

# The State of Texas



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## **Report to the 81st Legislature on Senate Bill 90 (80<sup>th</sup> Legislature) Relating to the Pilot Program for Emailing Balloting Materials to Overseas Military Personnel**

### **Brief Overview**

This report is submitted in accordance with Senate Bill 90, 80th Regular Session, 2007. Senate Bill 90 required the Secretary of State to implement a pilot program to evaluate the use of electronic mail to provide balloting materials to overseas voters who are members of the armed forces of the United States for the November 4, 2008 general election. Nineteen counties participated in the program, and less than 160 ballots were emailed to overseas military voters, and less than 70 ballots were returned. Response to the pilot was generally positive, but participation was limited.

### **Background**

Senate Bill 90 was enacted by the 80th Legislature and required the Secretary of State to implement a pilot program to evaluate the use of electronic mail to provide balloting materials to overseas military voters. The overseas military voter was required to provide a .mil email address to send official ballots and balloting materials and was required to apply using the Federal Postcard Application ("FPCA"), which is limited to overseas and military voters. This was the first pilot program enacted by the Texas Legislature relating to the emailing of balloting materials. The pilot program was limited to the November 4, 2008 General Election for State and County Officers due to security concerns with providing balloting materials via email. Overseas military voters who participated in the pilot were required to return the voted ballot by regular mail.

### **Implementation and Invitation to Participate**

The Texas Secretary of State first invited counties to participate in the pilot program at our 25<sup>th</sup> annual election law seminar conducted in July of 2007, immediately after the 80<sup>th</sup> Legislative Session ended. On August 13, 2007, staff attorneys contacted various county representatives via telephone to obtain suggestions on implementing the pilot program. On August 14, 2007, an email was sent to all the counties in which a military base was located to obtain their feedback on how the pilot should be conducted. In March of 2008, representatives of the Secretary of State's Elections Division conducted a conference call with staff members of the U.S. Department of Defense, Federal Voting Assistance Program, the agency that assists military and overseas citizens with various issues including voting, to outline the proposed implementation of the pilot program and to obtain their input from the federal perspective. Based on suggestions from county officials and the Federal Voting Assistance Program, this office proposed an administrative rule in July 2008 which prescribed the guidelines and rules to participate.

During the Secretary of State's 26<sup>th</sup> annual election law seminar conducted in July of 2008, our office reviewed the administrative rules with the county officials and again encouraged counties to participate in the pilot. Also in July, we sent a memorandum to each of the 254 county election officials and county judges outlining the program, the procedures for implementation and a reminder of the requirement to notify our office if they wished to participate; the memo included the form for participating in the program. The proposed administrative rule went into effect on September 11, 2008. The administrative rule outlined issues such as (1) deadlines for the military personnel to make requests for emailed balloting materials, (2) procedures on how to get the appropriate balloting materials, signature sheet and envelopes to the voters via email, (3) procedures on how to process the balloting materials upon receipt, and (4) guidelines for acceptance or rejection of the ballot by the early voting ballot board. In October of 2008 after numerous last minute attempts to increase county participation, a memo was mailed to each of the 17 counties that agreed to participate in the pilot, and it included further details in response to questions from the counties, along with a frequently-asked-question section and the signature sheet needed to be completed by the military personnel. We note that two counties were added after the September 5<sup>th</sup> deadline, bringing the total number of participating counties to 19. Attached are the adopted rules and correspondence sent to the county officials as described above.

