

SUBJECT: Allowing certain military voters to receive and cast a ballot electronically

COMMITTEE: Elections — favorable without amendment

VOTE: 8 ayes — L. Taylor, Hernandez Luna, Berman, Branch, Burkett, Isaac,  
P. King, Veasey

0 nays

1 absent — Farias

WITNESSES: For — Ed Johnson, Harris County Clerk Office; Michael Vasquez, Texas Conference of Urban Counties; Skipper Wallace, Texas Republican County Chairs Association; (*Registered, but did not testify*: Robert, Antill, King Street Patriots; Mary Beaver; Dana DeBeauvoir, Legislative Committee County & District Clerks Association; Rachel Delgado, Galveston County Tea Party, Inc.; Rosemary Edwards, Travis County Republican Party; Dean Wright, New Revolution Now Institute, Inc.)

Against — (*Registered, but did not testify*: Sonia Santana, ACLU-Texas)

On — Elizabeth Hanshaw Winn, Secretary of State

BACKGROUND: Texas Administrative Code, Title 1, Part 4, sec. 81.39 authorizes the secretary of state to e-mail ballots to absent uniformed services voters, including their spouse and dependents, that are absent from their county of residence and overseas during a federal election. The federal Military and Overseas Voter Empowerment (MOVE) Act allows uniformed services voters temporarily residing out their county of residence and U.S. citizens who reside overseas to request by e-mail the e-mail transmission of balloting materials for federal elections from the early voting clerk. The email transmission of ballots is limited to federal elections unless the election is part of a joint election ballot that contains a federal office. Ballots for other elections are mailed.

Election Code, sec. 105.001 authorizes the electronic transmission of a completed ballot early voting ballot by telephonic facsimile machine (FAX) or similar electronic means if the person is in the U.S. armed forces on active duty overseas and is in an area in which the person is eligible to

receive hostile fire pay or imminent danger pay or is in a designated combat zone.

DIGEST:

HB 1502 would authorize military voters on active duty overseas to receive and cast a ballot electronically. The secretary of state would be required to prescribe procedures to allow the electronic transmission of balloting materials to, and electronic transmission of a voted ballot by, a member of the armed forces of the United States who was on active duty overseas for the general primary election, a runoff primary election, or the general election for state and county officers.

The procedure would have to require that the early voting clerk of a county send balloting materials to an e-mail address in a form and manner prescribed by the secretary of state if the voter:

- was an FPCA (federal postcard applicant) registrant and eligible for early voting by mail under current law;
- provided a current address located outside the United States and was voting from outside the United States;
- provided an e-mail address that contained the voter's name and the suffix ".mil;" and
- requested that balloting materials be sent by electronic transmission.

The procedure would have to provide for the verification of the voter and the security of the transmission and require the early voting clerk to maintain a record of each ballot received under the provisions of the bill.

An e-mail address would be confidential and not constitute public information. The early voting clerk would be required to ensure that an e-mail address provided was excluded from disclosure.

If a voter returned both a voted ballot mailed to the voter under the federal Uniformed and Overseas Citizens Absentee Voting Act and a voted ballot transmitted electronically, only the ballot that was transmitted electronically could be counted.

The secretary of state would be authorized to adopt necessary rules to implement these procedures.

Election Code, sec. 105.001 relating to transmitting a completed ballot by telephonic facsimile machine (FAX), would be repealed.

The bill would take effect September 1, 2011.

**SUPPORTERS  
SAY:**

Under current law, it is extremely difficult and time-consuming for overseas armed forces members to participate in elections. There have always been problems with getting voted mail ballots from military voters in time to be counted. HB 1502 would make voting for overseas active-duty military voters more convenient and expedited, ensuring that their votes were timely counted. One of the key components of the bill would be the requirement of a military e-mail address, which would contain encryption and other security measures. Some county elections officials say they would be comfortable with Internet transmission using a secure military e-mail address.

Even though members of the armed forces who are in combat zones are permitted to send their voted ballot by FAX, there is not always a FAX machine that is convenient to use or that offers privacy to vote. There may not be a FAX machine available at all. Many armed forces members only have the option of mailing in their voted ballot. Being able to send a voted ballot over the Internet would cut down the time it takes to receive a ballot by about one or two weeks, which is how long it takes if the ballot is sent by mail. Military voters who are risking their lives to defend and protect the country deserve to have expanded voting opportunities.

**OPPONENTS  
SAY:**

Expanding the voting franchise for the military voters stationed overseas is a laudable goal, but submitting a voted ballot via the Internet would not be secure and would be open to hacking and manipulation. Several pilot projects around the country that have attempted to prove that Internet transmission of balloting materials is secure were easily hacked. The state of the art for software and security is not in place yet. Any current verification system in place now simply would not be secure enough.

Some claim that a secure e-mail would be enough to ensure the security of the transmission, but there would have to be a secure channel of transmission, which, at this time, cannot be guaranteed.

Currently, military voters can FAX voted ballots to their early voting clerk, so a more secure option already is available.

NOTES:

A similar bill, HB 2173 by Torres, which would establish a pilot program for electronic transmission of ballots to and from overseas military voters, is on today's General State Calendar.

According to the bill's fiscal note, no significant fiscal implications to the state is anticipated. Tarrant County anticipates a cost of \$27,000 to pay three additional temporary employees. Bexar County reported that there would be some costs associated with managing electronic ballots but that the fiscal impact would not be significant.