

By: Van de Putte

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A BILL TO BE ENTITLED

# 1 AN ACT

2 relating to the adoption of voting procedures necessary to  
3 implement the federal Military and Overseas Voter Empowerment Act.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 101, Election Code, is amended to read as  
6 follows:

7 CHAPTER 101. VOTING BY RESIDENT FEDERAL POSTCARD APPLICANT

## SUBCHAPTER A. GENERAL PROVISIONS

9                   Sec. 101.001. ELIGIBILITY. A person is eligible for early  
10 voting by mail as provided by this chapter if:

14 (2) the person is:

15 (A) a member of the armed forces of the United  
16 States, or the spouse or a dependent of a member;

17 (B) a member of the merchant marine of the United  
18 States, or the spouse or a dependent of a member; or

19 (C) domiciled in this state but temporarily  
20 living outside the territorial limits of the United States and the  
21 District of Columbia.

22 Sec. 101.002. GENERAL CONDUCT OF VOTING. Voting under this  
23 chapter shall be conducted and the results shall be processed as  
24 provided by Subtitle A for early voting by mail, except as otherwise

1 provided by this chapter.

2 Sec. 101.003. DEFINITIONS. [FORM AND CONTENTS OF  
3 ~~APPLICATION.~~ (a) ~~An application for a ballot to be voted under~~  
4 ~~this chapter must:~~

5 [1) ~~be submitted on an official federal postcard~~  
6 ~~application form, and~~

7 [2) ~~include the information necessary to indicate~~  
8 ~~that the applicant is eligible to vote in the election for which the~~  
9 ~~ballot is requested.~~

10 [(b)] In this chapter:

11 (1) "Federal [~~federal~~] postcard application" means  
12 an application for a ballot to be voted under this chapter submitted  
13 on the official federal form prescribed under the federal Uniformed  
14 and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff  
15 et seq.).

16 (2) "FPCA registrant" means a person registered to  
17 vote under Section 101.055.

18 Sec. 101.004. NOTING FPCA REGISTRATION ON POLL LIST. For  
19 each FPCA registrant accepted to vote, a notation shall be made  
20 beside the voter's name on the early voting poll list indicating  
21 that the voter is an FPCA registrant.

22 Sec. 101.005. NOTING FPCA REGISTRATION AND E-MAIL ON EARLY  
23 VOTING ROSTER. The entry on the early voting roster pertaining to a  
24 voter under this chapter who is an FPCA registrant must include a  
25 notation indicating that the voter is an FPCA registrant. The early  
26 voting clerk shall note on the early voting by mail roster each  
27 e-mail of a ballot under Subchapter C.

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

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

12        SUBCHAPTER B. SUBMISSION OF FEDERAL POSTCARD APPLICATION

13        Sec. 101.051. FORM AND CONTENTS OF APPLICATION. An  
14 application for a ballot to be voted under this subchapter must:

15        (1) be submitted on an official federal postcard  
16 application form; and

17        (2) include the information necessary to indicate that  
18 the applicant is eligible to vote in the election for which the  
19 ballot is requested.

20        Sec. 101.052 [101.004]. SUBMITTING APPLICATION. (a) A  
21 federal postcard application must be submitted to the early voting  
22 clerk for the election who serves the election precinct of the  
23 applicant's residence.

24        (a-1) A federal postcard application must be submitted by:

25        (1) mail; or

26        (2) electronic transmission of an image of the  
27 application under procedures prescribed by the secretary of state.

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10 (d) A timely application that is addressed to the wrong  
11 early voting clerk shall be forwarded to the proper early voting  
12 clerk not later than the day after the date it is received by the  
13 wrong clerk.

14 (e) An applicant who otherwise complies with applicable  
15 requirements is entitled to receive a full ballot to be voted by  
16 mail under this chapter if:

17 (1) the applicant submits a federal postcard  
18 application to the early voting clerk on or before the 20th day  
19 before election day; and

20 (2) the application contains the information that is  
21 required for registration under Title 2.

