

## **BILL ANALYSIS**

C.S.S.B. 100  
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Defense & Veterans' Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The federal Military and Overseas Voter Empowerment Act facilitates the voting process for military and overseas voters by requiring ballots to be transmitted within a specified period before a federal election. C.S.S.B. 100 seeks to help implement federal requirements by providing for the electronic transmission of blank ballots for all military and overseas voters and requiring the secretary of state to create a tracking system under which military and overseas voters can determine whether a voted ballot has been received by the early voting clerk. The bill attempts to further facilitate the process for those voters by extending the elections covered to an election in which an office of the federal government appears, an election to fill a vacancy in the legislature, with certain exceptions, or an election held jointly with those elections. The bill also addresses certain election dates and deadlines.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking is expressly granted to the secretary of state in SECTIONS 1 and 49 of this bill.

### **ANALYSIS**

C.S.S.B. 100 amends the Election Code to designate the secretary of state as the state coordinator between military and overseas voters and county election officials. The bill requires a county election official to cooperate with the secretary of state to ensure that military and overseas voters timely receive accurate balloting materials that a voter is able to cast in time for the election and otherwise comply with the federal Military and Overseas Voter Empowerment Act. The bill authorizes the secretary of state to adopt rules as necessary to implement these provisions.

C.S.S.B. 100 requires the secretary of state, in coordination with local election officials, to implement an electronic free-access system by which a person eligible for early voting by mail as a resident federal postcard applicant or as an overseas citizen may determine by telephone, by e-mail, or over the Internet whether the person's federal postcard application (FPCA) or other registration or ballot application has been received and accepted and whether the person's ballot has been received and the current status of the ballot.

C.S.S.B. 100, in provisions relating to applying for more than one election with a single FPCA, removes a provision requiring an application to be treated as if it requests a ballot for each election for a federal office, including a primary or runoff election, that occurs on or before the date of the second general election for state and county officers that occurs after the date the application is submitted.

C.S.S.B. 100 requires a person, for purposes of registering to vote as a federal postcard applicant, to provide the address of the last place of residence of the person in Texas or the last place of residence in Texas of the person's parent or legal guardian. The bill requires the voter registrar to register the person at the address provided unless that address no longer is recognized

as a residential address, in which event the registrar is required to assign the person to an address under procedures prescribed by the secretary of state.

C.S.S.B. 100 establishes, in provisions relating to the official carrier envelope for voting, that the provisions of law allowing the envelope to be mailed free of United States postage are provided by the federal Uniformed and Overseas Citizens Absentee Voting Act, rather than the Federal Voting Assistance Act of 1955.

C.S.S.B. 100 establishes procedures for the e-mail transmission of balloting materials for the purpose of implementing the federal Military and Overseas Voter Empowerment Act. The bill authorizes a person eligible for early voting by mail under provisions relating to the FPCA to request from the appropriate early voting clerk e-mail transmission of balloting materials. The bill requires the early voting clerk to grant such a request if the requestor has submitted a valid FPCA and meets certain requirements relating to military status, residency, and location for voting and provides an e-mail address that corresponds to the address on file with the requestor's FPCA or stated on a newly submitted FPCA. The bill requires the early voting clerk to grant the request if it is submitted on or before the seventh day before the date of the election and if a marked ballot for the election from the requestor has not been received by the early voting clerk. The bill requires the early voting clerk to note on the early voting by mail roster each e-mail of a ballot under these provisions.

C.S.S.B. 100 establishes that an e-mail address used to request balloting materials is confidential and does not constitute public information under the state's open records law and requires an early voting clerk to ensure that a voter's e-mail address provided under these provisions is excluded from public disclosure. The bill limits the e-mail transmission of balloting materials under these provisions to an election in which an office of the federal government appears on the ballot, an election to fill a vacancy in the legislature unless the election is ordered as an emergency election or held as an expedited election, or an election held jointly with either of those types of elections. The bill specifies the balloting materials to be sent by e-mail and the format of those materials. The bill requires the secretary of state to prescribe procedures for the retransmission of balloting materials following an unsuccessful transmission of the materials to a voter.

