



TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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MEMORANDUM

TO: TACIR Commission Members

FROM: Harry A. Green *Harry*
Executive Director

DATE: December 7, 2011

SUBJECT: Election Bills Referred to TACIR in 2011

During the 2011 legislative session, the House State and Local Government Committee referred two election bills to TACIR for study. They are reviewed and discussed below. The bills are appended to the memo.

SB1872 (Kyle)/HB0472 (Pitts)

Bill Summary

As introduced, requires the state election coordinator to study the feasibility of permitting registered voters who reside outside the precinct listed as their permanent residence on their permanent voter registration card to vote only for candidates running for statewide office; the study will not address property rights voting; the coordinator must report the results of the study to the General Assembly by February 28, 2012.

Fiscal Note

Not significant.

Legislative History

Senator Kyle introduced this bill to the Senate State and Local Government Committee on April 12, 2011. He stated that college students and people who are traveling may not have requested an absentee ballot and should still be allowed to vote on statewide races in the Tennessee county in which they temporarily reside. He pointed out that the bill asks only that the State Election Coordinator study the issue. The bill was recommended for passage by the

Committee by a 6-0-2 vote. It passed the full Senate on April 21, 2011 in a 28-2-1 vote.

Representative Pitts introduced the bill to the House State and Local Government Subcommittee on April 13, 2011. Though they understood that it was not the intent of the bill, subcommittee members expressed concern that the language might restrict persons who live outside the precinct in which they are registered from voting in any local elections even if they voted in their home precincts. Speaker Williams expressed further concern that the study might be burdensome to the Coordinator of Elections and his staff and that the bill should “urge” such a study rather than “require” it. The bill was moved on to the full State and Local Government Committee with the understanding that Representative Pitts would work on the language.

The bill came before the full House State and Local Government Committee on April 19, 2011. Representative Pitts offered an amendment to clarify the bill’s language, but no one had seen it. Members asked to hear from Election Coordinator Mark Goins, and he said that he needed time to review the amendment and that he had not spoken to either of the bill’s sponsors about it. The bill was deferred for a week and Committee Chairman Todd asked Representative Pitts to talk to the State Election Coordinator about it in the meantime.

At the April 26, 2011 meeting, the amendment to clarify the language was passed. Coordinator Goins came up to answer questions and he said that the idea was not feasible because the counties are not linked to one another so that they can report who has voted and prevent people from voting more than once. Fraud such as this would be identified, but not until after the votes had been cast. Representative McCormick pointed out that it was a felony and the voter would eventually be caught, so that 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.

Issues to Consider

- Would it improve access to voting?

The target of the legislation proposed for study is any legitimate voter who temporarily resides away from her home precinct but who does not wish to move her registration to the temporary address. The types of voters offered as an example during discussion were college students.

Elections generally fall in the middle of a semester, and college students who prefer to maintain their parents’ address as their permanent one may find it difficult to travel home to vote. Early voting is offered on Saturdays, so it should be possible for a student to go home and vote, but it might not be convenient. Voting absentee requires advance planning and many college students may not start the process in time.

The idea behind this bill is that students, or anyone else similarly situated at a temporary address, could vote in statewide races at a precinct in their temporary location during early voting. The restriction to statewide elections only was included to prevent the necessity of maintaining all ballots from all counties at every precinct statewide.

The population targeted by this legislation has a way to vote, but there are obstacles that could be reduced by allowing voting in the county in which they temporarily reside.

- Would it allow voter fraud?

When a person votes early in his home county, all polling places in the county get an instant update showing that he has voted. Counties do not receive these updates from one another, however, so someone might vote in both his permanent and temporary residence counties. He should not be able to vote in more counties than that because he should be required to show proof of residence (like a utility bill, an active college ID, etc.) even for his temporary county. A voter would not have proof of residence in counties beyond his home and temporary residence.