22 (f) The applicant is entitled to receive only a federal  
23 ballot to be voted by mail under Chapter 114 if:

24 (1) the applicant submits the federal postcard  
25 application to the early voting clerk after the date provided by  
26 Subsection (e)(1) and before the sixth day before election day; and

27 (2) the application contains the information that is

1 required for registration under Title 2.

2 (g) An applicant who submits a federal postcard application  
3 to the early voting clerk on or after the sixth day before election  
4 day is not entitled to receive a ballot by mail for that election.

5 (h) If the applicant submits the federal postcard  
6 application within the time prescribed by Subsection (f)(1) and is  
7 a registered voter at the address contained on the application, the  
8 applicant is entitled to receive a full ballot to be voted by mail  
9 under this chapter.

10 (i) Except as provided by Subsections (l) and (m), for  
11 purposes of determining the date a federal postcard application is  
12 submitted to the early voting clerk, an application is considered  
13 to be submitted on the date it is placed and properly addressed in  
14 the United States mail. An application mailed from an Army/Air  
15 Force Post Office (APO) or Fleet Post Office (FPO) is considered  
16 placed in the United States mail. The date indicated by the post  
17 office cancellation mark, including a United States military post  
18 office cancellation mark, is considered to be the date the  
19 application was placed in the mail unless proven otherwise. For  
20 purposes of an application made under Subsection (e):

21 (1) an application that does not contain a  
22 cancellation mark is considered to be timely if it is received by  
23 the early voting clerk on or before the 15th day before election  
24 day; and

25 (2) if the 20th day before the date of an election is a  
26 Saturday, Sunday, or legal state or national holiday, an  
27 application is considered to be timely if it is submitted to the

1 early voting clerk on or before the next regular business day.

2 (j) If the early voting clerk determines that an application  
3 that is submitted before the time prescribed by Subsection (e)(1)  
4 does not contain the information that is required for registration  
5 under Title 2, the clerk shall notify the applicant of that fact.  
6 If the applicant has provided a telephone number or an address for  
7 receiving mail over the Internet, the clerk shall notify the  
8 applicant by that medium.

9 (k) If the applicant submits the missing information before  
10 the time prescribed by Subsection (e)(1), the applicant is entitled  
11 to receive a full ballot to be voted by mail under this chapter. If  
12 the applicant submits the missing information after the time  
13 prescribed by Subsection (e)(1), the applicant is entitled to  
14 receive a full ballot to be voted by mail for the next election that  
15 occurs:

16 (1) in the same calendar year; and  
17 (2) after the 30th day after the date the information  
18 is submitted.

19 (l) For purposes of determining the end of the period that  
20 an application may be submitted under Subsection (f)(1), an  
21 application is considered to be submitted at the time it is received  
22 by the early voting clerk.

23 (m) The secretary of state by rule shall establish the date  
24 on which a federal postcard application is considered to be  
25 electronically submitted to the early voting clerk.

26 Sec. 101.053 [101.0041]. ACTION BY EARLY VOTING CLERK ON  
27 CERTAIN APPLICATIONS. The early voting clerk shall notify the

1 voter registrar of a federal postcard application submitted by an  
2 applicant that states a voting residence address located outside  
3 the registrar's county.

4       Sec. 101.054 [~~101.005~~]. APPLYING FOR MORE THAN ONE ELECTION  
5 IN SAME APPLICATION. (a) A person may apply with a single federal  
6 postcard application for a ballot for any one or more elections in  
7 which the early voting clerk to whom the application is submitted  
8 conducts early voting.

9       (b) An application that does not identify the election for  
10 which a ballot is requested shall be treated as if it requests a  
11 ballot for:

12           (1) each general election in which the clerk conducts  
13 early voting; and

14           (2) the general primary election if the application  
15 indicates party preference and is submitted to the early voting  
16 clerk for the primary.

17           (c) An application shall be treated as if it requests a  
18 ballot for:

19           (1) a runoff election that results from an election  
20 for which a ballot is requested; and

21           (2) each election for a federal office, including a  
22 primary or runoff election, that occurs on or before the date of the  
23 second general election for state and county officers that occurs  
24 after the date the application is submitted.

