

# ASSEMBLY, No. 2204

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED FEBRUARY 25, 2008

**Sponsored by:**

**Assemblywoman JOAN M. QUIGLEY**

**District 32 (Bergen and Hudson)**

**Assemblyman JACK CONNERS**

**District 7 (Burlington and Camden)**

**Assemblyman VINCENT PRIETO**

**District 32 (Bergen and Hudson)**

**Co-Sponsored by:**

**Assemblyman Schaer**

**SYNOPSIS**

Broadens methods of transmitting ballots used in federal elections to include electronic means.

**CURRENT VERSION OF TEXT**

As introduced.



A2204 QUIGLEY, CONNERS

2

1 AN ACT concerning the transmission of certain ballots used by  
2 overseas voters voting in federal elections and amending various  
3 parts of the statutory law.

4

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

7

8 1. Section 2 of P.L.1976, c.23 (C.19:59-2) is amended to read as  
9 follows:

10 2. As used in this act:

11 a. "United States" means each of the several states, the District  
12 of Columbia, Commonwealth of Puerto Rico, Guam, American  
13 Samoa and the Virgin Islands; the term does not mean or include  
14 the Canal Zone or any other territory or possession of the United  
15 States.

16 b. "Residing abroad" means residing outside the United States.

17 c. "Federal election" means any general, special or primary held  
18 for the purpose of nominating or electing any candidate for the  
19 office of President or Vice President of the United States,  
20 Presidential elector, United States Senator or member of the United  
21 States House of Representatives.

22 d. "Overseas federal election voter" means any person in  
23 military service who, by reason of active duty or service, is absent  
24 on the date of an election from the place of residence in New Jersey  
25 where the person is or would be qualified to vote, and any citizen of  
26 the United States residing abroad who (1) immediately prior to his  
27 departure from the United States was domiciled in New Jersey and  
28 (a) was registered to vote, or had all the qualifications to register  
29 and vote, in New Jersey; or (b) had all the qualifications to register  
30 and vote in New Jersey other than having attained 18 years of age  
31 but has since attained that age; or (c) would, but for residence, have  
32 the qualifications to register and vote in New Jersey; (2) does not  
33 maintain a residence in the United States and is not registered or  
34 qualified to vote elsewhere in the United States; and (3) holds a  
35 valid passport or card of identity and registration issued under  
36 authority of the Secretary of State of the United States.

37 e. **["Fax"]** "Electronic means" means any transmission made by  
38 an electronic telefacsimile machine or a similar device, or by any  
39 other form of electronic transmission **[device which]** including, but  
40 not exclusive to electronic mail, that transports an authentic copy of  
41 a document from one user **[of the device]** to another.

42 (cf: P.L.1993, c.73, s.4)

**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.**

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

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

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

36 (cf: P.L.1995, c.195, s.1)

37

38       3. Section 5 of P.L.1976, c.23 (C.19:59-5) is amended to read as  
39 follows:

40       5. a. An application for an overseas federal election voter ballot  
41 shall be in substantially the following form:

42       APPLICATION FOR AN OVERSEAS FEDERAL ELECTION  
43 VOTER BALLOT

44       I, the undersigned, certify the following as a basis for an  
45 application as citizen of the United States residing outside the  
46 United States to receive a Federal election ballot to be voted at the  
47 election to be held on ..... (date of election) that is to say:



1 sent to each such voter shall include a certificate substantially the  
2 same as provided for in section 9 of P.L.1976, c.23 (C.19:59-9).

3 c. The printed instructions sent with each overseas federal  
4 election voter ballot, including instructions sent by electronic  
5 means, shall include a copy of the following notice:

6 PENALTY FOR FRAUDULENT VOTING  
7

8 Any person who knowingly violates any of the provisions of the  
9 Overseas Residents Federal Election Absentee Voting Law, or who,  
10 not being entitled to vote thereunder, fraudulently votes or attempts  
11 to vote thereunder or enables or attempts to enable another person,  
12 not entitled to vote thereunder, to vote fraudulently thereunder or  
13 who prevents or attempts to prevent by fraud the voting of any  
14 person legally entitled to vote under this act, shall be guilty of an  
15 indictable offense, and upon conviction thereof shall be subject, in  
16 addition to such other penalties as are authorized by law, to  
17 disenfranchisement unless and until pardoned or restored by law to  
18 the right of suffrage.

