

BILL ANALYSIS

Senate Research Center

C.S.S.B. 100
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State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The federal government passed the Military and Overseas Voter Empowerment (MOVE) Act in the fall of 2009, which changes the way military and overseas voters register and vote in federal elections. The MOVE Act also facilitates the voting process for military and overseas voters by requiring ballots to be transmitted no later than 45 days before an election for federal office. This Act became effective for all federal elections beginning with the November 2010 general election.

C.S.S.B. 100 helps implement the federal government's requirements by providing for the electronic transmission of blank ballots for all military and overseas voters if requested; 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. C.S.S.B. 100 goes beyond the requirements of the MOVE Act by extending the elections covered to any election in which an office of the federal government appears; an election held statewide; or any election held jointly with a federal or statewide election.

C.S.S.B. 100 amends current law relating to the adoption of voting procedures necessary to implement the federal Military and Overseas Voter Empowerment Act.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the secretary of state in SECTION 1 (Sections 101.108 and 101.109, Election Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 101, Election Code, as follows:

CHAPTER 101. VOTING BY RESIDENT FEDERAL POSTCARD APPLICANT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 101.001. Makes no changes to this section.

Sec. 101.002. Makes no changes to this section.

Sec. 101.003. New heading: DEFINITIONS. Deletes existing Subsection (a) relating to the form and contents of an application for a ballot. Deletes existing Subsection (b) designation. Defines, in this chapter, "FPCA registrant." Makes a nonsubstantive change.

Sec. 101.004. NOTING FPCA REGISTRATION ON POLL LIST. Requires that for each federal postcard application (FPCA) registrant accepted to vote, a notation be made beside the voter's name on the early voting poll list indicating that the voter is an FPCA registrant.

Sec. 101.005. NOTING FPCA REGISTRATION AND E-MAIL ON EARLY VOTING ROSTER. Requires that the entry on the early voting roster pertaining to a voter under this chapter who is an FPCA registrant include a notation indicating that the voter is an

FPCA registrant. Requires the early voting clerk to note on the early voting by mail roster each e-mail of a ballot under Subchapter C.

Sec. 101.006. EXCLUDING FPCA REGISTRANT FROM PRECINCT EARLY VOTING LIST. Provides that a person to whom a ballot is provided under this chapter is not required to be included on the precinct early voting list if the person is an FPCA registrant.

Sec. 101.007. DESIGNATION OF SECRETARY OF STATE. Provides that the secretary of state (SOS) is designated as the state office to provide information regarding voter registration procedures and absentee ballot procedures, including procedures related to the federal write-in absentee ballot, to be used by persons eligible to vote under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) (42 U.S.C. Section 1973ff et seq.).

Sec. 101.008. STATUS OF APPLICATION OR BALLOT VOTED. Requires SOS, in coordination with local election officials, to implement an electronic free-access system by which a person eligible for early voting by mail under this chapter or Chapter 114 (Voting Federal Ballot by Overseas Citizen) may determine by telephone, by e-mail, or over the Internet whether the person's FPCA or other registration or ballot application has been received and accepted, and the person's ballot has been received and the current status of the ballot.

SUBCHAPTER B. SUBMISSION OF FEDERAL POSTCARD APPLICATION

Sec. 101.051. FORM AND CONTENTS OF APPLICATION. Requires that an application for a ballot to be voted under this subchapter be submitted on an official federal postcard application form, and include the information necessary to indicate that the applicant is eligible to vote in the election for which the ballot is requested.

Sec. 101.052. SUBMITTING APPLICATION. Redesignates existing Section 101.004 as Section 101.052. Makes no further changes to this section.

Sec. 101.053. ACTION BY EARLY VOTING CLERK ON CERTAIN APPLICATIONS. Redesignates existing Section 101.0041 as Section 101.053. Makes no further changes to this section.

Sec. 101.054. APPLYING FOR MORE THAN ONE ELECTION IN SAME APPLICATION. Redesignates existing Section 101.005 as Section 101.054. (a)-(b) Makes no changes to these subsections.

(c) Deletes existing text relating to 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.

(d) Makes no changes to this subsection.

Sec. 101.055. FPCA VOTER REGISTRATION. Redesignates existing Section 101.006 as Section 101.055. (a) Makes no changes to this subsection.

