The Tennessee Advisory Commission on Intergovernmental Relations

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MEMORANDUM

TO: Commission Members

FROM: Lynnisse Roehrich-Patrick
Executive Director

DATE: 20 June 2012

SUBJECT: Commission Report to the House State and Local Government Committee on House Bill 472 to Require a Study of Permitting Registered Voters Temporarily Residing Outside the Precinct Where They are Registered to Vote in Statewide Elections

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The House State and Local Government Committee referred House Bill 472 by Representative Pitts to the Tennessee Advisory Commission on Intergovernmental Relations for study. The bill would have required the state coordinator of elections to "study the feasibility of permitting registered voters who reside outside the precinct listed as their permanent residence at the time of an election to vote in statewide elections only." Our report recommends that the coordinator of state elections study the possibility of the state allowing voters temporarily residing outside of their counties of permanent residence to cast provisional ballots in their counties of temporary residence.

This report is submitted for your approval.

Report of the Tennessee Advisory Commission on Intergovernmental Relations

Increasing Voter Access
Exploring Options

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Contents

Increasing Voter Access
Exploring Options

Voting is a treasured right of citizenship in America, but may pose a challenge for people who temporarily reside away from their home districts because of school, work, or family obligations. Senator Jim Kyle and Representative Joe Pitts introduced legislation in 2011 that would have required the state election coordinator to study the feasibility of allowing these voters to cast ballots only in statewide races in their counties of temporary residence during the early voting period. After discussion, the House State and Local Government Committee referred the bill to the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) for study.

Voting at a place of temporary residence may not be feasible now but likely will be in the future. The likelihood is great enough to warrant further study by the state's election experts, including members of the state election commission and the state election coordinator. Voting in the manner contemplated by the bill calling for this study would require upgrading the state's voter database to allow instantaneous updates. Other options based on current law in Tennessee include allowing temporary residents to cast a provisional ballot or vote at the local election commission. Ballots by either method would have to be checked against the voters' home-county registration before being counted.

Options based on registration and voting methods in other states could also be considered:

- Same-day registration—Eight states allow registration on the same day as voting; one allows it at specific locations during early voting. North Dakota requires no voter registration.
- Voting by mail—In Washington and Oregon, all voters vote by mail, and their ballots are automatically sent to them without special request.
- Greater use of Internet to vote—In many states (though not in Tennessee), military personnel and other eligible voters overseas can not only request a ballot by e-mail but also return it by e-mail. As Internet capabilities become more sophisticated, other means of voting may become possible.

These changes would not come without costs and risks, which must be weighed against the potential for increasing voter access and participation. However, they might improve voter turnout. Based on data from the U.S. Census Bureau, only five states have lower voter participation rates than Tennessee. The reasons for this ranking may also warrant further study.

Current Law

Recent changes in Tennessee's election processes have helped make voting more accessible, more accurate, and easier to administer. The advent of electronic voting—

the method used in 93 of Tennessee's 95 counties—has reduced the administrative difficulties that voting in counties of temporary residence could cause. Likewise, the move to a statewide voter database has further reduced the potential for fraud.

Laws Pertaining to Registration

Tennessee election law provides voters who temporarily reside outside their counties three options for casting their ballots. A qualified registered voter may

1. vote early in his or her county of permanent residence at a designated location,

2. vote at his or her assigned local polling place, or

3. request and cast an absentee ballot by mail.

A voter may register and vote in his or her county of temporary residence as long as residency requirements are met.[1]

Laws Pertaining to Access

Two procedural changes implemented over the past few decades have improved access for voters residing temporarily out of county:

1. Voting early was authorized by passage of the Tennessee Early Voting Act in 1994. For the 15-day period that begins 20 days before the election and ends 5 days before the election, voters may cast ballots at their county election commission's office or designated satellite locations. This gives registered voters who are temporarily residing out of county more opportunities to return home to vote. This 15-day period includes Saturdays.

2. Absentee voting has been permitted for many years. More recently, however, voters have been able to apply to the county election commission for an absentee ballot by fax or e-mail, as well as by postal mail. This has helped reduce the amount of advanced planning required to vote absentee. Voters may request an absentee ballot from a county election commission as early as 90 days before the election or as late as 7 days before the election. With the ability to fax or e-mail the request for a ballot application, a voter requesting a ballot 7 days before the election could feasibly receive it and return it in time to be counted.[2]

[1] Tennessee Code Annotated § 2-2-122 spells out the principles for determination of residence for election purposes.