If a voter did vote in two counties, it would be discovered after the election and he would be charged with a felony. It does not seem likely that a voter would commit a crime with a near 100% chance of getting caught when the payoff is just one extra vote for his candidate of choice. But even in the unlikely event that a voter did make this sacrifice, and it did affect the outcome, there is already established legal recourse for the losing candidate. In the face of election fraud that could swing the election, the results could be challenged and voided under Tenn. Code Ann. § 2-17-113.

The laws against such fraud and the extreme likelihood of being caught serve as a deterrent and legal recourse exists if deterrence fails.

- Would voting in local elections be discouraged and/or prohibited?

When the bill was initially filed, the language made it sound as if voters with both a permanent and a temporary residence within the state would be allowed to vote only in statewide elections regardless of where they voted. Representative Pitts (the House sponsor) noted in the State and Local Government Committee that this was not the intent and he filed an amendment to clarify the language. The amendment passed before the bill was sent to TACIR for study.

There were additional concerns that allowing this option would encourage those with temporary residences to vote in the county of temporary residence and thus give up their right to vote in their home county local elections. It is possible that this could happen, though with all precinct

ballots on file with the state Coordinator of Elections, and with almost all Tennessee counties using electronic voting machines, it is certainly feasible for all ballot faces to be available at all precincts during early voting, much as all county ballot faces are currently available. Even counties with paper ballots have at least one electronic voting machine per precinct for disabled voters who may need it.

- How would local election officials be affected?

Staff solicited the opinion of local election officials in counties with universities in all three Grand Divisions of the state. Some replied and some did not. The replies staff did receive mentioned concerns about voter fraud. When staff spoke with the state Coordinator of Elections, he also suggested that some county election officers might be reluctant to accept the residence and identity verifications conducted by election officers in other counties.

Staff Analysis

This would appear to be legislation that would allow greater access to voting for a group that has some obstacles in getting to the polls. The threat of voter fraud appears to be minimal. Local election coordinators did not mention any concerns about additional staff needs or workload being required. If the possibility of fraud remains a concern, the program could start slowly, allowing voters to cast provisional ballots in their temporary residence counties during early voting. The five-day period between early voting and election day would allow those provisional ballots to be sent to the voters' home counties, where signatures would be compared and it could be verified that the voter had not voted in both places before the vote was opened and allowed into the vote count.

SB2035 (Ford)/HB0779 (Brown)

Bill Summary

This bill requires the local law enforcement department to make every reasonable effort to have a visible presence during the time of door-to-door campaigning, if a candidate for state or local public office:

- Plans to conduct a door-to-door campaign within the district for which such official is seeking election;
- Desires to have law enforcement presence during the period when such door-to-door campaign is scheduled; and
- Notifies the local law enforcement department in writing at least 10 days prior to the date such door-to-door campaign is scheduled.

The presence may be by patrol cars or walking patrols or a combination of both in the discretion of the local law enforcement department.

Fiscal Note

Not significant based on the following assumptions:

- Local law enforcement agencies, upon timely request by a candidate, will redirect existing patrols to the area where a door-to-door campaign is being conducted.
- Any additional cost to local law enforcement agencies resulting from redirection of existing patrols will be assessed to the candidate requesting such services.

Legislative History

Representative Brown introduced the bill to the House State and Local Government Subcommittee on March 30, 2011. Representative Brown told the story of one of her campaign workers who had a homeowner pull a gun on him and threaten to kill him while canvassing a neighborhood for Dr. Brown. She said she had researched the issue and felt that this type of incident may become more common in the future. She felt it should be addressed and requested that the bill be sent to TACIR for study. The subcommittee members showed some discomfort with the language of the bill, suggesting that it might be better to encourage rather than require local law enforcement to have a presence when requested for neighborhood canvassing. Nevertheless, the subcommittee sent the bill to TACIR unchanged.

Issues to Consider

- Are there any legal restrictions on canvassing residential areas?

