

- SUBJECT:** Pilot program for military voters to cast a ballot electronically
- COMMITTEE:** Elections — favorable, without amendment
- VOTE:** 9 ayes — L. Taylor, Hernandez Luna, Berman, Branch, Burkett, Farias, Isaac, P. King, Veasey
- 0 nays
- WITNESSES:** For — Dana DeBeauvoir, Legislative Committee of County and District Clerks Association of Texas; Don Lee, Texas Conference of Urban Counties; Morgan Little; (*Registered, but did not testify:* Rosemary Edwards; Glen Shuffler, County and District Clerks Association of Texas; Joy Streater, County and District Clerks Association; Skipper Wallace, Texas Republican County Chairs Association; Dean Wright, New Revolution Now Institute, Inc)
- Against — (*Registered, but did not testify:* Stewart Snider, League of Women Voters of Texas)
- On — Jacquelyn Callanen, Bexar County Elections; Ann McGeehan, 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 outside 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 electronic 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. 101 sets forth the procedures for voting by resident federal postcard applicant. A federal postcard application (FPCA) is an application for a ballot to be voted under the provisions of the federal Uniformed and Overseas Citizens Absentee Voting Act.

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 2173 would establish a pilot program for the electronic transmission of ballots to and from overseas and military voters. By July 1, 2012, the secretary of state would have to prescribe procedures to implement a pilot program to allow balloting materials to be transmitted electronically to a voter and to allow a voted ballot to be sent electronically by voter. The voter would have to be located outside the territorial limits of the United States and the District of Columbia for the general election for state and county officers in 2012.

A county could participate in the pilot program if:

- the early voting clerk of the county made a request to the secretary of state to participate; and
- the secretary of state approved the request.

The procedure would have to require that the early voting clerk of a participating 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 registrant and was eligible to early vote by mail under current law;
- provided a current address that was located outside the United States and was voting from outside the United States;
- provided an e-mail address; 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 these provisions.

An e-mail address provided under the provisions of the bill would be confidential and would not constitute public information. The early voting

clerk would be required to ensure that an e-mail address 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 sent electronically would be counted.

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

At the conclusion of the pilot program, but no later than February 15, 2013, the secretary of state would be required to report to the Legislature. The report could include recommendations relating to the continued feasibility of providing electronic balloting materials to military and overseas voters and suggestions for permanent statutory authority on this issue. This section would expire February 16, 2013.

The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

Under current law it is extremely difficult for overseas military voters to participate in elections. There have always been problems with getting voted ballots from military voters in time to be counted. HB 2173 would create a pilot program allowing certain military and overseas voters to receive and cast a ballot electronically. It would be limited to the 2012 general election for state and county officers. If it were determined to be a workable process, it could then be taken statewide. It would give democracy a 21st century makeover to make voting more accessible.

Currently, 26 other states allow some form of electronic submission of ballots by voters who are eligible under federal law to vote in this way.

Based on industry experts, there is technology in place that uses cryptographic technology and digital signatures that would ensure the highest levels of privacy, integrity, accessibility, and confidential voting for the voter. Once the ballot was submitted, if the unique signature were correct, the ballot would be accepted by the verification system. If the signature were not correct, the ballot would be rejected. Other programs used by other states, including Texas, have been proven to be safe, secure, verifiable, auditable.

Based on a survey of seven states by the Congressional Research Service, an average of 28 percent of military and overseas ballots in the 2008 elections were returned as undeliverable, lost, or rejected. Furthermore, members of the armed forces are almost twice as likely to experience registration problems and give up because they do not receive ballots on time. The bill would expedite the voting process and ensure that troops who took the time and effort to vote would have their votes counted.

Even though current law allows military voters to send their voted ballot by FAX, there is not always a FAX machine available or one that provides voting privacy. The pilot program would determine if electronic transmission was a better alternative and just as safe as mailing a voted ballot, but it would not take as long. It can take up to two weeks for a mailed ballot to arrive from overseas, especially if it is coming from a combat zone.

OPPONENTS
SAY:

While expanding the voting franchise for the military overseas is a laudable goal, allowing voted ballots to be submitted over the Internet would not be secure. It would be open to hacking and manipulation by bad actors. Several pilot programs across the country very similar to the one being proposed by HB 2173 were easily hacked into. The state of the art for software, verification, and security is simply not in place yet.

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 1502 by White, which would allow certain military voters to receive and cast a ballot electronically, is on today's General State Calendar today.