C.S.S.B. 100, in provisions relating to the return of a ballot, requires a voter who is a member of the armed forces or the merchant marine of the United States or the spouse or a dependent of such a member to be voting from outside the voter's county of residence and requires a voter who is domiciled in Texas but temporarily living outside the territorial limits of the United States and the District of Columbia to be voting from outside the United States. The bill requires a voter who receives a ballot under these provisions to return it by mail, common or contract carrier, or courier and prohibits the voter from returning the ballot by electronic transmission, with certain exceptions. The bill establishes that a ballot that is not returned as required by these provisions is considered a ballot not timely returned and is not sent to the early voting ballot board for processing. The bill specifies that the deadline for returning a ballot under these provisions is the same as the deadline for returning a marked ballot voted by mail.

C.S.S.B. 100 requires the secretary of state by rule to create a tracking system under which an FPCA registrant may determine whether a voted ballot has been received by the early voting clerk. The bill requires each county that sends ballots to FPCA registrants to provide information required by the secretary of state to implement the system. The bill authorizes the secretary of state to adopt rules as necessary to implement provisions relating to the e-mail transmission of balloting materials and to provide for an alternate secure method of electronic ballot transmission instead of transmission by e-mail.

C.S.S.B. 100 creates an exception for its provisions to the requirement that a runoff election be held not earlier than the 20th or later than the 45th day after the date the final canvass of the main election is completed. The bill requires a runoff election for a special election to fill a

vacancy in Congress or a special election to fill a vacancy in the legislature that is not an emergency or expedited election to be held not earlier than the 70th day or later than the 77th day after the date the final canvass of the main election is completed.

C.S.S.B. 100 specifies that for an election to be held on the date of the general election for state and county officers, the election is required to be ordered not later than the 78th day, rather than the 70th day, before election day and that for an election to be held on a uniform election date other than the date of the general election for state and county officers, the election is required to be ordered not later than the 71st day before election day.

C.S.S.B. 100, in provisions requiring, with certain exceptions, each general or special election in Texas to be held on the second Saturday in May or the first Tuesday after the first Monday in November, requires the elections to be held on one of the following dates: the second Saturday in May in an odd-numbered year; the second Saturday in May in an even-numbered year, for an election held by a political subdivision other than a county; or the first Tuesday after the first Monday in November. The bill specifies that a county elections administrator is not required to enter into a contract to furnish election services for an election held on the second Saturday in May in an even-numbered year.

C.S.S.B. 100 removes provisions authorizing the governing body of a political subdivision other than a county, not later than December 31, 2005, to change the date on which it holds its general election to another authorized uniform election date. The bill extends the deadline for the governing body of a political subdivision, other than a county, that holds its general election for officers on a date other than the November uniform election date to change the date on which it holds its general election for officers to the November uniform election date, from not later than December 31, 2010, to not later than December 31, 2012.

C.S.S.B. 100 requires a political subdivision that before September 1, 2011, held its general election for officers on the uniform election date in May or that is required by other law to hold its general election for officers on that date to hold its general election for officers on the first Tuesday in April in an odd-numbered year unless the governing body of the political subdivision changes the date.

C.S.S.B. 100 authorizes a home-rule city to implement the change in election dates through the adoption of a resolution and specifies that such a resolution supersedes a city charter provision that requires a different general election date. The bill specifies that the holdover of a member of a governing body of a city in accordance with provisions of the Texas Constitution requiring officers to serve until their successors are qualified, as that term of office may be conformed to a new election date chosen under these provisions, does not constitute a vacancy for purposes of provisions of the Texas Constitution relating to vacancies on the governing body of a home-rule city.

C.S.S.B. 100 changes the general primary election date from the first Tuesday in March to the first Tuesday in April in each even-numbered year. The bill changes the runoff primary election date from the second Tuesday in April to the third Tuesday in June following the general primary election. The bill changes the presidential primary election date from the first Tuesday in March to the first Tuesday in April in each presidential election year.

C.S.S.B. 100 makes provisions relating to the effect of a weekend or holiday on the deadline for the performance of an act inapplicable to the deadline for the early voting ballot board to verify and count provisional ballots.

C.S.S.B. 100 specifies that provisions relating to the deadline for mailing balloting materials for voting by mail are for a covered election under the bill's provisions, rather than for the general election for state and county officers.

