

CHAPTER 2011-162

Committee Substitute for House Bill No. 227

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; reenacting s. 102.166(5), F.S., to incorporate the amendment to s. 101.5614, F.S., in a reference thereto; amending s. 104.18, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

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

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

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

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

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

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

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

(b)1. In an election for federal office, an elector may designate a candidate by writing the name of a candidate on the ballot. Except for a primary or

special primary election, the elector may alternatively designate a candidate by writing the name of a political party on the ballot. A written designation of the political party shall be counted as a vote for the candidate of that party if there is such a party candidate in the race.

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

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

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

(e) Any abbreviation, misspelling, or other minor variation in the form of the name of an office, the name of a candidate, or the name of a political party must be disregarded in determining the validity of the ballot.

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

(b) A federal write-in absentee ballot may not be canvassed until 7 p.m. on the day of the election. Each federal write-in absentee ballot received by 7 p.m. on the day of the election shall be canvassed pursuant to ss. 101.5614(5) and 101.68, unless the elector's official absentee ballot is received by 7 p.m. on election day. If the elector's official absentee ballot is received by 7 p.m. on election day, the federal write-in absentee ballot is invalid and the official absentee ballot shall be canvassed. The time shall be regulated by the customary time in standard use in the county seat of the locality.

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

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

101.5614 Canvass of returns.—

(5)(a) If any absentee ballot is physically damaged so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. Likewise, a duplicate ballot shall be made of an absentee ballot containing an overvoted race or a marked absentee ballot in which every race is undervoted which shall include all valid votes as determined by the canvassing board based on rules adopted by the division pursuant to s. 102.166(4). All duplicate ballots shall be clearly labeled “duplicate,” bear a serial number which shall be recorded on the defective ballot, and be counted in lieu of the defective ballot. After a ballot has been duplicated, the defective ballot shall be placed in an envelope provided for that purpose, and the duplicate ballot shall be tallied with the other ballots for that precinct.

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

Section 3. Subsection (4) of section 102.166, Florida Statutes, is amended, and, for the purpose of incorporating the amendment made by the act to section 101.5614, Florida Statutes, in a reference thereto, subsection (5) of section 102.166, Florida Statutes, is reenacted, to read:

102.166 Manual recounts of overvotes and undervotes.—

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

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

1. Exclusively provide that the voter must properly mark or designate his or her choice on the ballot; or
2. Contain a catch-all provision that fails to identify specific standards, such as “any other mark or indication clearly indicating that the voter has made a definite choice.”

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

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

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

3. The sufficiency of designating a candidate’s first or last name when an opposing candidate has the same or a similar name, notwithstanding generational suffixes and titles such as “Jr.,” “Sr.,” or “III.” The rule should contemplate the sufficiency of additional first names and first initials, middle names and middle initials, generational suffixes and titles, nicknames, and, in general elections, the name or abbreviation of a political party.

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

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

6. The 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.

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

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

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

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

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

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

(d) The Department of State shall adopt detailed rules prescribing additional recount procedures for each certified voting system which shall be uniform to the extent practicable. The rules shall address, at a minimum, the following areas:

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

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

104.18 Casting more than one ballot at any election.—Except as provided in s. 101.6952, whoever willfully votes more than one ballot at any election commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 5. This act shall take effect July 1, 2011.

Approved by the Governor June 17, 2011.

Filed in Office Secretary of State June 17, 2011.