[2] There are additional provisions for military families and qualified voters living overseas, including a longer period for requesting an absentee ballot and the ability to have the ballot itself e-mailed to the voter.

Proposed Legislation

House Bill 472 by Representative Joe Pitts and Senate Bill 1872 by Senator Jim Kyle, as introduced and passed by the Senate, would have required the state election coordinator to "study the feasibility of permitting registered voters who reside outside the precinct listed as their permanent residence at the time of an election to vote in statewide elections only." The bill excluded voting based on ownership of property within a municipality and the requirements established by municipalities for voting in municipal elections from the study. The coordinator would have been required to report the study's results to the House and Senate State and Local Government committees by February 28, 2012. See appendix A for a copy of the bill.

Situation Giving Rise to the Bill

In introducing the bill to the Senate State and Local Government Committee, Senator Kyle said that college students and people who are traveling on Election Day may not have requested an absentee ballot but should still be allowed to vote in statewide races where they temporarily reside. Representative Pitts provided a similar explanation of the bill in the House State and Local Government Committee. Given the concern of the bill's sponsors about increasing opportunities to vote, TACIR staff reviewed voter turnout data from the U.S. Census Bureau to determine how Tennessee compares with other states. In 2008, only five states ranked lower than Tennessee in voter participation.[3] Turnout for all registered voters in the U.S. was 89.6% while Tennessee's was 86.1%. (See appendix B.) The national average for the 18-24 population was 83.0%, while Tennessee's was 78.5%. (See appendix C.)

Reaction to the Legislation

Senators responded favorably to the proposed legislation and passed the bill. House members had a number of questions. Though they understood that it was not the bill's intent, House State and Local Government subcommittee members expressed concern that the language might restrict persons who live outside their registered precincts from voting in local elections even if they returned to their home precincts to vote. Representative Pitts noted that this was not the intent and offered an amendment to clarify that point.

In meetings of the House State and Local Government Committee members' concerns centered on the potential for

- excessive administrative burdens on state and local election offices,
- increased potential for fraud, and
- decreased voting in local races.

[3] Current Population Survey. 2009. *Table 4c. Reported Voting and Registration of the Total Voting-Age Population, by Age, for States: November 2008*. Washington, DC: United States Census Bureau. http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html (accessed May 10, 2012).

Coordinator of Elections Mark Goins in speaking to the effects of the bill said that the proposed legislation was not feasible because the counties are not linked to one another. Consequently, they cannot report who has voted and prevent people from voting more than once. Voting twice is fraud, of course, and as House Majority Leader Gerald McCormick pointed out, a felony. He also noted the likelihood of being caught, which should serve as a deterrent. He suggested that the bill be sent to TACIR for study and, after some discussion, the committee voted to do so.

Potential Increase in Administrative Burden and Cost

The fiscal note produced by staff of the Fiscal Review Committee deemed its effect on state and local government finances "not significant" because the election coordinator's office could study the issues using existing resources. It did not address the estimated cost of the proposed change in voting practice.

Local Administrative Burden and Cost. Staff interviewed several local election officials across the state to determine whether the increased access proposed in this bill would impose an administrative burden. Because the Voter ID law—requiring one of a short list of specific government-issued photo identifications to be presented at the polls—went into effect in 2012, local officials did not express concern that another county might fail to adequately verify identity. Local officials were concerned, however, about having timely access to the statewide registration list so that they could verify the eligibility of out-of-county voters. Election officials sometimes lack access to the most updated statewide list, which would be vital to prevent duplicate voting. They were unsure about the cost of providing a statewide-only ballot where electronic machines are used because the ballots are created by programmers from the voting machine companies. Company representatives, however, indicated that an additional ballot is a minor matter and should involve no additional cost.

Tennessee has two counties—Hamilton and Pickett—that use optical scan paper ballots. Those counties would need pre-printed statewide-only ballots at every early voting location and so would incur some additional cost. Local officials also thought that polling places near colleges might become more crowded than usual if the proposed legislation were in effect and that the voters there might require special attention because their registration verification could take longer. Officials liked that the out-of-county voting would be restricted to the early voting period when the polling locations are heavily staffed with experienced election workers.

State Administrative Burden and Cost. For voting in non-resident counties to become feasible, Tennessee would need to improve the state's voter database technology. With the present technology, the risk of fraud, though slight, could increase because the statewide voter list is not updated immediately. Election officials can tell if someone attempts to cast a vote in two locations within counties, but not across counties. If checks across counties against the statewide voter list were possible, then voters could theoretically vote at any early voting location statewide without raising concerns of fraud.