(b) Requires a person, for purposes of registering to vote under this chapter, to provide the address of the last place of residence of the person in this state or the last place of residence in this state of the person's parent or legal guardian.

(c) Requires the registrar to register the person at the address provided under Subsection (b) unless that address is no longer recognized as a residential address, in which event the registrar is required assign the person to an address under procedures described by SOS. Deletes text of existing Subsection (b), defining "FPCA registrant."

Sec. 101.056. METHOD OF PROVIDING BALLOT; REQUIRED ADDRESS. Redesignates existing Section 101.007 as Section 101.056. (a) Requires that the balloting materials provided under this subchapter, rather than chapter, be airmailed to the voter free of United States postage, as provided by the UOCAVA, in an envelope labeled "Official Election Balloting Material - via Airmail." Requires SOS to provide early voting clerks with instructions on compliance with this subsection.

(b)-(c) Makes no changes to these subsections.

Sec. 101.057. RETURN OF VOTED BALLOT. Redesignates existing Section 101.008 as Section 101.057. Makes a conforming change.

Deletes existing Sections 101.009 (Noting FPCA Registration on Poll List), 101.010 (Noting PFCA Registration on Early Voting Roster), and 101.011 (Excluding FPCA Registrant from Precinct Early Voting List).

Sec. 101.058. OFFICIAL CARRIER ENVELOPE. Redesignates existing Section 101.012 as Section 101.058. Requires that the officially prescribed carrier envelope for voting under this subchapter be prepared so that it can be mailed free of United States postage, as provided by UOCAVA, rather than the Federal Voting Assistance Act of 1955, and contain the label prescribed by Section 101.056(a), rather than Section 101.007(a), for the envelope in which the balloting materials are sent to a voter. Requires SOS to provide early voting clerks with instructions on compliance with this section. Makes a conforming change.

SUBCHAPTER C. E-MAIL TRANSMISSION OF BALLOTING MATERIALS

Sec. 101.101. PURPOSE. Sets forth the purpose of this subchapter.

Sec. 101.102. REQUEST FOR BALLOTING MATERIALS. (a) Authorizes a person eligible to vote under this chapter to request from the appropriate early voting clerk e-mail transmission of balloting materials under this subchapter.

(b) Requires the early voting clerk to grant a request made under this section for the e-mail transmission of balloting materials if:

(1) the requestor has submitted a valid FPCA, and if the requestor is a person described by Section 101.001(2)(C) (relating to a person being eligible for early voting by mail under this chapter if the person is domiciled in this state but temporarily living outside the United States and the District of Columbia), has provided a current mailing address that is located outside the United States; or if the requestor is a person described by Section 101.001(2)(A) (relating to a person being eligible for early voting by mail under this chapter if the person is a member of the armed forces of the United States or a spouse or dependent of a member) or (B) (relating to a person being eligible for early voting by mail under this chapter if the person is a member of the merchant marine of the United States, or the spouse or dependant of a member), has provided a current mailing address that is located outside the requestor's county of residence;

(2) the requestor provides an e-mail address that corresponds to the address on file with the requestor's federal postcard application; or stated on a newly submitted federal postcard application;

(3) the request is submitted on or before the seventh day before the date of the election; and

(4) a marked ballot for the election from the requestor has not been received by the early voting clerk.

Sec. 101.103. CONFIDENTIALITY OF E-MAIL ADDRESS. Provides that an e-mail address used under this subchapter to request balloting materials is confidential and does not constitute public information for purposes of Chapter 552 (Public Information), Government Code. Requires an early voting clerk to ensure that a voter's e-mail address provided under this subchapter is excluded from public disclosure.

Sec. 101.104. ELECTIONS COVERED. Provides that the e-mail transmission of balloting materials under this subchapter is limited to:

- (1) an election in which an office of the federal government appears on the ballot, including a primary election;
- (2) an election to fill a vacancy in the legislature unless the election is ordered as an emergency election under Section 41.0011 (Emergency Requiring Early Election), or the election is held as an expedited election under Section 203.013 (Expedited Election); or
- (3) an election held jointly with an election described by Subdivision (1) or (2).

