

19:59-4

LEGISLATIVE HISTORY CHECKLIST
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(Absentee ballots)

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BILL NO: A2584

SPONSOR(S): Holzapfel & Russo

DATE INTRODUCED: February 23, 1995

COMMITTEE: **ASSEMBLY** State Government
SENATE: ---

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Second reprint enacted denoted by superscript numbers

DATE OF PASSAGE: **ASSEMBLY:** June 19, 1995
SENATE: June 26, 1995

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FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

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COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: No

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VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

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Recommendations made by Federal Voting Assistance Program of the Office of U.S. Secretary of Defense--attached.

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[SECOND REPRINT]
ASSEMBLY, No. 2584

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 23, 1995

By Assemblymen HOLZAPFEL and RUSSO

1 AN ACT concerning certain absentee ballots and amending and
2 supplementing P.L.1976, c.23.

3

4 BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 ¹1. Section 4 of P.L.1976, c.23 (C.19:59-4) is amended to read
7 as follows:

8 4. a. Requests for an application to vote in a federal election
9 as an overseas federal election voter may be made by or on
10 behalf of an applicant to the county clerk of the county in which
11 the applicant was formerly domiciled or to the Secretary of State
12 of New Jersey if the applicant does not know the county of his
13 former domicile. All such applications shall be forwarded to such
14 voters by air mail or by fax, if so requested by the voter. Any
15 overseas Federal election voter requesting that an application for
16 a ballot be sent to that voter by fax shall supply to the Secretary
17 of State or the county clerk, as is appropriate, the telephone
18 number and location to which the application is to be sent. To
19 qualify an applicant to be sent a ballot by air mail in order to
20 vote in an election, the applicant's completed application shall
21 be received by the appropriate county clerk on or before the
22 thirtieth day preceding the election. To qualify an applicant to
23 be sent a ballot by fax in order to vote in an election, the
24 applicant's completed application shall be received by the
25 appropriate county clerk on or before the [eleventh] fourth day
26 preceding the election.

27 b. An overseas federal election voter may use a federal
28 postcard application form to register to vote or to apply for an
29 overseas federal election voter ballot. The voter may send the
30 form by air mail or by fax to either the appropriate county clerk
31 or the Secretary of State and, in the case of an application for a
32 ballot, may request that the ballot be sent by air mail or by fax.
33 Any voter sending the form by fax shall also mail simultaneously
34 the federal postcard application form to the appropriate county
35 clerk or the Secretary of State. Any federal postcard application
36 for a ballot sent by an overseas federal election voter and
37 received by a county clerk or the Secretary of State shall also be
38 considered a request for registration if that voter is not already
39 registered.¹

40 (cf: P.L.1993, c.73, s.6)

41 ¹[1.] 2.¹ Section 10 of P.L.1976, c.23 (C.19:59-10) is amended
42 to read as follows:

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ASG committee amendments adopted March 9, 1995.

² Assembly floor amendments adopted June 12, 1995.

1 10. a. For overseas federal election voter ballots other than
2 such ballots sent to the voter by fax, the procedure for
3 completing the ballot shall be as follows:

4 Upon completion of the ballot by indicating his choice of
5 candidates for the offices named, the ballot shall be placed in the
6 inner envelope and sealed. Upon completion and signing in his
7 handwriting the certificate attached to the inner envelope, the
8 inner envelope shall be placed in the outer envelope which when
9 sealed shall be mailed postage prepaid to the county board of
10 elections whose address is printed thereon.

11 b. For overseas federal election voter ballots sent to the voter
12 by fax, the procedure for completing the ballot shall be as follows:

13 After the ballot is received and completed by the voter by
14 indicating that person's choice of candidates for the offices
15 named, the ballot shall be placed in a secure envelope. Upon
16 completion and signing in the voter's handwriting of the
17 certificate sent to the voter pursuant to section 8 of P.L.1976,
18 c.23 (C.19:59-8), it shall be placed in the same envelope as the
19 voted ballot. The envelope shall then be sealed securely and sent
20 immediately by air mail to the appropriate county ¹[clerk] board
21 of elections¹ in this State.

22 c. Notwithstanding the provisions of subsection a. and b. of
23 this section, a copy of a voted overseas federal election voter
24 ballot may be transmitted by fax to the appropriate county
25 ¹[clerk] board of elections¹ in this State. Such a ballot shall be
26 subject to the provisions of sections ¹[2] 3¹ and ¹[3] 4¹ of
27 P.L. , c. (C.)(now pending before the Legislature as
28 this bill.)