25           (d) An application requesting a ballot for more than one  
26 election shall be preserved for the period for preserving the  
27 precinct election records for the last election for which the

1 application is effective.

2 Sec. 101.055 [~~101.006~~]. FPCA VOTER REGISTRATION. [(a)]  
3 The submission of a federal postcard application that complies with  
4 the applicable requirements by an unregistered applicant  
5 constitutes registration by the applicant:

6 (1) for the purpose of voting in the election for which  
7 a ballot is requested; and

8 (2) under Title 2 unless the person indicates on the  
9 application that the person is residing outside the United States  
10 indefinitely.

11 [(b) In this chapter, "FPCA registrant" means a person  
12 registered to vote under this section.]

13 Sec. 101.056 [~~101.007~~]. METHOD OF PROVIDING BALLOT;  
14 REQUIRED ADDRESS. (a) The balloting materials provided under this  
15 subchapter [~~chapter~~] shall be airmailed to the voter free of United  
16 States postage, as provided by the federal Uniformed and Overseas  
17 Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et seq.), in  
18 an envelope labeled "Official Election Balloting Material - via  
19 Airmail." The secretary of state shall provide early voting clerks  
20 with instructions on compliance with this subsection.

21 (b) The address to which the balloting materials are sent to  
22 a voter must be:

23 (1) an address outside the county of the voter's  
24 residence; or

25 (2) an address in the United States for forwarding or  
26 delivery to the voter at a location outside the United States.

27 (c) If the address to which the balloting materials are to

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1 be sent is within the county served by the early voting clerk, the  
2 federal postcard application must indicate that the balloting  
3 materials will be forwarded or delivered to the voter at a location  
4 outside the United States.

5 Sec. 101.057 [~~101.008~~]. RETURN OF VOTED BALLOT. A ballot  
6 voted under this subchapter [~~chapter~~] may be returned to the early  
7 voting clerk by mail, common or contract carrier, or courier.

8 ~~[Sec. 101.009. NOTING FPCA REGISTRATION ON POLL LIST. For  
9 each FPCA registrant accepted to vote, a notation shall be made  
10 beside the voter's name on the early voting poll list indicating  
11 that the voter is an FPCA registrant.]~~

12 ~~[Sec. 101.010. NOTING FPCA REGISTRATION ON EARLY VOTING  
13 ROSTER. The entry on the early voting roster pertaining to a voter  
14 under this chapter who is an FPCA registrant must include a notation  
15 indicating that the voter is an FPCA registrant.]~~

16 ~~[Sec. 101.011. EXCLUDING FPCA REGISTRANT FROM PRECINCT  
17 EARLY VOTING LIST. A person to whom a ballot is provided under this  
18 chapter is not required to be included on the precinct early voting  
19 list if the person is an FPCA registrant.]~~

20 Sec. 101.058 [~~101.012~~]. OFFICIAL CARRIER ENVELOPE. The  
21 officially prescribed carrier envelope for voting under this  
22 subchapter [~~chapter~~] shall be prepared so that it can be mailed free  
23 of United States postage, as provided by the federal Uniformed and  
24 Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et  
25 seq.) [~~Federal Voting Assistance Act of 1955~~], and must contain the  
26 label prescribed by Section 101.056(a) [~~101.007(a)~~] for the  
27 envelope in which the balloting materials are sent to a voter. The

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1 secretary of state shall provide early voting clerks with  
2 instructions on compliance with this section.

3 SUBCHAPTER C. E-MAIL TRANSMISSION OF BALLOTTING MATERIALS

4 Sec. 101.101. PURPOSE. The purpose of this subchapter is to  
5 implement the federal Military and Overseas Voter Empowerment Act  
6 (Pub. L. No. 111-84, Div. A, Title V, Subt. H).

7 Sec. 101.102. REQUEST FOR BALLOTTING MATERIALS. (a) A  
8 person eligible to vote under this chapter may request from the  
9 appropriate early voting clerk e-mail transmission of balloting  
10 materials under this subchapter.

