

# The State of Texas



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Phil Wilson  
Secretary of State

## MEMORANDUM

TO: County Judges, County Clerks, and Elections Administrators

FROM: Ann McGeehan, Director of Elections

DATE: July 1, 2008

RE: Pilot Program for Emailing Ballots to FPCA Voters under Senate Bill 90

Senate Bill 90, which was enacted during the 80<sup>th</sup> Regular Legislative Session in 2007, amended Chapter 101 of the Texas Election Code ("the Code") by adding Section 101.0071. Section 101.0071 requires the Secretary of State to implement a pilot program to evaluate the use of a .mil email address to send blank ballots and balloting materials to military voters who are overseas and who applied by FPCA during the November 4, 2008 general election for state and county officers. This memo provides an overview of the program's procedures.

**NOTE:** Section 101.0071 enables early voting clerks to email balloting materials to qualified FPCA voters, as detailed below. However, the voters' marked ballots must be returned via regular mail. Marked ballots may not be returned via email under this program.

Under Section 101.0071, a county may participate in the pilot program if the early voting clerk of the county makes a request to the Secretary of State to participate, and the Secretary of State approves that request. **If your county would like to participate in the program, please complete and return the enclosed Request to Participate form to our office no later than September 5, 2008.** You may return the enclosed form by mail or by facsimile to our office.

Under Section 101.0071, once balloting materials have been mailed to the voter in the normal manner, the early voting clerk may send balloting materials to the voter's email address IF the voter:

- is a member of the armed forces and is an FPCA registrant who is eligible for early voting by mail;
- provides a current address that is located outside of the United States and is voting from outside the United States;
- provides an email address that contains the voter's name and the suffix ".mil;" and
- requests balloting materials to be sent by email because the voter did not receive the balloting materials provided by mail.

We note that Section 101.0071 requires an overseas military voter to request receipt of his or her balloting materials via mail and then subsequently request them via email. We interpret this

## MEMORANDUM

Page 2

provision to require that an overseas military voter must request his or her balloting materials via email after allowing the county sufficient time to send all ballots by mail. Per Section 86.004(b), counties must send all mail ballots no later than Saturday, September 20, 2008. Therefore, a voter may request their balloting materials via email on or after September 20, 2008. All such requests must be made before the deadline for an application for a ballot by mail, which is Tuesday, October 28, 2008 by 5 p.m.

**NOTE:** A request to receive balloting materials via email which is received earlier than September 20, 2008 or later than October 28, 2008 by 5 p.m. must be rejected as untimely.

Section 101.0071 also requires that participating email addresses must contain the voter's name and end in the suffix ".mil." We interpret this provision to require that the name in the email address must substantially match the name on the FPCA.

If balloting materials are emailed to one voter under this pilot program, the clerk must email balloting materials to all voters who meet the program qualifications, as articulated above, and request their ballots via email. The early voting clerk should amend each voter's FPCA to include their email address. However, an email address provided under this section is not public information per Chapter 552 of the Texas Government Code. Early voting clerks shall ensure that the voter's email address is excluded from public disclosure.

Under Section 101.0071, the balloting materials sent to a voter via email must include a signature sheet for the voter. This signature sheet has been included with this memorandum and is available electronically via email from our office. The balloting materials should also include: the appropriate ballot for each voter; ballot instructions; information on how to print a security envelope and return envelope; and the list of certified write-in candidates, as applicable.

**Ballots emailed to voters under the pilot program must be returned 1) with a signature sheet and 2) by mail, UNLESS the voter qualifies to return their ballot by facsimile, per the provisions of Section 105.001, for military voters who receive hostile fire or imminent danger pay or who are stationed in combat pay zones. Our office will send a reminder about the facsimile program, along with the updated combat zones, prior to the November 4, 2008 General Election, in our usual manner.**

If a voter returns both a voted ballot provided to the voter by mail in accordance with Section 101.007(a) [normal FPCA procedure] AND a voted ballot provided to the voter by email via this pilot program, only the ballot that was provided electronically may be counted; however, if the voter returned only the mail ballot, then that ballot may be accepted, if the early voting clerk received an email from the voter stating that their regular mail ballot arrived. All ballots returned via the pilot program shall be processed in the same manner as all other ballots voted by mail. Instructions on the signature sheet direct voters to place their marked ballot into a ballot secrecy envelope, and then to place the secrecy envelope and signature sheet into a carrier envelope. The carrier envelope should then be addressed to the early voting clerk and mailed.

All other provisions which apply to voting by mail apply to this pilot program, including the deadline for returning a marked ballot per Section 86.007. As previously mentioned, voters in hostile fire/imminent danger pay zones and/or combat zones are eligible to return their marked

## MEMORANDUM

Page 3

ballots via facsimile, per Section 105.001. These procedures remain in effect, in conjunction with the pilot program.

Our analysis of the program has identified several potential implementation issues, and participating counties should evaluate these issues and determine procedures for handling them.