19 (cf: P.L.1993, c.73, s.8)  
20

21 5. Section 12 of P.L.1993, c.73 (C.19:59-8.1) is amended to read  
22 as follows:

23 12. Whenever a county clerk receives a request by **[fax]**  
24 electronic means from an overseas federal election voter that an  
25 overseas federal election voter ballot be sent to that person by **[fax]**  
26 electronic means, the county clerk shall verify the voter's eligibility  
27 to vote as an overseas federal election voter in the State and the  
28 county desired. If the overseas federal voter is eligible to vote  
29 therein, the county clerk shall send the ballot to the voter as soon as  
30 practicable by **[fax]** electronic means using the telephone number  
31 or electronic address supplied by the voter for that purpose. If the  
32 overseas federal election voter is not eligible to vote in the State or  
33 the county desired, notice of noneligibility shall be provided to the  
34 voter by **[fax]** electronic means as soon as practicable after the  
35 receipt of the request.

36 (cf: P.L.1993, c.73, s.12)  
37

38 6. Section 10 of P.L.1976, c.23 (C.19:59-10) is amended to read  
39 as follows:

40 10. a. For overseas federal election voter ballots other than such  
41 ballots sent to the voter by **[fax]** electronic means, the procedure  
42 for completing the ballot shall be as follows:

43 Upon completion of the ballot by indicating his choice of  
44 candidates for the offices named, the ballot shall be placed in the  
45 inner envelope and sealed. Upon completion and signing in his  
46 handwriting the certificate attached to the inner envelope, the inner  
47 envelope shall be placed in the outer envelope which when sealed

1 shall be mailed postage prepaid to the county board of elections  
2 whose address is printed thereon.

3 b. For overseas federal election voter ballots sent to the voter  
4 by **[fax]** electronic means, the procedure for completing the ballot  
5 shall be as follows:

6 After the ballot is received and completed by the voter by  
7 indicating that person's choice of candidates for the offices named,  
8 the ballot shall be placed in a secure envelope. Upon completion  
9 and signing in the voter's handwriting of the certificate sent to the  
10 voter pursuant to section 8 of P.L.1976, c.23 (C.19:59-8), it shall be  
11 placed in the same envelope as the voted ballot. The envelope shall  
12 then be sealed securely and sent immediately by air mail to the  
13 appropriate county board of elections in this State.

14 c. Notwithstanding the provisions of subsections a. and b. of  
15 this section, a copy of a voted overseas federal election voter ballot  
16 may be transmitted by **[fax]** electronic means to the appropriate  
17 county board of elections in this State. Such a ballot shall be  
18 subject to the provisions of sections 3 and 4 of P.L.1995, c.195  
19 (C.19:59-14 and C.19:59-15).  
20 (cf: P.L.1995, c.195, s.2)

21  
22 7. Section 11 of P.L.1976, c.23 (C.19:59-11) is amended to read  
23 as follows:

24 11. On receipt of each overseas federal election voter ballot,  
25 other than a ballot which had been sent by **[fax]** electronic means  
26 to an overseas federal election voter, the signature on the certificate  
27 on the inner envelope shall be compared to that on the person's  
28 application. All ballots, whether originally sent to an overseas  
29 federal election voter by air mail or **[by fax]** electronic means, shall  
30 be approved, disapproved, processed, counted and disputes in  
31 connection therewith shall be handled in the same manner as is  
32 applicable to other absentee ballots. No ballot received after the  
33 time designated for the closing of the polls shall be counted.  
34 (cf: P.L.1993, c.73, s.10)

35  
36 8. Section 3 of P.L.1995, c.195 (C.19:59-14) is amended to read  
37 as follows:

38 3. Notwithstanding any law, rule or regulation to the contrary,  
39 a copy of a voted overseas federal election voter ballot or of a voted  
40 federal write-in absentee ballot which is transmitted by **[fax]**  
41 electronic means to the appropriate county board of elections in this  
42 State shall be considered valid and counted if it:

- 43 a. is from a qualified voter;
- 44 b. has been transmitted to the appropriate county board of  
45 elections no later than the time designated by law for the closing of  
46 the polls on that day; and

1 c. is accompanied by the following statement, which shall be  
2 certified by the voter's signature: "I understand that by **[faxing]**  
3 transmitting by electronic means a copy of my voted ballot I am  
4 voluntarily waiving my right to a secret ballot. At the same time, I  
5 pledge to place the original voted ballot in a secure envelope,  
6 together with any other required certification, and send the  
7 documents immediately by air mail to the appropriate county board  
8 of elections."