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

13 (1) the requestor has submitted a valid federal  
14 postcard application and:

15 (A) if the requestor is a person described by  
16 Section 101.001(2)(B) or (C), has provided a current mailing  
17 address that is located outside the United States and is voting from  
18 outside the United States; or

19 (B) if the requestor is a person described by  
20 Section 101.001(2)(A), has provided a current mailing address that  
21 is located outside the requestor's county of residence and is  
22 voting from outside that county;

23 (2) the requestor provides an e-mail address:

24 (A) that corresponds to the address on file with  
25 the requestor's federal postcard application; or

26 (B) stated on a newly submitted federal postcard  
27 application;

1                   (3) the request is submitted on or before the seventh  
2 day before the date of the election; and  
3                   (4) a marked ballot for the election from the  
4 requestor has not been received by the early voting clerk.

5                   Sec. 101.103. CONFIDENTIALITY OF E-MAIL ADDRESS. An e-mail  
6 address used under this subchapter to request balloting materials  
7 is confidential and does not constitute public information for  
8 purposes of Chapter 552, Government Code. An early voting clerk  
9 shall ensure that a voter's e-mail address provided under this  
10 subchapter is excluded from public disclosure.

11                   Sec. 101.104. ELECTIONS COVERED. The e-mail transmission  
12 of balloting materials under this subchapter is limited to:

13                   (1) an election in which an office of the federal  
14 government appears on the ballot, including a primary election;  
15                   (2) an election held statewide; or  
16                   (3) an election held jointly with an election  
17 described by Subdivision (1) or (2).

18                   Sec. 101.105. BALLOTING MATERIALS TO BE SENT BY E-MAIL.  
19 Balloting materials to be sent by e-mail under this subchapter  
20 include:

21                   (1) the appropriate ballot;  
22                   (2) ballot instructions, including instructions that  
23 inform a voter that the ballot must be returned by mail to be  
24 counted;  
25                   (3) instructions prescribed by the secretary of state  
26 on:  
27                   (A) how to print a return envelope from the

1     federal Voting Assistance Program website; and

2                    (B) how to create a carrier envelope for the  
3     ballot; and

4                    (4) a list of certified write-in candidates, if  
5     applicable.

6                    Sec. 101.106. METHODS OF TRANSMISSION TO VOTER. (a) The  
7     balloting materials may be provided by e-mail to the voter in PDF  
8     format, through a scanned format, or by any other method of  
9     electronic transmission authorized by the secretary of state in  
10    writing.

11                  (b) The secretary of state shall prescribe procedures for  
12    the retransmission of balloting materials following an  
13    unsuccessful transmission of the materials to a voter.

14                  Sec. 101.107. RETURN OF BALLOT. (a) A voter who receives a  
15    ballot under this subchapter must return the ballot in the same  
16    manner as required under Section 101.057 and, except as provided by  
17    Chapter 105, may not return the ballot by electronic transmission.

18                  (b) A ballot that is not returned as required by this  
19    section is considered a ballot not timely returned and is not sent  
20    to the early voting ballot board for processing.

21                  (c) The deadline for the return of a ballot under this  
22    section is the same deadline as provided in Section 86.007.

23                  Sec. 101.108. TRACKING OF BALLOTTING MATERIALS. The  
24    secretary of state by rule shall create a tracking system under  
25    which an FPCA registrant may determine whether a voted ballot has  
26    been received by the early voting clerk. Each county or political  
27    subdivision that sends ballots to FPCA registrants shall provide

1 information required by the secretary of state to implement the  
2 system.