C.S.S.B. 100 requires the early voting clerk, in provisions requiring the clerk to enclose certain materials in a jacket envelope for a timely returned early voting ballot voted by mail, to include in the envelope a copy of the voter's FPCA, if the ballot is voted under provisions relating to voting by a resident federal postcard applicant, and the signature cover sheet, if the ballot is voted under provisions relating to voting by military personnel or other overseas voters.

C.S.S.B. 100 prohibits the early voting clerk, if the clerk has provided a voter a ballot to be voted by mail by both regular mail and e-mail, from delivering a jacket envelope containing the early voting ballot voted by mail by the voter to the early voting ballot board until both ballots are returned or the deadline for returning marked ballots voted by mail has passed. The bill requires the clerk, if both ballots are returned before the deadline, to deliver only the jacket envelope containing the ballot provided by e-mail to the board. The bill establishes that the ballot provided by regular mail is considered to be a ballot not timely returned.

C.S.S.B. 100 requires the early voting ballot board, in determining whether to accept an early voting ballot voted by mail when neither the overseas voter's signature on the ballot application nor the signature on the carrier envelope certificate is determined to have been executed by a person other than the voter, unless signed by a witness, to compare the signature on the carrier envelope or signature cover sheet with the signature of the voter on the FPCA.

C.S.S.B. 100 requires the early voting ballot board, when placing and sealing rejected ballots in a carrier envelope, to keep a record of the number of rejected ballots in each envelope. The bill requires a notation to be made on the carrier envelope of any ballot that was rejected after the envelope was opened and to include the reason the envelope was opened and the ballot was rejected.

C.S.S.B. 100 requires the presiding judge of the early voting ballot board, when providing written notice of the reason for the rejection of a ballot, to also provide the notice to the e-mail address to which the ballot was sent if the ballot was transmitted to the voter by e-mail.

C.S.S.B. 100 requires the early voting ballot board, for a ballot voted under provisions relating to voting by resident federal postcard applicants or by military or other overseas voters, to place the copy of the voter's FPCA or signature cover sheet in the same location as the carrier envelope.

C.S.S.B. 100 requires the secretary of state to prescribe procedures to allow a voter who qualifies to vote by a federal write-in absentee ballot to vote through use of a federal write-in absentee ballot in an election for any office for which balloting materials may be sent by e-mail transmission.

C.S.S.B. 100 extends the deadline for a certifying authority to certify candidates' names for placement on the general election ballot from not later than the 55th day to not later than the 68th day before general election day.

C.S.S.B. 100 extends the filing deadline for candidates for city office and for candidates and declared write-in candidates for office of a political subdivision other than a county or city, for an election to be held on the date of the general election for state and county officers, from the 67th or 70th day before election day, as applicable, to the 78th day before election day. The bill specifies that for an election to be held on a uniform election date other than the date of the general election for state and county officers, the filing deadline for those candidates is the 71st day before election day.

C.S.S.B. 100 extends the following deadlines in connection with the withdrawal, death, or ineligibility of a candidate who is the party nominee in a general election for state and county officers:

- the deadline for delivering the certification of a replacement nominee for placement on the ballot, from the 70th day to the 71st day before election day; and

- the deadline for delivering the certification of a replacement nominee if a political party's district executive committee fails to nominate a replacement candidate to fill a vacancy in a nomination for a district office, from the 67th day to the 69th day before election day.

C.S.S.B. 100 extends the following deadlines and periods in connection with the withdrawal, death, or ineligibility of a candidate in an election other than a general election for state and county officers:

- the deadline for withdrawal if the filing deadline is the 78th day before election day, from the 67th day to the 71st day before election day;
- the date before which a candidate withdraws or is declared ineligible, if the filing deadline is the 78th day before election day, and the name of the candidate is omitted from the ballot, from the 67th day to the 71st day before election day; and
- the date after which a candidate is declared ineligible, if the filing deadline is the 78th day before election day, and the candidate's name is placed on the ballot, from the 67th day to the 71st day before election day.

C.S.S.B. 100 extends the following deadlines in connection with a write-in candidate in a general election for state and county officers:

- the deadline for filing a declaration of write-in candidacy, with certain exceptions, from the 70th day to the 78th day before general election day;
- the deadline for filing a declaration of write-in candidacy if a candidate whose name is to appear on the general election ballot dies or is declared ineligible, from the 67th day to the 75th day before election day; and
- the deadline for delivering the certification of a candidate for placement on the list of write-in candidates, from the 62nd day to the 68th day before election day.

