

SUBJECT: Moving the general primary election date, implementing the MOVE Act

COMMITTEE: Defense and Veterans' Affairs — committee substitute recommended

VOTE: 8 ayes — Pickett, Sheffield, Berman, Farias, Landtroop, Perry, Scott,
V. Taylor

0 nays

1 absent — Flynn

SENATE VOTE: On final passage, April 14 — 29-1 (Nelson)

WITNESSES: For — None

Against — None

On — Ann McGeehan, Secretary of State

BACKGROUND: Members of the uniformed services and U.S. citizens who live abroad are eligible to register and vote absentee in federal elections under the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA).

In 2009, Congress overhauled UOCAVA by enacting the Military and Overseas Voter Empowerment (MOVE) Act. A major feature of the MOVE Act is its requirement that all states send absentee ballots to uniformed and overseas citizens at least 45 days before an election, unless a state has received a waiver from the federal government. In response to the MOVE Act, some states have moved their primary election date in order to meet the 45-day deadline.

MOVE also requires states to establish procedures to allow UOCAVA voters to request registration and absentee ballot applications electronically and by mail.

Texas Administrative Code, Title 1, Part 4, ch. 81 authorizes the secretary of state (SOS) to e-mail ballots to uniformed services voters, including their spouse and dependents, that are overseas during a federal election.

Election Code, ch. 101 sets forth the procedures for early voting by mail using federal postcard applications (FPCAs). Sec. 41.001 sets forth the uniform election dates. With certain exceptions, each general or special election in Texas is held on the second Saturday in May or the first Tuesday after the first Monday in November.

Election Code, sec. 41.007 stipulates that the general primary election date is the first Tuesday in March in each even-numbered year. The runoff primary election date is the second Tuesday in April after the general primary election, and the presidential primary election date is the first Tuesday in March in each presidential election year. Sec. 172.023 stipulates that an application for a place on the general primary election ballot must be filed no later than January 2 in the primary election year.

DIGEST:

CSSB 100 would move the general primary election date to the first Tuesday in April and the runoff to the third Tuesday in June. The presidential primary election date would move to the first Tuesday in April in each presidential election year.

The bill would require, with certain exceptions, each general or special election in Texas 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. A county elections administrator would not be 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.

The bill would extend the deadline to December 31, 2012, for a political subdivision other than a county that held its general election for officers on a date other than the November uniform election date to change the election date to the November uniform election date.

A political subdivision that before September 1, 2011, held its general election for officers on the uniform election date in May, or that was required by other law to hold its general election for officers on that date, would have 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 changed the date.

CSSB 100 would authorize a home-rule city to implement the changes authorized by the bill by adopting a resolution. The change would supersede a city charter provision that required a different general election date. A holdover of a member of a city governing body, in accordance with state constitutional provisions requiring officers to serve until their successors were qualified, as the term of office could be conformed to a new election date, would not constitute a vacancy for purposes relating to vacancies in the Texas Constitution.

Implementing the federal MOVE Act. CSSB 100 would implement the federal MOVE Act and authorize the e-mail transmission of balloting materials to a member of the armed forces or merchant marines of the U.S., or their spouse or dependent, or a person domiciled in this state but temporarily living outside the U.S.

The SOS would be the designated state office to provide information about voter registration procedures and absentee ballot procedures, including procedures related to the federal write-in absentee ballot, to be used by individuals eligible to vote under the federal MOVE Act. The SOS would be the state coordinator between military and overseas voters and county election officials and could adopt any necessary rules, including rules for an alternate secure method of electronic ballot transmission other than e-mail.

County election officials would have to cooperate with the SOS to ensure that military and overseas voters timely received accurate balloting materials in time for the election

An application for a ballot to be voted by mail would have to be submitted on an official FPCA form and include certain eligibility information. An individual qualified to vote under these provisions could request from the early voting clerk e-mail transmission of balloting materials. The early voting clerk would have to grant this request if:

- the requestor had submitted a valid FPCA and was an overseas voter who provided a current mailing address located outside the U.S. or a military voter who provided a current mailing address outside of his or her county;

- the requestor provided an e-mail address that corresponded to the address on file with the FPCA or on a newly submitted FPCA;
- the request was submitted on or before the seventh day before the date of the election; and
- a marked ballot for the election from the requestor had not been received by the early voting clerk.

An e-mail address would be confidential and would not constitute public information. An early voting clerk would have to ensure that a voter's e-mail address was excluded from public disclosure.