9 (cf: P.L.1995, c.195, s.3)

10  
11 9. Section 4 of P.L.1995, c.195 (C.19:59-15) is amended to read  
12 as follows:

13 4. a. Immediately after a copy of the voted overseas federal  
14 election voter ballot or federal write-in absentee ballot has been  
15 **[faxed]** transmitted by electronic means to the appropriate county  
16 board of elections, as permitted pursuant to section 3 of P.L.1995,  
17 c.195 (C.19:59-14), the overseas federal election voter shall place  
18 the original voted ballot in a secure envelope, together with a  
19 certificate substantially the same as provided for in section 9 of  
20 P.L.1976, c.23 (C.19:59-9), and send the documents by air mail to  
21 the appropriate county board of elections.

22 b. All copies of voted ballots received by **[fax]** electronic  
23 means shall be approved, disapproved, processed and counted, and  
24 disputes in connection therewith shall be handled, in the same  
25 manner as is applicable to other absentee ballots. No ballot  
26 received after the time designated for the closing of the polls shall  
27 be counted.

28 c. The county board of elections shall take all necessary  
29 precautions to preserve the security of the ballot materials and  
30 specifically shall ensure that the vote cast by a voter using a  
31 **[faxed]** ballot transmitted by electronic means is not revealed,  
32 except to the extent necessary by law or judicial determination.  
33 Upon the completion of all inspections of a **[faxed]** ballot  
34 transmitted by electronic means required by law, the board or any  
35 employee thereof acting under its direction shall promptly separate  
36 the waiver certification from the **[faxed]** ballot transmitted by  
37 electronic means. Any person handling such a **[faxed]** ballot shall  
38 not identify the votes cast by any voter, except upon judicial  
39 determination.

40 d. Prior to certification of the results of the election, the county  
41 board shall:

42 (1) compare the information on the **[faxed]** copy transmitted by  
43 electronic means of each voted ballot with the same on the original  
44 voted ballot sent by air mail by the voter who **[faxed]** transmitted  
45 to the county board a copy of the voted ballot by electronic means,  
46 and the signature on the statement received by **[fax]** electronic  
47 means with the signature on the certificate received by air mail; and

1 (2) ascertain whether an original voted ballot has been received  
2 for each **【faxed】** copy of a voted ballot received by electronic  
3 means and counted.

4 Whenever the particulars of the **【faxed】** copy of a voted ballot  
5 **【of a voter】** transmitted by electronic means do not conform exactly  
6 with the particulars of the original voted ballot sent by air mail to  
7 the county board afterwards by that voter and whenever an original  
8 voted ballot has not been received which corresponds to a **【faxed】**  
9 copy of a voted ballot transmitted by electronic means which has  
10 been received and counted by the county board, those ballots and all  
11 other pertinent documents and information relative to those ballots  
12 shall be turned over to the superintendent of elections in counties  
13 having a superintendent and the prosecutor in all other counties for  
14 further investigation and action.

15 e. Within 30 days after the election, the county board shall  
16 gather and keep together the **【faxed】** copy of the voted ballot  
17 transmitted by electronic means, the certified statement and the  
18 original voted ballot sent by air mail of each voter who transmitted  
19 a copy of a voted ballot by **【fax】** electronic means. Those ballots  
20 needed for an investigation conducted by the superintendent of  
21 elections or the county prosecutor, as the case may be, or by any  
22 other law enforcement official shall be returned to the county board  
23 as soon as practicable after the conclusion of the investigation. All  
24 ballots and documents relative to a **【faxed】** copy of a voted ballot  
25 transmitted by electronic means and received by the county board  
26 shall be retained by it for a period of one year following the day of  
27 the election. The superintendent of elections in counties having a  
28 superintendent and the prosecutor in all other counties shall have  
29 the authority to impound all such documents whenever he shall  
30 deem such action necessary.

31 (cf: P.L.1995, c.195, s.4)

32

33 10. This act shall take effect on January 1 following the date of  
34 enactment.

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36

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#### STATEMENT

38

39 The purpose of this bill is to expand the methods of transmitting  
40 ballots used by overseas voters who wish to vote in federal  
41 elections. The bill does this by removing the term “fax” in those  
42 section of law pertaining to this type of voting and replacing it with  
43 the term “electronic means,” which is a broader term that  
44 encompasses fax machines and any other form of electronic  
45 transmission including, but not exclusively, electronic mail. Thus,  
46 under the bill, a voter could request and receive information about  
47 voting in a federal election by electronic mail and also complete

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1 and return an electronic ballot that has been received by electronic  
2 mail. Pursuant to current law, for such a vote to be considered  
3 valid, the voter would still be required to complete a paper copy of  
4 the ballot that would be sent to the appropriate county board of  
5 elections after the electronic transmittal of the voted ballot.