29 (cf: P.L.1993, c.73, s.9)

30 ¹[2.] 3¹ (New section) Notwithstanding any law, rule or
31 regulation to the contrary, a copy of a voted overseas federal
32 election voter ballot or of a voted federal write-in absentee
33 ballot which is transmitted by fax to the appropriate county
34 ¹[clerk] board of elections¹ in this State shall be considered valid
35 and counted if it:

36 a. is from a qualified voter;

37 b. has been transmitted to the appropriate county ¹[clerk no
38 earlier than the third day prior to the day of the election for
39 which it was intended and] board of elections¹ no later than the
40 time designated by law for the closing of the polls on that day;
41 and

42 c. is accompanied by the following statement, which shall be
43 certified by the voter's signature: "I understand that by faxing a
44 copy of my voted ballot I am voluntarily waiving my right to a
45 secret ballot. At the same time, I pledge to place the original
46 voted ballot in a secure envelope, together with any other
47 required certification, and send the documents immediately by
48 air mail to the appropriate county ¹[clerk] board of elections¹."

49 ¹[3.] 4¹ (New section) a. Immediately after a copy of the
50 voted overseas federal election voter ballot or federal write-in
51 absentee ballot has been faxed to the appropriate county ¹[clerk]
52 board of elections¹, as permitted pursuant to section ¹[2] 3¹ of
53 P.L. , c. (C.)(now pending before the Legislature as this
54 bill), the overseas federal election voter ¹[or the person using a

1 federal write-in absentee ballot]¹ shall place the original voted
2 ballot in a secure envelope, together with a certificate
3 substantially the same as provided for in section 9 of P.L.1976,
4 c.23 (C.19:59-9), and send the documents by air mail to the
5 appropriate county ¹[clerk] board of elections¹.

6 b. All copies of voted ballots received by fax shall be
7 approved, disapproved, processed and counted, and disputes in
8 connection therewith shall be handled, in the same manner as is
9 applicable to other absentee ballots. No ballot received after the
10 time designated for the closing of the polls shall be counted.

11 c. ¹[Within 21 days after] ²The county board of elections shall
12 take all necessary precautions to preserve the security of the
13 ballot materials and specifically shall ensure that the vote cast
14 by a voter using a faxed ballot is not revealed, except to the
15 extent necessary by law or judicial determination. Upon the
16 completion of all inspections of a faxed ballot required by law,
17 the board or any employee thereof acting under its direction shall
18 promptly separate the waiver certification from the faxed
19 ballot. Any person handling a faxed ballot shall not identify the
20 votes cast by any voter, except upon judicial determination.

21 d.² Prior to certification of the results of¹ the election, the
22 county board shall:

23 (1) compare the information on the faxed copy of each voted
24 ballot with the same on the original voted ballot sent by air mail
25 by the voter who faxed to the county board a copy of the voted
26 ballot, and the signature on the statement received by fax with
27 the signature on the certificate received by air mail; and

28 (2) ascertain whether an original voted ballot has been
29 received for each faxed copy of a voted ballot received and
30 counted.

31 Whenever the particulars of the faxed copy of a voted ballot of
32 a voter do not conform exactly with the particulars of the
33 original voted ballot sent by air mail to the county ¹board¹
34 afterwards by that voter and whenever an original voted ballot
35 has not been received which corresponds to a faxed copy of a
36 voted ballot which has been received and counted by the county
37 board, those ballots and all other pertinent documents and
38 information relative to those ballots shall be turned over to the
39 superintendent of elections in counties having a superintendent
40 and the prosecutor in all other counties for further investigation
41 and action.

42 ²[d.] e.² Within 30 days after the election, the county board
43 shall gather and keep together the faxed copy of the voted ballot,
44 the certified statement and the original voted ballot sent by air
45 mail of each voter who transmitted a copy of a voted ballot by
46 fax. Those ballots needed for an investigation conducted by the
47 superintendent of elections or the county prosecutor, as the case
48 may be, or by any other law enforcement official shall be
49 returned to the county board as soon as practicable after the
50 conclusion of the investigation. All ballots and documents
51 relative to a faxed copy of a voted ballot received by the county
52 board shall be retained by it for a period of one year following
53 the day of the election. The superintendent of elections in
54 counties having a superintendent and the prosecutor in all other

1 counties shall have the authority to impound all such documents
2 whenever he shall deem such action necessary.

3 ¹[4.] 5.¹ This act shall take effect on January 1st following
4 enactment.

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9 Provides for acceptance and counting of certain voted absentee
10 ballots sent by fax to the appropriate county board of elections.