Voter registration. To register to vote under the bill, a person would be required to provide the address of the last place of residence in the state or the person's parent or legal guardian's last place of residence. The registrar would have to register the person at the address provided or assign them an address under prescribed procedures.

Balloting materials. Balloting materials could be e-mailed only for an election in which an office of the federal government was on the ballot, including a primary election or an election to fill a vacancy in the Legislature unless it was ordered as an emergency election or held as an expedited election or was a joint election under either of those circumstances.

Balloting materials sent by e-mail would have to include:

- the appropriate ballot;
- ballot instructions;
- instructions on how to print a return envelope from the federal voting assistance program website and how to create a carrier envelope or signature sheet for the ballot; and
- a list of certified write-in candidates.

Balloting materials could be provided in PDF format, through a scanned format, or by any other method of electronic transmission authorized by the SOS. The SOS would be required to prescribe procedures for the retransmission of materials following an unsuccessful transmission.

Military or overseas voters would have to be voting from outside the voter's county or from outside the U.S. A voter who received a ballot under these provisions would have to return it by mail, common or

contract carrier, or courier. A ballot could not be returned by electronic transmission, with certain exceptions.

The deadline for returning ballots would be the same as the deadline for returning a marked ballot voted by mail. If a ballot was late, it would not be sent to the early voting ballot board for processing. If a ballot was timely, the clerk would have to include in the jacket envelope a copy of the voter's FPCA and the signature cover sheet, if applicable.

For each FPCA registrant accepted to vote, the early voting clerk would have to note on the early voting poll list indicating the voter was an FPCA registrant. The clerk also would have to note on the early voting roster each e-mail of a ballot voted under these provisions. A ballot from an FPCA registrant would not have to be included on the precinct early voting list.

The SOS, in coordinating with local election officials, would be required to implement an electronic free-access system that a person could use to determine, by telephone, e-mail, or over the Internet, whether the FPCA or other registration or ballot application had been received or accepted and whether the person's ballot had been received and its status.

The SOS would have to create a tracking system under which an FPCA registrant could determine whether a voted ballot had been received by the early voting clerk. Each county that sent ballots to these individuals would have to provide information required by the SOS to implement the system.

If the early voting clerk had provided a voter a ballot to be voted by mail by regular mail and e-mail, the clerk could not deliver a jacket envelope containing the early voting ballot until both ballots were returned or the deadline for returning marked ballots had passed. If the ballots provided by regular mail and e-mail were returned before the deadline, the early voting clerk would have to deliver to the board only the jacket envelope containing the ballot provided by e-mail. The ballot provided by regular mail would be considered not timely returned.

In determining whether to accept an early voting ballot by mail when the signature on the carrier envelope certificate was determined to have been executed by someone other than the voter, the early voting ballot board would have to compare the signature on the carrier envelope or signature cover sheet with the signature on the FPCA.

The bill would require 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 would require a notation to be made on the carrier envelope of any ballot rejected after the envelope was opened and to include the reason the envelope was opened and the ballot rejected.

The presiding judge of the early voting ballot board, when providing written notice of the reason for the rejection, would also have to provide the notice to the e-mail address where the ballot was sent.

For ballots from military or overseas voters, the early voting ballot board would have to place the copy of the voter's FPCA or signature cover sheet in the same location as the carrier envelope.

The bill would require the SOS to prescribe procedures to allow a voter who qualified 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.

Change of terms in municipalities. By December 31, 2011, the governing body of the general-law municipality could adopt a resolution changing the length of terms of its members to two years. The resolution would have to specify how the transition from the length of the former term to the modified term was made. The transition would have to begin with the first regular election for members of the governing body that occurred after January 1, 2012, and a member who served on that date would serve the remainder of that term. This provision would expire January 1, 2015.

The bill's provisions would prevail over another act of the 82 Legislature to the extent of any conflict. The SOS would have to adopt rules to implement the bill's provisions, including the adjustment of any affected date, deadline, or procedure. The bill's provisions would not be in effect for an election held on November 8, 2011.

CSHB 100 would make a number of organizational and conforming changes to the Election Code and other statutes related to extending or shortening deadlines, where appropriate, as a result of amending the uniform election and primary election dates.

The bill would take effect on September 1, 2011.

**SUPPORTERS
SAY:**

Texas must comply with the 2009 MOVE Act, which requires states to provide absentee ballots to military personnel and other citizens living overseas at least 45 days before a federal election and to establish rules for the electronic transmission of ballots and a free tracking system for military voters to use to track their ballots. CSSB 100 would be needed to align state election law with the new federal requirements in time for the 2012 elections, or else face possible sanctions from the federal government. Fourteen states or jurisdictions had federal intervention in 2010.