First, many voters will be eager to use this program to return their marked ballots via email. Senate Bill 90 does not allow for the transmission of marked ballots via email. Blank balloting materials may be emailed from the early voting clerk to the pilot program voter, but the marked ballot and signature sheet must be returned by mail. We reiterate that Section 105.001 of the Code, which authorizes the electronic transmission of voted ballots from voters in hostile fire/imminent danger pay zones and/or combat zones, will still apply.

Second, counties are required to email a variety of materials to voters, including the ballot, signature sheet, envelope forms, and list of write-in candidates, as applicable. We recommend that the staff of participating counties become familiar and comfortable with scanning documents and attaching files to be sent via email. We also recommend that participating counties evaluate the speed and security of their computers prior to embarking on the program. This evaluation should include checking spam filters to ensure that counties can properly receive email from “.mil” email addresses. Participating counties will also need to ensure that they monitor email and facsimile transmissions regularly throughout the voting period.

Third, many voters will provide an email address which does not include their name or does not end with the suffix “.mil.” Senate Bill 90 specifically states that balloting materials may only be sent via email to an email address which meets both of these criteria. An email address which does not include the voter’s name and/or does not end in “.mil” is not authorized for use in this pilot program.

Finally, Senate Bill 90 requires the Office of the Secretary of State to file a report with the Texas Legislature concerning the pilot program, including recommendations relating to the continued feasibility of providing balloting materials by electronic mail to military personnel overseas, and the expansion of the program to include all overseas voters. These recommendations may also include suggestions for permanent statutory authority regarding the provisions of sending balloting materials by electronic mail. All counties that participate in the pilot program will be strongly encouraged to contribute their specific findings, which will be included in this report.

If your county is interested in participating in the pilot program, please return the attached form to our office no later than September 5, 2008. If you need more information, please contact Staff Attorney Heather Bernard at [elections@sos.state.tx.us](mailto:elections@sos.state.tx.us) or toll-free at 800-252-2216.

**Questions and Answers Relating to Email Pilot Program**

**Are there any requirements for counties to participate?**

No, the only requirement is that the county indicates that they would like to participate, as discussed in the accompanying memorandum. However, we strongly suggest that counties involved in this pilot should feel comfortable using email programs, scanning documents, and sending messages with attached files.

**How will we know if we have successfully signed up to participate?**

Upon receiving a county's Request to Participate form, our office will send a confirmation email.

**How many counties are currently signed up to participate?**

This is our first official communication to county election officials. While some counties have expressed an informal desire to participate, all counties are requested to return a Request to Participate form to officially notify us that they will participate.

**Do we need to preclear our participation in this program with the U.S. Department of Justice?**

No. Our office has precleared the provisions of Senate Bill 90. We will also submit this memorandum and the administrative rules (once adopted) to the Department of Justice to obtain preclearance of program procedures. These submissions should be sufficient to preclear any county's participation in the pilot program.

**Do I need to keep a separate list of voters who have received balloting materials by email?**

The early voting clerk shall note on the early voting by mail roster any ballots emailed to overseas military voters under this program. We recommend tracking this information using your usual early voting roster method. Since all timely requests to receive balloting materials via email will be submitted after the deadline for counties to send all ballots by mail, we suggest that you add a column to your usual early voting roster. This column will enable you to denote that you have emailed balloting materials to the voter, upon their request. This way, it will be clear from your voting roster that you have sent one voter two ballots, but it will also be clear that this is per the requirements of the pilot program. Please note that such rosters are subject to public disclosure, with the exception of the voters' email addresses.

**How does a voter request that their balloting materials be sent to them via email?**

A voter may simply email your office to identify themselves and request that you send their ballot via email. If they are military voters who are overseas and who applied by FPCA with your county, they are eligible. You must also have an email address ending in ".mil" on file with their current FPCA, or the voter must provide that email address to you.

**The voter gave me an email address that does not end in ".mil." May I email the balloting materials to another email address?**

No. SB 90 specifically requires that the voter provides an email address which includes the voter's name and ends in ".mil."

**Does this program apply only to military voters, or does it also apply to their spouses and dependents?**

The program is written to apply only to "members of the armed forces" pursuant to Section 101.0071(a) of the Code.

**What do I need to send the voter by email?**

You need to email the voter the following materials:

- Ballot;
- Ballot instructions;
- Signature sheet;
- Security envelope template (information about how to print this envelope from the Federal Voting Assistance Program (FVAP) website);
- Mailing envelope template (information about how to print this envelope from the Federal Voting Assistance Program (FVAP) website);
- List of certified write-in candidates, if applicable; and
- Any other materials you send to regular by mail voters.

**Where do we obtain the signature sheet to be emailed to the voters?**

We have included a signature sheet with this mailing. You may also obtain this form electronically via email from our office.