### **Report from Participating Counties**

The nineteen counties that participated are:

Bexar	Nueces
Brazoria	Robertson
Brown	Tarrant
Cooke	Taylor
Collin	Tom Green
Dallas	Travis
El Paso	Victoria
Harris	Wichita
Kaufman	Zavala
Lubbock	

To assess the success of the pilot, after the November 4, 2008 general election, the Secretary of State sent an electronic communication to the participating counties asking the following questions:

1. How did you publicize the pilot program? (For example, press conference, outreach to local media, posting information on county website.)
2. Did you feel as if voters knew about the program?
3. How many voters requested ballots via email for this election? (Please include your estimate of voters that requested ballots but were not eligible to receive them.)
4. How many ballots did you email to voters?
5. Of the ballots you emailed, how many were returned?
6. Of the ballots which were returned, how many were counted? (If they were not counted, please give us an idea of why.)
7. Of the ballots you emailed, roughly how many voters attempted to return their marked ballot via email?
8. Did you have issues with voters who wanted ballots via email but were not eligible to receive them?
9. How would you change the program if it were going to be repeated?

10. Overall, how would you rank your experience with the program? (Excellent, Very Good, Good, Fair, Poor) Please include your thoughts and all other comments. Please include your honest assessment of your experience with the program.

All the counties responded and their feedback can be generally summarized as follows:

- Most eligible voters were not aware of the pilot until the county shared the information with them.
- Balloting materials were emailed to 154 voters. (No ballots were emailed in Zavala County.)
- 68 ballots were returned.
- Spouses and dependents of eligible military voters were frustrated that they couldn't participate in the pilot, and many counties suggested that the pilot be expanded to include this population.
- No counties expressed any concern with the security aspects of emailing blank ballots to military voters.
- Several counties expressed a desire to expand the program to all overseas voters, not just overseas military voters with a .mil email address.
- Several counties explained that some of the voters stationed in combat pay zones, faxed the ballot back after it was emailed.

### **Observations from the Secretary of State's Office**

From the perspective of the Secretary of State's Office, most of the observations concerning the pilot were positive. Our observations include the following:

- Military personnel who were able to receive their balloting materials via email after holding out for the awaited mail ballot were excited to have another avenue for voting in the important 2008 presidential election.
- Some counties had difficulty sending electronic ballot communications to the military personnel as many of them had difficulty obtaining access to a scanner to scan the specific ballot style connected to the military personnel's residential address.
- Several overseas military voters whose residences fell within nonparticipating counties would have liked to have been able to participate in the pilot.
- Spouses and dependents of military personnel and federal contractors working overseas (with or without a .mil address) felt the program should have been applied to them as well.
- There was some frustration in getting the communication to the affected military personnel. The information was posted on the following websites: Texas Secretary of State ([www.sos.state.tx.us](http://www.sos.state.tx.us)), Federal Voting Assistance Program of the U.S. Department of Defense ([www.fvap.gov](http://www.fvap.gov)), and the Overseas Vote Foundation ([www.overseasvotefoundation.org](http://www.overseasvotefoundation.org)), a non-partisan voter services organization that assists overseas voters. Additionally, the Overseas Vote Foundation sent an email to all email addresses in their database informing them about the program. However, most voters who were eligible to participate in the program were not aware of it.
- County participation in the pilot was limited due to a reluctance on the part of most counties to take on a new obligation in the busy presidential election year. Many counties already felt overwhelmed with the volume of work associated with the 2008 presidential election and felt

that they did not have adequate staff or resources to allow them to participate. Some counties did not have the technical resources to participate in the pilot.

### **Recommendations**

1. Due to the limited participation in the pilot, the Secretary of State recommends that the pilot be reauthorized and expanded to include spouses and dependents of overseas military personnel who are overseas as a result of their relatives' military deployment and expanded to include additional election dates. If the Legislature decides to create permanent statutory authority for the emailing of balloting materials, we suggest that the mandate apply initially to more populous counties. Smaller counties may not have the resources necessary to email ballots to overseas military.
2. The Secretary of State recommends that an FPCA voter who qualifies to vote under this process should request a ballot by email at the time the FPCA is filed, rather than wait to see if his or her balloting materials are timely received.
3. Finally, the Secretary of State also recommends that the Legislature explores other ways to facilitate voting by overseas military voters. In particular, the Legislature may wish to authorize the faxing of blank balloting materials in addition to email.