C.S.S.B. 100 extends or establishes, as applicable, the following deadlines in connection with a write-in candidate in a city election:

- for an election to be held on the date of the general election for state and county officers, the filing deadline is extended from the 67th day to the 74th day before election day; and
- for an election to be held on a uniform election date other than the date of the general election for state and county officers, the filing deadline is established as the 71st day before election day.

C.S.S.B. 100 extends the following deadlines in connection with general provisions relating to political parties or in connection with the organization of political parties:

- the deadline for delivering the certification of nominees for statewide and district offices for placement on the general election ballot, from the 62nd day to the 68th day before general election day;
- the deadline for filing a declaration of write-in candidacy for county chair or precinct chair, with certain exceptions, from the 62nd day to the 88th day before general primary election day; and
- the deadline for filing a declaration of write-in candidacy for county chair or precinct chair if a candidate whose name is to appear on the ballot dies or is declared ineligible, from the 59th day to the 79th day before election day.

C.S.S.B. 100 extends or shortens, as appropriate, the following deadlines and periods in

connection with political parties nominating candidates by primary elections:

- the deadline for the state chair's certification of names for placement on the general primary ballot, from the 57th day to the 84th day before general primary election day;
- the date after which a candidate for nomination may not withdraw from the general primary election, from the 62nd day to the 88th day before general primary election day;
- the date on or before which a candidate's withdrawal, death, or ineligibility triggers an extended filing deadline, from the 62nd day to the 88th day before general primary election day;
- the deadline for filing an application for an office sought by a withdrawn, deceased, or ineligible candidate or for receipt of such an application filed by mail, from the 60th day to the 80th day before general primary election day;
- the date on or before which a candidate's withdrawal, death, or ineligibility results in the candidate's name being omitted from the general primary election ballot, from the 62nd day to the 88th day before general primary election day;
- the date after which the name of a candidate who has made an application for a place on the general primary election ballot that complies with the applicable requirements and who dies or is declared ineligible is placed on the ballot, from the 62nd day to the 88th day before general primary election day;
- the deadline for withdrawing from a runoff primary, from the 10th day to the 8th day after general primary election day; and
- the deadline for conducting the drawing to determine the order of the candidates' names on the general primary election ballot for each county, from the 53rd day to the 81st day before general primary election day.

C.S.S.B. 100 extends the deadline for the secretary of state to certify presidential and vice-presidential candidates from the later of the 68th day, rather than the 62nd day, before presidential election day or the second business day after the date of final adjournment of the party's national presidential nominating convention.

C.S.S.B. 100 extends the following deadlines in connection with a special election to fill a vacancy in office generally:

- the deadline for ordering a special election to be held on the date of the general election for state and county officers, from the 70th day to the 78th day before election day; and
- the filing deadline for a special election to be held on the date of the general election for state and county officers, from the 67th day to the 75th day before election day.

C.S.S.B. 100 amends the Education Code to extend the following deadlines in connection with an election for trustees of an independent school district:

- the deadline for filing an application to get on the ballot, with certain exceptions, from the 62nd day to the 71st day before the date of the election; and
- the deadline for filing an application if the election will be held on the date of the general election for state and county officers, from the 70th day to the 78th day before election day.

C.S.S.B. 100 extends the deadline for a board of trustees to adopt a resolution changing the length of the terms of its trustees from December 31, 2007, to December 31, 2011. The bill requires the transition to a modified term to begin with the first regular election for trustees that

occurs after January 1, 2012, rather than January 1, 2008, and requires a trustee who serves on that date to serve the remainder of that term. The bill makes these provisions expire January 1, 2017, rather than January 1, 2013.

C.S.S.B. 100 amends the Education Code, Health and Safety Code, and Water Code to change the deadline for filing a declaration of write-in candidacy in connection with an election for trustees of an independent school district or a junior college district or for board members of a hospital district or for a commissioner of a self-liquidating navigation district from the fifth day after the date an application for a place on the ballot is required to be filed to the 74th day before election day, for an election to be held on the date of the general election for state and county officers, and the 71st day before election day, for an election to be held on a uniform election date other than the date of the general election for state and county officers.