1 relative to a faxed copy of a voted ballot received by the county
2 board shall be retained by it for a period of one year following
3 the day of the election. The superintendent of elections in
4 counties having a superintendent and the prosecutor in all other
5 counties shall have the authority to impound all such documents
6 whenever he shall deem such action necessary.

7 4. This act shall take effect on January 1st following
8 enactment.

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11 STATEMENT

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13 The purpose of this bill is to permit a person who is outside of
14 the United States to use a fax to send a copy of a voted overseas
15 federal election voter ballot or of a federal write-in absentee
16 ballot to the appropriate county clerk in this State.

17 Under the bill, such a ballot sent by fax shall be valid and
18 counted if it: 1) is from a qualified voter; 2) is received by the
19 county clerk no earlier than the third day prior to the day of the
20 election for which it was intended and no later than the time
21 designated by law for the closing of the polls on that day; and 3)
22 is accompanied by a statement in which the voter certifies that
23 the voter voluntarily waives his or her right to privacy and
24 pledges to place the original voted ballot in a secure envelope,
25 together with any other required certification, and send the
26 documents immediately by air mail to the appropriate county
27 clerk.

28 The bill further provides that all copies of voted ballots
29 received by fax shall be approved, disapproved, processed and
30 counted, and disputes in connection therewith shall be handled, in
31 the same manner as is applicable to other absentee ballots.

32 These changes in current State law are based on
33 recommendations made by the Federal Voting Assistance
34 Program of the Office of the U.S. Secretary of Defense in order
35 to facilitate voting by American citizens covered by the
36 Uniformed and Overseas Citizens Absentee Voting Act. To date,
37 eight states and the District of Columbia accept copies of voted
38 ballots sent by fax from outside of the United States.

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43 Provides for acceptance and counting of certain voted absentee
44 ballots sent by fax to the appropriate county clerks.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2584

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 9, 1995

The Assembly State Government Committee reports favorably and with committee amendments Assembly, No. 2584.

This bill revises the "Overseas Residents Federal Election Absentee Voting Law", which provides for the distribution of overseas Federal election voter ballots to documented U.S. citizens who have left a New Jersey domicile to take up residence abroad. The bill would permit a person who votes by means of such a ballot to cast that ballot by fax transmission to the appropriate county board in this State.

Under the bill, the faxed ballot shall be valid and counted if it is: (1) from a qualified voter; (2) received by the county no later than the time designated by law for the closing of the polls on the day of the election; and (3) accompanied by a statement in which the voter certifies that the voter voluntarily waives the right to a secret ballot and pledges to place the original voted ballot in a secure envelope, together with any other required certification, and send the documents immediately by air mail to the appropriate county board.

The bill further provides that all copies of voted ballots received by fax shall be approved, disapproved, processed and counted, and disputes in connection therewith shall be handled, in the same manner as is applicable to other absentee ballots.

Finally, the bill prescribes a post-election procedure for checking faxed ballots for possible irregularities. Under this procedure, the county board is required, prior to certification of the results of the election, to compare the information on the faxed copy of the voted ballot and the voter signature on the waiver of privacy accompanying the same with the information and signature on the original ballot and waiver that the voter shall have mailed to the board. When no original ballot has been received; or when the original ballot has been received, but the particulars of the faxed copy do not conform exactly with those of the original ballot, then the ballots in question and related documents are to be turned over to the superintendent of elections in a county in which that office has been established, and to the prosecutor in any other county.

These changes in current State law are based on recommendations made by the Federal Voting Assistance Program of the Office of the U.S. Secretary of Defense in order to facilitate voting by American citizens covered by the Uniformed and Overseas Citizens Absentee Voting Act. To date, eight states and the District of Columbia accept copies of voted ballots sent by fax from outside of the United States.

COMMITTEE AMENDMENTS

The committee adopted amendments to this bill to:

(1) Extend the deadline for receipt by the county clerk of a fax-transmitted overseas Federal election voter's ballot application from the 11th to the fourth day preceding the election in which the applicant seeks to vote;

(2) Eliminate, as a condition of validity of a fax-transmitted overseas Federal election voter ballot, any requirement that the ballot not be received before a certain date;

(3) Eliminate a redundant reference to a "person using a federal write-in absentee ballot";

(4) Shorten the period of time prescribed for official comparison of a voter's faxed ballot with the original ballot that the voter is required to return by air mail from the 21st day after the election to the date on which the election results are certified (generally, the sixth day after the election); and

(5) Replace several references to the county clerk as the official designated to receive original and faxed voted overseas Federal election voter ballots with references to the county board of elections, in conformity with the provisions of other statutes governing absentee voting.