3 Sec. 101.109. RULES. The secretary of state may adopt rules  
4 as necessary to implement this subchapter.

5 ~~[Sec. 101.013. DESIGNATION OF SECRETARY OF STATE. The~~  
6 ~~secretary of state is designated as the state office to provide~~  
7 ~~information regarding voter registration procedures and absentee~~  
8 ~~ballot procedures, including procedures related to the federal~~  
9 ~~write-in absentee ballot, to be used by persons eligible to vote~~  
10 ~~under the federal Uniformed and Overseas Citizens Absentee Voting~~  
11 ~~Act (42 U.S.C. Section 1973ff et seq.), as amended.]~~

12 SECTION 2. Section 86.011(b), Election Code, is amended to  
13 read as follows:

14 (b) If the return is timely, the clerk shall enclose the  
15 carrier envelope and the voter's early voting ballot application in  
16 a jacket envelope. The clerk shall also include in the jacket  
17 envelope:

18 (1) a copy of the voter's federal postcard application  
19 if the ballot is voted under Chapter 101; and

20 (2) the signature cover sheet, if the ballot is voted  
21 under Chapter 105.

22 SECTION 3. Subchapter B, Chapter 87, Election Code, is  
23 amended by adding Section 87.0223 to read as follows:

24 Sec. 87.0223. TIME OF DELIVERY: BALLOTS SENT OUT BY REGULAR  
25 MAIL AND E-MAIL. (a) If the early voting clerk has provided a voter  
26 a ballot to be voted by mail by both regular mail and e-mail under  
27 Subchapter C, Chapter 101, the clerk may not deliver a jacket

1 envelope containing the early voting ballot voted by mail by the  
2 voter to the board until:

3                   (1) both ballots are returned; or  
4                   (2) the deadline for returning marked ballots under  
5 Section 86.007 has passed.

6                   (b) If both the ballot provided by regular mail and the  
7 ballot provided by e-mail are returned before the deadline, the  
8 early voting clerk shall deliver only the jacket envelope  
9 containing the ballot provided by e-mail to the board. The ballot  
10 provided by regular mail is considered to be a ballot not timely  
11 returned.

12                 SECTION 4. Section 87.041, Election Code, is amended by  
13 adding Subsection (f) to read as follows:

14                 (f) In making the determination under Subsection (b)(2) for  
15 a ballot cast under Chapter 101 or 105, the board shall compare the  
16 signature on the carrier envelope or signature cover sheet with the  
17 signature of the voter on the federal postcard application. If the  
18 board determines that the signatures could have been made by the  
19 same person, the ballot shall be accepted.

20                 SECTION 5. Section 87.043, Election Code, is amended by  
21 amending Subsection (a) and adding Subsection (d) to read as  
22 follows:

23                 (a) The early voting ballot board shall place the carrier  
24 envelopes containing rejected ballots in an envelope and shall seal  
25 the envelope. More than one envelope may be used if necessary. The  
26 board shall keep a record of the number of rejected ballots in each  
27 envelope.

1                   (d) A notation must be made on the carrier envelope of any  
2 ballot that was rejected after the carrier envelope was opened and  
3 include the reason the envelope was opened and the ballot was  
4 rejected.

5                   SECTION 6. Section 87.0431, Election Code, is amended to  
6 read as follows:

7                   Sec. 87.0431. NOTICE OF REJECTED BALLOT. Not later than the  
8 10th day after election day, the presiding judge of the early voting  
9 ballot board shall deliver written notice of the reason for the  
10 rejection of a ballot to the voter at the residence address on the  
11 ballot application. If the ballot was transmitted to the voter by  
12 e-mail under Subchapter C, Chapter 101, the presiding judge shall  
13 also provide the notice to the e-mail address to which the ballot  
14 was sent.

15                   SECTION 7. Section 87.044(a), Election Code, is amended to  
16 read as follows:

17                   (a) The early voting ballot board shall place each  
18 application for a ballot voted by mail in its corresponding jacket  
19 envelope. For a ballot voted under Chapter 101 or 105, the board  
20 shall also place the copy of the voter's federal postcard  
21 application or signature cover sheet in the same location as the  
22 carrier envelope. If the voter's ballot was accepted, the board  
23 shall also place the carrier envelope in the jacket envelope.  
24 However, if the jacket envelope is to be used in a subsequent  
25 election, the carrier envelope shall be retained elsewhere.

26                   SECTION 8. This Act takes effect September 1, 2011.