As it stands now, the dates of the filing deadline, presidential primary election, the primary runoff election, and nonpartisan city and school elections are too compressed to comply with the law. To keep the January 2 filing deadline and comply with the federal law, Texas has to shift the party primaries to later in the year.

Additionally, because of rules adopted by the national Republican Party, Texas would need to move its primary to April in order to remain a winner-take-all primary state. Under Texas Republican Party rules, candidates receiving over 50 percent of the presidential primary vote statewide or in a congressional district receive all of the delegates. If Texas retains this system for a March primary, it could risk losing half of its delegates to the national party convention.

Voting is quite often difficult for those on active duty. The distance of military personnel and individuals living temporarily overseas has made it difficult to comply with the elections timeline. The goal is to ensure that military members and their dependents are not disenfranchised when trying to cast a ballot. The federal government has acted in response to concerns that about a quarter of military and overseas ballots were not reaching voters in time.

The real issue is the amount of time needed to request, receive, and return a ballot by mail. It makes it virtually impossible for active military men and women serving overseas to vote in a timely fashion. The bill would authorize ballots to be e-mailed, printed, and returned, but the deadline for returning the ballots would be the same for ballots being voted by mail.

There were several options for moving election and filing dates, but the proposals in the bill would cause the least ripple effect. Keeping the current filing deadline for candidates to apply for a spot on the primary ballot of January 2 would not put candidates in jeopardy of the state's "resign to run" law. The Texas Constitution stipulates that a county officeholder must resign before seeking another office if more than a year is left on his or her term. Officeholders routinely file by January 2 because that leaves less than a year on their current term.

Moving the primary election date would give voters more time to get to know the candidates and to think about the issues. The bill would keep the ability to combine the general and local elections dates on the first Tuesday in November and maintain the May election date in odd-numbered years. Local entities still could hold elections in May of even-numbered years. If the county elections administrator refused to administer the election, the local entities could contract to hold their elections.

The bill would also allow for the adjustment of terms of office for certain cities, moving the terms from three years to two to enable them to comply more easily.

**OPPONENTS
SAY:**

The vast majority of cities and school districts hold their nonpartisan elections on the May uniform election date. Schools want their elections held before summer, and cities want their elections before start their budgeting processes. The bill would allow these entities to have the May uniform election date in odd-numbered years or be forced to move these elections to the uniform election date in November.

The bill would authorize local entities to hold an election on the May election date in even-numbered years and although it would not require county election administrators to supply voting machines, this has been standard practice. County election administrators have said that it would be too difficult to supply electronic voting machines to local entities wanting to hold an election in May of even-numbered years. As a result, local entities that currently conduct an election every May because of staggered terms of office would be forced to switch to the November date.

In addition to cities and school districts, many other local entities hold elections on the May election date, including water districts, municipal utility districts, and community colleges. To coordinate the administration

and expense of holding a local election would be very difficult and expensive.

Under current law there are two election date options – May and November. Local election officials have the option to put propositions and bond proposals on the May ballot and other measures and member elections on the ballot in November. The proposals in the bill would give local officials less flexibility when responding to the needs of the community.

If the November uniform date was chosen, nonpartisan issues could be drowned out by the partisan ones, especially with straight-party voting, and the ballots would be very large. A November date could force a runoff election to occur during the holiday season, when resources and manpower are scarce.

Moving the primary election date later in the year would rob Texas of clout in the presidential primaries. It should remain a part of Super Tuesday in March.

**OTHER
OPPONENTS
SAY:**

A better alternative to changing the length of terms for general-law municipalities would be to allow for the election of all members of the governing body at the same election, rather than simply authorizing the entities to change the length of the terms to two years.

NOTES:

The House committee version of the bill differs from the Senate-passed version by establishing the runoff primary election date as the third Tuesday in June rather than the fourth Tuesday in May. The substitute also contains provisions relating to the general primary election date and the presidential primary election date that were not included in the Senate-passed version.

According to the bill's fiscal note, the fiscal implications cannot be determined at this time. It is assumed that if the primary runoff election date is moved from the second Tuesday in April to the third Tuesday in June, several public schools used for the elections would be closed for the summer and could charge a fee. This could cost the state about \$86,000 to \$260,000.

A similar bill, HB 2173 by Torres, which has many of the same provisions, including the implementation of the federal MOVE Act, passed the House by 142-1 on May 5 and passed the Senate on May 23.