C.S.S.B. 100, in provisions relating to an election for trustees of an independent school district or a junior college district or for board members of a hospital district or for a commissioner of a self-liquidating navigation district, repeals provisions that set the filing deadline for an election to be held on the date of the general election for state and county officers as the 67th day before election day.

C.S.S.B. 100 amends the Local Government Code to authorize the governing body of a general-law municipality whose governing body is composed of members that serve a term of one or three years, not later than December 31, 2011, to adopt a resolution changing the length of the terms of its members to two years. The bill requires the resolution to specify the manner in which the transition from the length of the former term to the modified term is made, requires the transition to begin with the first regular election for members of the governing body that occurs after January 1, 2012, and specifies that a member who serves on that date is required to serve the remainder of that term. The bill makes these provisions expire January 1, 2015.

C.S.S.B. 100 authorizes the governing body of a political subdivision that elects the members of its governing body to a term that consists of an odd number of years, not later than December 31, 2012, to adopt a resolution changing the length of the terms of its members to an even number of years. The bill requires the resolution to specify the manner in which the transition from the length of the former term to the modified term is made, requires the transition to begin with the first regular election for members of the governing body that occurs after January 1, 2013, and specifies that a member who serves on that date is required to serve the remainder of that term. The bill makes these provisions expire January 1, 2020.

C.S.S.B. 100 specifies that its provisions prevail over another act of the 82nd Legislature, Regular Session, 2011, regardless of relative dates of enactment, to the extent of any conflict. The bill requires the secretary of state to adopt rules as necessary to implement the bill's provisions, including the adjustment or modification of any affected date, deadline, or procedure. The bill specifies that its provisions are inapplicable to an election held on November 8, 2011.

C.S.S.B. 100 makes organizational and conforming changes to provisions of law relating to early voting by a resident federal postcard applicant.

C.S.S.B. 100 repeals the following provisions:

- Section 41.0052(a-1), Election Code
- Section 11.056(e), Education Code
- Section 130.0825(e), Education Code
- Section 285.131(g), Health and Safety Code
- Section 63.0945(f), Water Code

## **EFFECTIVE DATE**

September 1, 2011.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 100 differs from the original by removing statutory provisions authorizing the governing body of a political subdivision other than a county to change its general election date before December 31, 2005, whereas the original updates those provisions. The substitute contains provisions not included in the original relating to changing a general election date.

C.S.S.B. 100 differs from the original by establishing the runoff primary election date as the third Tuesday in June following the general primary election, whereas the original establishes that date as the fourth Tuesday in May. The substitute contains provisions not included in the original relating to the general primary election date and the presidential primary election date.

C.S.S.B. 100 omits a provision included in the original relating to the acceptance of an early voting ballot voted by mail.

C.S.S.B. 100 omits a provision included in the original relating to the regular filing period for a general primary election. The substitute contains provisions not included in the original relating to a write-in candidate for county chair or precinct chair, the state chair's certification of names for placement on a general primary ballot, withdrawal from the general primary, an extended filing deadline for a general primary election, omission from a general primary ballot of the name of a withdrawn, deceased, or ineligible candidate, appearance on the general primary ballot of the name of a deceased or ineligible candidate, and withdrawal from a runoff primary.

C.S.S.B. 100 differs from the original by requiring the drawing to determine the order of the candidates' names on the general primary election ballot for each county to be conducted not later than the 81st day before general primary election day, whereas the original requires the drawing to be conducted not later than the fourth Tuesday in December of an odd-numbered year.

C.S.S.B. 100 differs from the original by authorizing the governing body of a political subdivision that elects the members of its governing body to a term that consists of an odd number of years to change the length of the terms of its members to an even number of years not later than December 31, 2012, whereas the original authorizes such a governing body to make such a change not later than December 31, 2011. The substitute differs from the original by requiring the transition to new terms to begin with the first regular election for members of the governing body that occurs after January 1, 2013, whereas the original requires the transition to begin with the first election that occurs after January 1, 2012.

C.S.S.B. 100 contains provisions not included in the original relating to a conflict of interest between the substitute and another act of the legislature, the adoption of necessary rules by the secretary of state, and the inapplicability of the substitute to an election held on November 8, 2011.

C.S.S.B. 100 differs from the original in nonsubstantive ways by conforming to certain bill drafting conventions.