Sec. 101.105. BALLOTING MATERIALS TO BE SENT BY E-MAIL. Provides that balloting materials to be sent by e-mail under this subchapter include:

- (1) the appropriate ballot;
- (2) ballot instructions, including instructions that inform a voter that the ballot must be returned by mail to be counted;
- (3) instructions prescribed by SOS on how to print a return envelope from the federal Voting Assistance Program website, and how to create a carrier envelope for the ballot; and
- (4) a list of certified write-in candidates, if applicable.

Sec. 101.106. METHODS OF TRANSMISSION TO VOTER. (a) Authorizes the balloting materials to be provided by e-mail to the voter in PDF format, through a scanned format, or by any other method of electronic transmission authorized by SOS in writing.

(b) Requires SOS to prescribe procedures for the retransmission of balloting materials following an unsuccessful transmission of the material to a voter.

Sec. 101.107. RETURN OF BALLOT. (a) Requires a voter described in Section 101.001(2)(A) or (B) to be voting from outside the voter's county of residence. Requires a voter described by Section 101.001(2)(C) to be voting from outside the United States.

(b) Requires a voter who receives a ballot under this subchapter to return the ballot in the same manner as required under Section 101.057 and, except as provided by Chapter 105 (Voting by Military Personnel or Other Persons Overseas), and prohibits return of the ballot by electronic transmission.

(c) Provides that a ballot that is not returned as required by this section is considered a ballot not timely returned and is not sent to the early voting ballot board for processing.

(d) Provides that the deadline for the return of a ballot under this section is the same deadline as provided in Section 86.007 (Deadline for Returning a Marked Ballot), Election Code.

Sec. 101.108. TRACKING OF BALLOTING MATERIALS. Requires SOS 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. Requires each county that sends ballots to FPCA registrants to provide information required by SOS to implement the system.

Sec. 101.109. RULES. (a) Authorizes SOS to adopt rules as necessary to implement this subchapter.

(b) Authorizes SOS to provide for an alternative secure method of electronic ballot transmission under this subchapter instead of transmission by e-mail.

Deletes existing Section 101.013 (Designation of Secretary of State).

SECTION 2. Amends Section 2.025, Election Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Requires that a runoff election, except as provided by Subsection (d) or as otherwise provided by this code, 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.

(d) Requires that a runoff election for a special election to fill a vacancy in Congress or a special election to fill a vacancy in the legislature to which Section 101.104 applies 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.

SECTION 3. Amends Section 3.005(c), Election Code, to provide 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 before the election, rather than the 70th day before the election, and 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 the election. Makes nonsubstantive changes.

SECTION 4. Amends Section 41.001(a), Election Code, to require that each general or special election in this state, except as otherwise provided by this subchapter, be held on the second Saturday in May in an odd-numbered year, or the first Tuesday after the first Monday in November.

SECTION 5. Amends Section 41.0052(a), Election Code, to authorize the governing body of a political subdivision other than a county to, not later than December 31, 2012, rather than December 31, 2005, change the date on which it holds its general election for officers to another authorized uniform election date.

SECTION 6. Amends Section 41.007(b), Election Code, to provide that the runoff primary election date is the fourth Tuesday in May, rather than the second Tuesday in April, following the general primary election.

SECTION 7. Amends Section 65.051, Election Code, by adding Subsection (c), to provide that Section 1.006 does not apply to this section.

SECTION 8. Amends Section 86.004(b), Election Code, to require that the balloting materials for a voter who indicates on the application for a ballot to be voted by mail or the FPCA that the voter is eligible to vote early by mail as a consequence of the voter's being outside the United States, for an election to which Section 101.104 applies, rather than the general election for state and county offices, be mailed on or before the later of the 45th day before the election or by the seventh calendar day after the date the clerk receives the application.

SECTION 9. Amends Section 86.011(b), Election Code, to require the election clerk, if the return is timely, to enclose the carrier envelope and the voter's early voting ballot application in a jacket envelope and to also include in the jacket envelope a copy of the voter's FPCA if the ballot

is voted under Chapter 101; and the signature cover sheet, if the ballot is voted under Chapter 105.

SECTION 10. Amends Subchapter B, Chapter 87, Election Code, by adding Section 87.0223, as follows:

Sec. 87.0223. TIME OF DELIVERY: BALLOTS SENT OUT BY REGULAR MAIL AND E-MAIL. (a) Prohibits the clerk, if the early voting clerk has provided a voter a ballot to be voted by mail by both regular mail and e-mail under Subchapter C, Chapter 101, from delivering a jacket envelope containing the early voting ballot voted by mail by the voter to the early voting ballot board (board) until both ballots are returned, or the deadline for returning market ballots under Section 86.007 has passed.

