

## **BILL ANALYSIS**

Senate Research Center  
82R763 DRH-D

S.B. 100  
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As Filed

### **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.

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. S.B. 100 also requires 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. 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.

As proposed, 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.).

#### 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. Makes no further changes to this section.

Sec. 101.055. FPCA VOTER REGISTRATION. Redesignates existing Section 101.006 as Section 101.055. Deletes existing designation of Subsection (a) and 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 PFC A 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 federal postcard application, and if the requestor is a person described by Section 101.001(2)(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) or (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 and is voting from 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), has provided a current mailing address that is located outside the requestor's county of residence and is voting from outside that county;

(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 held statewide; 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 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.

(b) Provides that a ballot 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.

(c) 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 or political subdivision that sends ballots to FPCA registrants to provide information required by SOS to implement the system.

Sec. 101.109. **RULES.** Authorizes SOS to adopt rules as necessary to implement this subchapter.

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

**SECTION 2.** 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 federal postcard application if the ballot is voted under Chapter 101; and the signature cover sheet, if the ballot is voted under Chapter 105.

**SECTION 3.** 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 4. 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 5. 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 6. 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 7. 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 8. Effective date: September 1, 2011.