Tennessee's voter list is currently maintained at the county level, and counties report updates to the state election coordinator's office. Voter information is comparable across counties—with the same fields for data—so the lists can be combined. Having the necessary instantaneous updates at all early voting locations, however, would require networking all of the counties to the state database and allowing them real-time access to the changes made by each local election office. This is technologically possible, but election officials believe it would be costly.

Potential for Voter Fraud

Under current law, voter fraud is prevented through registration rules, identification requirements, and voter affidavits. Voters who register by mail or with a state agency must appear in person the first time they vote after the registration is processed. In addition, registered voter lists are purged of ineligible voters prior to every election.[4] Voters must present photo identification and sign an affidavit verifying that they reside at the registered address before voting.

Duplicate vote fraud is prevented through careful record-keeping and instantaneous updates to county-level voter lists at early voting locations. When someone votes early, it is immediately reflected in the county list of registered voters. Workers at all polling places in a county receive notice. Counties do not receive these updates from one another, however, so people could vote early in multiple counties without being detected immediately.

Election officials believe that people voting in multiple counties would likely be discovered after the election when the statewide voter list is updated and could be charged with a felony. Local election officials, however, gave varying reports on the extent to which local district attorneys prosecute voter fraud cases. Technical violations of election law sometimes go unprosecuted when it appears that the voter was simply confused or misinformed. A candidate who loses an election because of voting fraud can challenge the results and, if successful, have them voided.[5] Of course, holding a new election is expensive and onerous, and no election can be "duplicated" because turnout will be different.

Potential Decrease in Voting in Local Races

It is impossible to estimate the number of people who would choose to vote in their counties of temporary residency if given the opportunity. Nor is it possible to know how many of those voters would otherwise have voted early in their home precincts or by absentee ballot. Anyone voting in a temporary county of residence who otherwise would not have voted would not affect participation in local races.

[4] Tennessee Code Annotated §§ 2-2-106 and 2-2-140 govern purges of ineligible voters. If an election office receives notice that a voter's eligibility has changed, that voter may be required to submit additional documentation to remain in an active status. Ineligible voters are purged.

[5] Tennessee Code Annotated § 2-17-113 provides for voiding an election in which fraud has been determined to be a factor if that fraud had the potential to change the outcome.

Policy Alternatives

Although voting at a place of temporary residence is not feasible now, it likely will be in the future. The likelihood is great enough to warrant further study by the state's election experts, including the state election commission and the state election coordinator. The following options are worth further study:

Options Based on Current Voting Methods in Tennessee

- **Casting a provisional ballot**. Temporary residents could cast a provisional ballot in their temporary county of residence during the early voting period. Ballots could then be sent to the voters' home counties to be verified and counted. Election officials in the county of temporary residence could verify identity, provide a paper ballot with statewide races only, and mail the completed ballot to the voter's home county at the beginning of the five-day period between the end of early voting and the election.

- **Voting at the local election commission office**. Temporary residents could vote at the local election commission office in their temporary county of residence.

Options Based on Practices in Other States.

- **Voting by Mail**. All voters in Washington and Oregon vote by mail, and their ballots are automatically sent to them. Tennessee has a similar process for those over 65 years of age, members of the armed forces and their families, and people with permanent disabilities who cannot go to the polls.

- **Same-day registration or no registration policies.** Eight states allow registration on voting day: Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, Wisconsin, and Wyoming. North Carolina allows qualified residents to register and vote during early voting at a "one-stop shop." North Dakota requires no voter registration.[6] Such policies, however, are likely to increase eligibility challenges.

- **Internet voting**. Voting over the Internet is currently used in some states under very limited circumstances. Military personnel and other eligible voters overseas, for example, can request and return ballots by e-mail in some states. Texas has allowed residents of the International Space Station to receive and return ballots via e-mail since 1977. Of course, setting up a widely-available system that is also secure enough to prevent hacking is a challenge that has not yet been solved.

[6] For more information go to https://vip.sos.nd.gov/pdfs/Portals/votereg.pdf.

Appendix A

House Bill 472/Senate Bill 1872

SENATE BILL 1872
By Kyle

HOUSE BILL 472

By Pitts

AN ACT relative to a study to be conducted by the state election coordinator concerning voting by certain registered voters.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1.