(b) Requires the early voting clerk, if both the ballot provided by regular mail and the ballot provided by e-mail are returned before the deadline, to deliver only the jacket envelope containing the ballot provided by e-mail to the board. Provides that the ballot provided by regular mail be considered to be a ballot not timely returned.

SECTION 11. Amends Section 87.041, Election Code, by adding Subsection (f), as follows:

(f) Requires the board, in making the determination under Subsection (b)(2) for a ballot cast under Chapter 101 or 105, to compare the signature on the carrier envelope or signature cover sheet with the signature of the voter on the federal postcard application. Requires the board to accept the ballot if the board determines that the signatures could have been made by the same person.

SECTION 12. Amends Section 87.043, Election Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Requires the board to place the carrier envelopes containing rejected ballots in an envelope and to seal the envelope. Authorizes more than one envelope to be used if necessary. Requires the board to keep a record of the number of rejected ballots in each envelope.

(d) Requires that a notation be made on the carrier envelope of any ballot that was rejected after the carrier envelope was opened and include the reason the envelope was opened and the ballot was rejected.

SECTION 13. Amends Section 87.0431, Election Code, to require the presiding judge of the board, not later than the 10th day after election day, to deliver written notice of the reason for the rejection of a ballot to the voter at the residence address on the ballot application. Requires the presiding judge, if the ballot was transmitted to the voter by e-mail under Subchapter C, Chapter 101, to also provide the notice to the e-mail address to which the ballot was sent.

SECTION 14. Amends Section 87.044(a), Election Code, to require the board, for a ballot voted under Chapter 101 or 105, to place the copy of the voter's federal postcard application or signature cover sheet in the same location as the carrier envelope.

SECTION 15. Amends Section 105.003, Election Code, to require SOS 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 certain elections, including an election for office for which balloting materials are authorized to be sent under Section 101.104.

SECTION 16. Amends Section 142.010(b), Election Code, to require the certifying authority, not later than the 68th, rather than later than the 55th day, before general election day, to deliver the certification to the authority responsible for having the official ballot prepared in each county in which the candidate's name is to appear on the ballot.

SECTION 17. Amends Section 143.007(c), Election Code, to provide that for an election to be held on the date the general election for state and county officers, the day of the filing deadline is the 78th, rather than 70th, day before the election day, and a uniform election date other than the date of the general election for state and county officers, the day of the filing deadline is the 71st day before election.

SECTION 18. Amends Section 144.005(d), Election Code, to make conforming changes.

SECTION 19. Amends Section 144.006(b), Election Code, to provide that for an election to be held on the date the general election for state and county officers, the day of the filing deadline is the 78th, rather than 67th, day before the election day, and a uniform election date other than the date of the general election for state and county officers, the day of the filing deadline is the 71st day before election.

SECTION 20. Amends Section 145.092(f), Election Code, to provide that a candidate in an election for which the filing deadline for an application for a place on the ballot is not later than 5 p.m. of the 78th, rather than 70th, day before election day is prohibited from withdrawing from the election after 5 p.m. of the 71st, rather than 67th, day before election day.

SECTION 21. Amends Section 145.094(a), Election Code, to require that the name of a candidate be omitted from the ballot if the candidate meets certain requirements, including withdraws or is declared ineligible before 5 p.m. of the 71st, rather than 67th, day before election day, in an election subject to Section 145.092(f).

SECTION 22. Amends Section 145.096(a), Election Code, to require that a candidate's name, except as provided by Subsection (b) (relating to requiring that the candidate's name to be placed on the runoff election ballot, if a candidate in a runoff election dies or is declared ineligible before runoff election day), be placed on the ballot if the candidate meets certain conditions, including being declared ineligible after 5 p.m. of the 71st day, rather than 67th day, before election day in an election subsection to Section 145.092(f).

SECTION 23. Amends Sections 146.025(a) and (b), Election Code, as follows:

(a) Requires that a declaration of write-in candidacy be filed not later than 5 p.m. of the 78th, rather than the 70th, day before general election day, except as otherwise provided by this code.