**Where do we obtain the security envelopes and return envelopes to provide to the voters?**

Voters should print the security (ballot secrecy) envelope available online at: [www.fvap.gov/pubs/fwabsecenv.pdf](http://www.fvap.gov/pubs/fwabsecenv.pdf). This should be printed on a No. 10 size business envelope or larger envelope. The voted ballot should be enclosed in the security envelope and sealed.

Voters should print off the postage paid envelope available online at: [www.fvap.gov/pubs/returnenvelope.pdf](http://www.fvap.gov/pubs/returnenvelope.pdf). This should be printed on a No. 10 size business or larger envelope.

**NOTE:** The postage for the FPCA return envelope is pre-paid (within U.S. postal system, including APO and FPO addresses and U.S. Embassies and Consulates) for use by absentee voters covered under the UOCAVA. Printing the mailing envelope template on plain paper and affixing it to another envelope will not be accepted by the United States Postal Service.

If voters are using a plain return envelope, they should write in bold letters on the bottom left-hand corner, "Official Absentee Balloting Material" and be sure to apply the required postage for their location.

**Can the voter email back the ballot to make sure it's received?**

No. SB 90 specifically requires that the voter return the marked ballot by mail.

However, please note that if the voter is in a hostile fire, imminent danger, or combat zone, they are eligible to return the ballot BY FACSIMILE, under Section 105.001 of the Election Code. This section authorizes the facsimile return of a marked ballot by active duty military voters, their spouses and dependents, so long as the voter is casting their ballot from an area designated for hostile fire pay, imminent danger pay, or one that has been designated as a combat zone by the president of the United States.

**We mailed the ballots to the voter two days ago. They are now requesting an email ballot. How long does the voter have to wait before requesting a ballot via email?**

There is no waiting period even if their ballots were mailed only days before as long as the request is made on or after September 20, 2008, the legal deadline by which counties must have mailed all ballots to be voted by mail.

**How late can a voter request that their ballot be emailed to them?**

The deadline to request balloting materials via email is October 28, 2008 by 5 p.m. This is the legal deadline to submit applications for ballots by mail, as well. We note that for voters casting their ballots from outside of the United States, the ballots must be received no later than the fifth day after election day. For the November 4, 2008 election, this means that ballots must be received no later than Monday, November 10<sup>th</sup>, because the fifth day after the election is a Sunday. It is in the voter's discretion to decide whether they have the means to return the ballot by mail in a timely manner.

**What if there is not enough time for a voter to return their ballot by mail?**

You may not refuse to send a voter their balloting materials, even if you are fairly certain that they do not have time to return their marked ballot by mail. We note that a voter may choose to return their ballot using expedited delivery (i.e., via FedEx), or that other military expedited procedures may be in place to provide a speedy return.

However, if you have concerns about the timeframe for a voter to return their ballot by mail to meet the applicable deadlines, we urge you to make the voter aware of the timeframe so that they may decide the best way to proceed.

**How are the ballots to be stored once they are received?**

Each emailed ballot which is received should be paired with the appropriate FPCA and stored securely in a jacket envelope with the FPCA and signature sheet. If the original mail ballot sent to the voter is also received, this ballot should also be stored in the jacket envelope. The contents of the jacket envelope will be reviewed by the early voting ballot board. The early voting clerk will provide direction to the early voting ballot board as to which ballot is to be counted in accordance with the procedures outlined in the memorandum and administrative rule, which will be published soon.

**How are the ballots processed by the early voting ballot board?**

The early voting clerk must present the email ballots with their corresponding jacket envelopes to the early voting ballot board when it reconvenes after the election to process provisional and overseas ballots. The early voting ballot board must wait until the early voting clerk has determined that all overseas ballots have been received in order to reconvene, or they will reconvene on the 6<sup>th</sup> day after election day.

If a voter has returned only the original mail ballot which was mailed to them, this ballot should be accepted, if the early voting clerk received an email from the voter stating that their regular mail ballot arrived.

If a voter has returned both the original mail ballot which was mailed to them, and also returned the emailed ballot by mail, only the emailed ballot may be counted. In order to count an emailed ballot, the ballot board must compare the voter's signature as it appears on the signature sheet returned with the ballot and as it appears on the voter's FPCA. If the signatures could have been written by the same person, the ballot should be accepted. If an emailed ballot was returned without a signature sheet, it may not be accepted.

**NOTE:** We anticipate that the ballots will not be readable by electronic scanners. The ballots will need to be counted by hand and added to the tally list accordingly, OR they may be duplicated for electronic tabulation.

**How can we tell our voters about this program?**

You may choose to communicate about this program with your voters in the manner that you deem appropriate. This may include posting information on your website or formulating an informative email which you distribute to your FPCA voters who have provided email addresses. We encourage you to consider ways to best use this program for the advantage of your voters.

**Where can military voters find more information about voting during active duty?**

The Federal Voting Assistance Program (FVAP) is available to provide additional assistance and information to military and overseas voters. They also have detailed resources available on their website: [www.fvap.gov](http://www.fvap.gov). They are available by phone at: (703) 588-1584 and toll-free at 800-438-VOTE(8683).

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