1994 Legislative Initiatives - New Jersey

ATTACHMENT 1

State Write-In Absentee Ballot

We also recommend New Jersey provide a state write-in absentee ballot for general elections. The purpose of the state write-in absentee ballot is to provide a method for voting by military and other persons overseas who, due to military contingencies or special circumstances such as those faced by submariners, Peace Corps volunteers, missionaries or others in remote areas, will be out of communication for extended periods of time and unable to receive regular absentee ballots sent in the normal time frame. A voter could request a state write-in ballot 90 days in advance and write in the names of the candidates or party preferences. The voter knows in advance that he or she will not be able to receive, vote, and return the regular absentee ballot in time to be counted. Twenty-two states have implemented state write-in absentee ballots.

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This state write-in ballot should not be confused with the Federal Write-In Absentee Ballot (FWAB). In comparison, the FWAB is only available to military stationed overseas and overseas citizens who have already applied for a regular absentee ballot. They do not know in advance that they need the FWAB. However, if the regular absentee ballot does not arrive timely, these voters may obtain, vote, and return the FWAB to the local election official.

It is also important to note that a state write-in ballot usually provides a "full" slate of offices to be voted upon including federal, state, and local offices. On the other hand, the FWAB only allows voting for federal offices.

Electronic Transmission of Election Materials

Consideration should be given to expanded use of modern technology in the absentee voting process. We realize New Jersey enacted legislation to provide for electronic transmission of the FPCA for registration and ballot request and electronic transmission of the blank ballot for the voter. We encourage expanded use of this alternative to include accepting the voted ballot from the voter by fax where circumstances would otherwise disenfranchise a citizen. Attached please find suggested sample language allowing for acceptance of the voted ballot from the voter by fax.

Your support in developing the acceptance of electronic transmission for all aspects of the process, with proper controls, would cut the ballot transit time at least in half. This would reduce a major obstacle to voting absentee and allow local election officials more flexibility in preparing absentee ballots and it could enfranchise many voters who would otherwise not be able to vote due to time constraints.

SUGGESTED LANGUAGE**ATTACHMENT 2****Reference to the Uniformed and Overseas Citizens Absentee Voting Act**

This language is usually found under the chapter in the State Election Code that makes reference to federal elections:

"It is the intent and purpose of this Legislature that the provisions set forth in this chapter are designed to facilitate the federal mandate of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA, 42 U.S.C. 1973 ff et. seq.)."

Electronic Transmission of Election Materials

"If the voter is residing outside the United States or a member of the United States armed forces or a spouse or dependent of a member of the armed forces and a qualified elector and feels he or she will not have time to vote timely by mail, the voter may apply for registration and an absentee ballot by facsimile. The voter may also request that the registrar transmit to him or her by facsimile a ballot, or a second ballot, as the case may be. The voter may then either mail or transmit by facsimile his or her voted ballot, back to the registrar.

If the voter chooses to transmit the voted ballot to the registrar by facsimile, the transmittal shall contain the following statement: "I understand that by faxing my voted ballot I am voluntarily waiving my right to a secret ballot." This statement shall be followed by the voter's signature, date and social security number. Upon receipt of the transmittal, the registrar shall place the voted ballot along with the signed statement and affidavit in an appropriately marked envelope and seal it. The registrar and his or her staff shall take the steps necessary to keep the voted ballots received by facsimile as confidential as practicable."

The Federal Write-In Absentee Ballot (FWAB)**● Expanded Use of the FWAB**

"If the voter is residing outside the United States or a member of the United States armed forces or a spouse or dependent of a member of the armed forces and a qualified elector he or she may use the Federal Write-In Absentee Ballot in general, special, and primary elections for federal offices. Such ballot shall be submitted and processed in the manner provided by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA, 42 U.S.C. 1973 ff et. seq.)"

● Use of FWAB as a Combined Request for Registration and Ballot Submission

"If the voter is residing outside the United States or a member of the United States armed forces or a spouse or dependent of a member of the armed forces and a qualified elector he or she may use the Federal Write-In Absentee Ballot (FWAB) transmission envelope as a request for registration simultaneously with the submission of the FWAB if:

- (1) the information submitted complies with the registration requirements of the state;
- (2) the voter is otherwise eligible to vote absentee in the jurisdiction where the request is submitted; and
- (3) the request is received by the appropriate state election official not less than 30 days before the election."