(b) Authorizes a declaration of write-in candidacy for the office sought by the deceased or ineligible candidate, if the candidate whose name is to appear on the general election ballot dies or is declared ineligible after the third day before the date of the filing deadline prescribed by Subsection (a), to be filed not later than 5 p.m. of the 75th, rather than the 67th, day before election day.

SECTION 24. Amends Section 146.029(c), Election Code, to require the certifying authority, not later than the 68th, rather than the 62nd, day before election day, to deliver the certification to the authority responsible for having the official ballot prepared in each county in which the office sought by the candidate is to be voted on.

SECTION 25. Amends Section 146.054(b), Election Code, to provide that for an election to be held on the date of the general election for the state and county officers, the day of the filing deadline is the 74th, rather than the 67th, day before election day, and a uniform election date other than the date of the general election for state and county officers, the day of the filing deadline is the 71st day before election day. Makes nonsubstantive changes.

SECTION 26. Amends Section 161.008(b), Election Code, to require SOS, not later than the 68th day, rather than the 62nd day, before general election day, to deliver the certification to the authority responsible for having the official general election ballot prepared in each county in which the candidate's name is to appear on the ballot.

SECTION 27. Amends Section 172.023(a), Election Code, to require that an application for a place on the general primary election ballot be filed not later than 6 p.m. on the third Monday in December of an odd-numbered year, rather than January 2 in the primary election year, unless the filing deadline is extended under Subchapter C.

SECTION 28. Amends Section 172.082(c), Election Code, to require that the drawing be conducted at the county seat not later than the fourth Tuesday in December of an odd-numbered year, rather than the 53rd day before general primary election.

SECTION 29. Amends Section 192.033(b), Election Code, to require SOS to deliver the certification to the authority responsible for having the official ballot prepared in each county before the later of the 68th, rather than 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.

SECTION 30. Amends Section 201.051(b), Election Code, to require the election, for a vacancy to be filled by a special election to be held on the date of the general election for state and county officer, to be ordered not later than the 78th, rather than the 70th, day before election day.

SECTION 31. Amends Section 201.054(f), Election Code, to provide that for a special election to be held on the date of the general election for state and county officers, the day of the filing deadline is the 75th, rather than 67th, day before election day.

SECTION 32. Amends Sections 11.055(a) and (c), Election Code, as follows:

(a) Requires that an application of a candidate for a place on the ballot, except as provided by Subsection (c), be filed not later than 5 p.m. of the 71st, rather than 62nd, day before the date of the election.

(c) Provides that for an election to be held on the date of the general election for state and county officers, the date of the filing deadline is the 78th, rather than the 70th, day before election day.

SECTION 33. Amends Section 11.056(b), Education Code, to require that a declaration of write-in candidacy be filed not later than the deadline prescribed by Section 146.054, Election Code, for a write-in candidate in a city election, rather than requiring that a declaration of write-in candidacy, except as provided by Subsection (c), be filed not later than 5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed.

SECTION 34. Amends Section 130.0825(b), Education Code, to make conforming changes.

SECTION 35. Amends Section 285.131(d), Health and Safety Code, to require that a declaration of write-in candidacy be filed not later than the deadline prescribed by Section 146.054, Election Code, for a write-in candidate in a city election, rather than requiring that a declaration of write-in candidacy, except as provided by Subsection (g), be filed not later than 5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed.

SECTION 36. Amends Section 63.0945(d), Water Code, to require that a declaration of write-in candidacy be filed not later than the deadline prescribed by Section 146.054, Election Code, for a write-in candidate in a city election, rather than requiring that a declaration of write-in candidacy, except as provided by Subsection (f), be filed not later than 5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed.

SECTION 37. Repealer: Section 41.0052(a-1) (relating to authorizing the governing body of a political subdivision to change the date on which it holds its general election under certain conditions), Election Code;

Repealers: Sections 11.056(e) (relating to the date of the filing deadline when the election is held on the date of the general election) and 130.0825(e) (relating to the date of the

filing deadline when the election is held on the date of the general election), Education Code;

Repealer: Section 285.131(g) (relating to the date of the filing deadline when the election is held on the date of the general election), Health and Safety Code; and

Repealer: Section 63.0945 (Write-in Candidates), Water Code.

SECTION 38. Effective date: September 1, 2011.