(a) Except as provided in subsection (b), the state election coordinator shall study the feasibility of permitting registered voters who reside outside of the precinct listed as their permanent residence at the time of an election to vote in statewide elections only. The study should consider establishing designated locations where such persons may vote to include the county election commission office, a public university campus, or at an equally desirable location. Such limited polling locations would be open only during the early voting period.

(b) Any property rights voting, based on ownership of property within the municipality, as permitted by a municipality in its charter, would not be a part of the study and voters who meet the requirements as enacted by the municipality to vote in municipal elections would continue to have the right to vote in such elections.

(c) The study shall be completed by the state election coordinator no later than February 2, 2012, and the state election coordinator shall present the results of the study, together with any recommended statutory changes, to the house and senate state and local government committees no later than February 28, 2012.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

Appendix B

Voter Participation By State (Ranked) 2008

State	Total Registered (millions)	Total Voted (millions)	Percent of Registered who Voted*
COLORADO	118,211	105,625	94.67%
DISTRICT OF COLUMBIA	1920	1671	94.44%
MINNESOTA	3,522	3,023	94.16%
NEW HAMPSHIRE	2874	2496	93.66%
WISCONSIN	1,318	1,092	93.25%
WASHINGTON	14,884	13,828	93.12%
CALIFORNIA	2,437	2,307	92.91%
OREGON	1,762	1,610	92.71%
WYOMING	447	408	92.59%
MARYLAND	9,930	8,950	92.39%
VIRGINIA	8,774	7,951	92.38%
MASSACHUSETTS	4,624	4,183	92.38%
IOWA	522	458	92.09%
MONTANA	722	644	91.67%
CONNECTICUT	6,152	5,436	91.37%
DELAWARE	2547	2269	91.28%
KANSAS	1,630	1,501	90.76%
FLORIDA	1,342	1,218	90.62%
NEW MEXICO	2258	1952	90.59%
MISSISSIPPI	2,393	2,150	90.50%
GEORGIA	801	716	90.46%
NEW JERSEY	2,827	2,612	90.45%
LOUISIANA	3,294	3,043	89.85%
NEBRASKA	5532	4865	89.78%
OHIO	2,930	2,759	89.75%
UNITED STATES	5,191	4,589	89.63%
NEVADA	3,224	2,846	89.55%
MAINE	1549	1391	89.39%
NEW YORK	939	843	89.37%
VERMONT	932	842	89.28%
RHODE ISLAND	622	583	89.26%
IDAHO	3281	2967	89.20%
NORTH CAROLINA	935	847	89.15%
PENNSYLVANIA	8,458	7,559	89.09%
UTAH	4,902	4370	89.00%
INDIANA	7,200	6,385	88.82%
ILLINOIS	6,109	5,483	88.36%
MISSOURI	1,798	1,507	88.28%
SOUTH DAKOTA	1588	1449	88.24%

State	Total Registered (millions)	Total Voted (millions)	Percent of Registered who Voted*
SOUTH CAROLINA	6,451	5,747	88.13%
ALASKA	568	507	88.12%
MICHIGAN	2,384	2,101	87.94%
HAWAII	3661	3139	87.74%
ALABAMA	2,921	2,515	87.20%
ARIZONA	10,124	8,435	86.85%
KENTUCKY	1,055	939	86.45%
TENNESSEE	4,642	4,269	86.10%
OKLAHOMA	3,951	3,650	83.82%
TEXAS	3,300	3,073	83.32%
ARKANSAS	917	740	82.85%
WEST VIRGINIA	3095	2886	80.70%
NORTH DAKOTA	270	250	80.45%

Source: U.S. Census Bureau, Current Population Survey, 2009.

Appendix C

18-24 Year-olds Registered and Voted (by state)

State and Age*	Registered		Total Voted		Percentage	
	Total Registered (millions)	18-24 Year-Olds Registered (millions)	Total Voted (millions)	18-24 year-olds voted (millions)	Percent Registered who Voted	Percent of 18-24 Year-olds Registered Who Voted
UNITED STATES						
Total	146,311		131,145		89.6%	
.18 to 24		15,082		12,515		83.0%
ALABAMA						
Total	2,438		2,126		87.2%	
.18 to 24		301		238		79.1%
ARIZONA						
Total	2,874		2,496		86.8%	
.18 to 24		303		223		73.6%
ARKANSAS						
Total	1,318		1,092		82.9%	
.18 to 24		141		99		70.2%
CALIFORNIA						
Total	14,884		13,828		92.9%	
.18 to 24		1,727		1,504		87.1%
COLORADO						
Total	2,437		2,307		94.7%	
.18 to 24		248		231		93.1%
CONNECTICUT						
Total	1,762		1,610		91.4%	
.18 to 24		164		143		87.2%
FLORIDA						
Total	8,774		7,951		90.6%	
.18 to 24		832		693		83.3%
GEORGIA						
Total	4,624		4,183		90.5%	
.18 to 24		491		401		81.7%
HAWAII						
Total	522		458		87.7%	
.18 to 24		37		27		73.0%
ILLINOIS						
Total	6,152		5,436		88.4%	
.18 to 24		694		585		84.3%
INDIANA						
Total	3,105		2,758		88.8%	
.18 to 24		304		222		73.0%
IOWA						
Total	1,630		1,501		92.1%	
.18 to 24		168		147		87.5%
KANSAS						
Total	1,342		1,218		90.8%	
.18 to 24		124		108		87.1%