The right of persons to enter private property to express political or religious views is protected under the First Amendment to the U.S. Constitution. Canvassers may enter private property as long as there are no “No Trespassing” signs visible. In *Watchtower Bible and Tract Society v. Village of Stratton*, the U.S. Supreme Court held that political and religious canvassers could not be required either to obtain a permit or to give notice prior to going door-to-door.

- Would a police presence promote safety?

A general police presence would not have prevented the incident that Representative Brown relayed. If the officers do not come to the door with canvassers, and the bill does not ask them to do so, then their presence is unlikely to make much difference in a volatile situation with a resident.

- Is canvassing danger a problem that needs to be addressed legislatively?

It is difficult to determine if there are many safety issues for canvassers. Most websites that give canvassing tips discuss only dogs as a safety concern. Staff could not find much in the way of canvassing incident reports. There were some stories about incidents with 2010 Census workers, but accounts said that they happened mostly at residences where “No Trespassing” signs were posted. Though Census workers are allowed to enter such property as federal employees, residents may not be aware of this.

Staff Analysis

Representative Brown’s account of what happened to her supporter while canvassing was frightening and it is something that everyone likely would agree should be prevented in the future if possible. It does not seem to be a common occurrence. This was a specific instance of a resident who had apparently suffered vandalism and assault on his property by unknown assailants more than once in the past. He did not have a “No Trespassing” sign posted. The military training of the canvasser almost certainly helped him to defuse the situation.

If officers had been aware of the canvass and had been in the neighborhood, it is unlikely that it would have made any difference in this incident. It is possible that an officer could have been alerted in time to try to defuse the situation, but probably not. Furthermore, there could be an issue defining “candidate.” Would someone who is trying to gather signatures to be put on the ballot be considered a candidate? What about someone who is simply exploring the idea of running for office and wants to hear potential constituent ideas and concerns? There could be a large group of people who would qualify to ask for assistance. The fiscal note assumes that existing resources would be redirected and the candidate charged for any additional resources needed. But the ability to redirect existing resources might be different on different days, opening local law enforcement up to charges of helping some candidates free of charge while others had to pay.

A brief safety training for canvassers before they “hit the streets” would probably be more effective. Staff searched for canvassing safety tips and found a few lists, but most were about avoiding injury by dogs. Staff asked Coordinator Goins if his office provides any guidelines, but he said training is generally left to the political parties. He expressed concern that guidelines from his office might open the State up to a lawsuit if they proved insufficient and someone was hurt.

Since some races are non-partisan, staff is unsure that leaving training to political parties would be fully effective. It might be useful for the Election Coordinator’s office to post some guidelines and training tips for candidates on the office’s website. As long as legal disclaimers were adequate, it should be safe to do. Many candidates might find it to be a useful and safety-promoting tool.

SENATE BILL 1872

By Kyle

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.

SENATE BILL 2035

By Ford

AN ACT to amend Tennessee Code Annotated, Title 2,
relative to election campaigns.

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

SECTION 1. Tennessee Code Annotated, Title 2, Chapter 1, Part 1, is amended by adding the following language as a new section as follows:

2-1-119.

(a) **If** a candidate for state or local public office as defined in § 2-10-102:

(1) Plans to conduct a door-to-door campaign within the district for which such official is seeking election;

(2) Desires to have law enforcement presence during the period when such door-to-door campaign is scheduled; and

(3) Notifies the local law enforcement department in writing at least ten (10) days prior to the date such door-to-door campaign is scheduled,

then the local law enforcement department shall make every reasonable effort to have a visible presence during the time such door-to-door campaign is conducted.

(b) The presence may be by patrol cars or walking patrols or a combination of both in the discretion of the local law enforcement department.

(c) As used in this section “local law enforcement department” means the police department if the door-to-door campaign is within a municipality and the sheriff’s office if the door-to-door campaign is within the county outside an incorporated municipality.

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