Absentee Ballot

DATE: March 16, 2015

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

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

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## I. Summary:

SB 184 expands the use of the Federal Write-in Absentee Ballot (FWAB) to include state constitutional amendments, local ballot measures, and judicial merit retention elections. In addition, the bill delays the canvassing of an FWAB until 10 days after the presidential preference primary or general election. This will allow the elector's original ballot to be counted [in lieu of an FWAB] if it is received during that 10-day window (provided it is otherwise proper).

The FWAB is considered a “ballot of last resort” for absent, active-duty military (and their families) and overseas citizens who timely request, but fail to receive, an official absentee ballot from their county supervisor of elections.

The bill takes effect July 1, 2015.

## II. Present Situation:

The Federal Write-in Absentee Ballot (FWAB) is a federally-mandated alternative, or “back-up,” ballot that allows otherwise-eligible overseas citizens and absent, active-duty military (and their families) to cast votes in federal elections,<sup>1</sup> provided they made a timely-request for a regular absentee ballot. Most states have also authorized the FWAB for voting in certain state and local elections.

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<sup>1</sup> From its inception in 1986 (Uniformed and Overseas Citizens Absentee Voting Act [UOCAVA]) until it was amended effective 2010, the FWAB was mandated only for federal general elections. See, U.S. Dep’t of Justice, Civil Rights Division web site 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 11, 2015). In 2010, the federal Military and Overseas Voter Empowerment Act (MOVE) expanded the required use of the FWAB to all federal elections, including primaries. *Id*; see also, 42 U.S.C. s. 1973ff-1(a).

In 2011, Florida expanded the FWAB's "ballot-of-last-resort"<sup>2</sup> use beyond just federal elections to include state and local elections involving two or more candidates.<sup>3</sup> At the time, the FWAB was designed solely for candidate races, with lines for designating candidates' names and offices sought; it did not embrace ballot elections requiring a voter's affirmation or rejection. In August 2013, the federal government modified the FWAB form to specifically include spaces for "Ballot Initiatives" and the "Initiative Vote."<sup>4</sup>

The canvassing of an FWAB that otherwise meets all the legal requirements for validity is a bit confusing, especially when both an FWAB and the elector's original absentee ballot are received: timing is determinative -<sup>5</sup>

- If the only ballot a supervisor timely receives from an elector is the FWAB, it is counted.
- If the supervisor receives both an FWAB and the elector's official absentee ballot by 7 p.m. on Election Day, then the elector's official ballot is counted.
- If the only ballot a supervisor receives from an elector by 7 pm on Election Day is the FWAB, then the FWAB is counted — regardless of whether the elector's original ballot is subsequently received within a special 10-day validity window after Election Day that the statutes provide for the presidential preference primary and general election.<sup>6</sup>

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

SB 184 eliminates Florida's "multi-candidate restriction," and authorizes the FWAB as a "ballot of last resort" for eligible voters in all federal, state, and local elections — including statewide constitutional initiatives, local ballot measures, and judicial merit retention elections for the Florida Supreme Court and district courts of appeal. It specifically directs that votes cast in judicial retention elections be treated in the same manner as ballot measures requiring a "yes" or "no" vote. Finally, it requires the Department of State to adopt rules prescribing what markings, symbols, or language on the FWAB constitute a valid vote with regard to these new elections.

In addition, the bill delays the canvassing of an FWAB until *10 days after the presidential preference primary or general election*, so that the elector's original ballot can be counted (in lieu of the FWAB) if it is received during that 10-day window (provided it is otherwise legal and proper). This should allow the canvassing board to better determine a voter's intent<sup>7</sup> (in most cases) and to more efficiently and accurately canvass the votes — since the ballot doesn't have to be duplicated to run through the tabulators.

The bill takes effect July 1, 2015.

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<sup>2</sup> Eligible military or overseas voter must have timely requested and not received an official absentee ballot in order to vote by FWAB. Section 101.6952(2)(a), F.S.

<sup>3</sup> Ch. 2011-162, Laws of Fla.

<sup>4</sup> Current FVAP form and instructions, available at Federal Voting Assistance Program web site:  
<https://www.fvap.gov/uploads/FVAP/Forms/fwab2013.pdf>, (last visited March 11, 2015).

<sup>5</sup> Section 101.6952(3)(b), F.S.

<sup>6</sup> An absentee ballot from an overseas elector in a presidential preference primary or general election will count if it is received up to 10 days after the date of the election, provided it is postmarked or dated no later than Election Day. Section 101.6952(5), F.S.

<sup>7</sup> The form of the original ballot is pre-printed with specific information for each contest (i.e., candidate names, designated arrows/ovals, better headers, less-confusing spacing).

**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. 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.

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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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