State and Age*	Registered		Total Voted		Percentage	
	Total Registered (millions)	18-24 Year-Olds Registered (millions)	Total Voted (millions)	18-24 year-olds voted (millions)	Percent Registered who Voted	Percent of 18-24 Year-olds Registered Who Voted
KENTUCKY						
Total	2,258		1,952		86.4%	
.18 to 24		230		183		79.6%
LOUISIANA						
Total	2,393		2,150		89.8%	
.18 to 24		197		165		83.8%
MAINE						
Total	801		716		89.4%	
.18 to 24		64		57		89.1%
MARYLAND						
Total	2,827		2,612		92.4%	
.18 to 24		286		251		87.8%
MASSACHUSETTS						
Total	3,294		3,043		92.4%	
.18 to 24		296		253		85.5%
MICHIGAN						
Total	5,532		4,865		87.9%	
.18 to 24		610		455		74.6%
MINNESOTA						
Total	2,930		2,759		94.2%	
.18 to 24		306		279		91.2%
MISSISSIPPI						
Total	1,590		1,439		90.5%	
.18 to 24		198		158		79.8%
MISSOURI						
Total	3,224		2,846		88.3%	
.18 to 24		377		304		80.6%
NEBRASKA						
Total	939		843		89.8%	
.18 to 24		94		75		79.8%
NEVADA						
Total	1,148		1,028		89.5%	
.18 to 24		106		85		80.2%
NEW HAMPSHIRE						
Total	757		709		93.7%	
.18 to 24		83		72		86.7%
NEW JERSEY						
Total	4,021		3,637		90.5%	
.18 to 24		462		384		83.1%
NEW MEXICO						
Total	935		847		90.6%	
.18 to 24		88		69		78.4%
NEW YORK						
Total	8,458		7,559		89.4%	
.18 to 24		875		741		84.7%

State and Age*	Registered		Total Voted		Percentage	
	Total Registered (millions)	18-24 Year-Olds Registered (millions)	Total Voted (millions)	18-24 year-olds voted (millions)	Percent Registered who Voted	Percent of 18-24 Year-olds Registered Who Voted
NORTH CAROLINA						
Total	4,902		4,370		89.1%	
.18 to 24		445		362		81.3%
OHIO						
Total	6,109		5,483		89.8%	
.18 to 24		692		581		84.0%
OKLAHOMA						
Total	1,798		1,507		83.8%	
.18 to 24		171		132		77.2%
OREGON						
Total	1,961		1,818		92.7%	
.18 to 24		158		136		86.1%
PENNSYLVANIA						
Total	6,451		5,747		89.1%	
.18 to 24		674		601		89.2%
SOUTH CAROLINA						
Total	2,384		2,101		88.1%	
.18 to 24		211		185		87.7%
TENNESSEE						
Total	2,921		2,515		86.1%	
.18 to 24		298		234		78.5%
TEXAS						
Total	10,124		8,435		83.3%	
.18 to 24		1,074		780		72.6%
UTAH						
Total	1,055		939		89.0%	
.18 to 24		107		85		79.4%
VIRGINIA						
Total	3,951		3,650		92.4%	
.18 to 24		346		311		89.9%
WASHINGTON						
Total	3,300		3,073		93.1%	
.18 to 24		259		223		86.1%
WEST VIRGINIA						
Total	917		740		80.7%	
.18 to 24		88		72		81.8%
WISCONSIN						
Total	3,095		2,886		93.2%	
.18 to 24		282		267		94.7%

*Note: States have been removed from this table that did not have sufficient 18-24 year olds to report separately.
Source: U.S. Census Bureau, Current Population Survey, 2009.