

BILL ANALYSIS

C.S.H.B. 71
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Defense & Veterans' Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

S.B. 90, enacted during the 80th Legislature, Regular Session, 2007, established a pilot program to provide a ballot by electronic mail to military personnel serving overseas to help alleviate the difficulties overseas military voters face. Nineteen counties participated in the program, and response to the pilot program was generally positive, but participation was limited. The pilot program was limited to the November 4, 2008, general election for state and county officers.

C.S.H.B. 71 requires the secretary of state to implement a program to allow the use of electronic mail balloting materials for military personnel serving overseas and their spouses and dependents also residing overseas.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the secretary of state in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 71 amends the Election Code to require the secretary of state to implement a program to allow the use of electronic mail to provide balloting materials for a general election for state and county offices to an overseas voter who is a member of the armed forces of the United States or a spouse or dependent of a member of the armed forces of the United States. The bill requires a county with a population of 100,000 or more to participate in the program. The bill authorizes a county with a population of less than 100,000 to participate in the program only if the early voting clerk of the county makes a request to the secretary of state to participate and the secretary of state approves the request.

C.S.H.B. 71 requires the early voting clerk in a participating county to send balloting materials to an electronic mail address in a form and manner prescribed by the secretary of state if the voter is a federal postcard application registrant and eligible for early voting by mail, provides a current address that is located outside the United States, provides an electronic mail address that contains the voter's name and the suffix ".mil" or provides an electronic copy of a letter from the commanding officer of the member of the armed forces that indicates that the voter is a spouse or dependent of the member and is residing overseas, and requests that balloting materials be sent by electronic mail.

C.S.H.B. 71 requires balloting materials sent to an electronic mail address to include a signature sheet for the voter, which must be returned with the ballot by the voter using one of the established methods for returning a completed ballot.

C.S.H.B. 71 requires an early voting clerk who provides a ballot to a voter at an electronic mail address to provide ballots to all voters who qualify to receive balloting materials in that manner and requires the clerk to amend the voter's federal postcard application for future elections with the voter's current address. The bill specifies the methods by which a ballot sent by electronic

mail and the signature sheet must be returned. The bill specifies that an electronic mail address provided for the purpose of the electronic mail ballot program is confidential and does not constitute public information. The bill requires the early voting clerk to ensure that an electronic mail address provided under such a program is excluded from disclosure.

C.S.H.B. 71 specifies that if a voter returns both a voted paper ballot mailed to the voter in accordance with state law and a voted ballot provided electronically to the voter under these provisions, only the ballot provided electronically may be counted. The bill requires a ballot returned under the electronic mail ballot program to be processed in the same manner as any other ballot voted by mail, as provided by state laws relating to the processing of early voting results. The bill specifies that all other election laws that would normally apply to a ballot voted by a resident federal postcard applicant apply to a ballot voted under the electronic mail ballot program.

C.S.H.B. 71 provides that these provisions may not be construed to impose liability with respect to the electronic mail ballot program on an Internet service provider, an interactive computer service, a telecommunications service, or a cable operator.

C.S.H.B. 71 authorizes the secretary of state to adopt rules as necessary to implement the electronic mail ballot program.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 71 differs from the original by expanding the electronic mail ballot program to allow balloting materials to be provided to a spouse or dependent of a member of the U.S. armed forces as well as to that member whereas the original limited the program to providing balloting material to the member only.

C.S.H.B. 71 differs from the original by requiring a county with a population of 100,000 or more to participate in the electronic mail ballot program and authorizing a county with a population of less than 100,000 to participate only if the early voting clerk of the county makes a request to the secretary of state to participate and the secretary of state approves the request, whereas the original authorized any county to participate under the same conditions described above for a county with a population of less than 100,000.

C.S.H.B. 71 differs from the original by requiring the early voting clerk in a participating county to send the balloting material to an electronic mail address under the program if the voter meets all of the enumerated eligibility requirements rather than authorizing the early voting clerk to do so as in the original. The substitute removes language in the original specifying, as a condition of eligibility, that the voter is voting from outside United States and specifying, as a reason for the voter requesting that balloting material be sent by electronic mail, the fact that the voter did not receive the balloting materials under other provisions for the distribution of ballots by mail. The substitute adds a provision not in the original that makes a person eligible to receive an electronic mail ballot if the voter, as an alternative to providing an electronic mail address with the voter's name and the suffix ".mil," provides an electronic copy of a letter from the commanding officer of the member of the armed forces that indicates that the voter is a spouse or dependent of the member and is residing overseas.

C.S.H.B. 71 removes a provision in the original requiring the secretary of state to prescribe procedures to allow for the signature sheet to be signed by the voter using a digital signature. The substitute adds a provision not in the original to preclude any construction of these provisions as an imposition of liability with respect to the electronic mail ballot program on an

Internet service provider, an interactive computer service, a telecommunications service, or cable operator.