

## **BILL ANALYSIS**

Senate Research Center  
81R16197 JRH-F

C.S.H.B. 71  
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State Affairs  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 90, 80th Legislature, Regular Session, 2007, established a pilot program to provide a ballot by electronic mail to military personnel serving overseas. S.B. 90 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 (OMVs). Nineteen counties participated in the program, and fewer than 160 ballots were electronically mailed to OMVs; fewer than 70 marked ballots were returned. Response to the pilot program was generally positive, but participation was limited. 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 electronic mail. OMVs who participated were required to return the voted ballot by regular mail. Several OMVs whose residences fell within non-participating counties would have liked to participate in the pilot.

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. In addition, there was some frustration in getting the communication to the affected military personnel. Following the general election, Secretary of State Hope Andrade released a report titled "Report to the 81st Legislature on Senate Bill 90 (80th Legislature) Relating to the Pilot Program for Emailing Balloting Materials to Overseas Military Personnel" that included recommendations for the program.

C.S.H.B. 71 amends current law relating to the establishment of a program to provide a ballot by electronic mail to military personnel serving overseas and their spouses and dependents residing overseas.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the secretary of state in SECTION 1 (Section 101.0072, Election Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 101, Election Code, by adding Section 101.0072, as follows:

Sec. 101.0072. ELECTRONIC MAIL BALLOT PROGRAM. (a) Requires the secretary of state to implement a program to allow the use of electronic mail to provide balloting materials for a general election for state and county officers to an overseas voter who is a member of the armed forces of the United States or a spouse or dependent of a member of the armed forces of the United States.

(b) Requires a county with a population of 100,000 or more to participate in the electronic mail ballot program. Authorizes a county with a population of less than 100,000 to participate in the program only if:

- (1) the early voting clerk of the county makes a request to the secretary of state to participate; and
- (2) the secretary of state approves the request.

(c) Requires the early voting clerk in a county participating in the program to send balloting materials to an electronic mail address in a form and manner prescribed by the secretary of state if the voter:

(1) is an FPCA registrant and is eligible for early voting by mail under Sections 101.001(1) (qualifies person to early voting by mail if the person otherwise would be qualified to vote if registered) and (2)(A) (qualifies person if the person is an armed forces member, or the spouse or dependent of a member);

(2) provides a current address that is located outside the United States and is voting from outside the United States;

(3) provides an electronic mail address that contains the voter's name and the suffix ".mil" or provides an electronic copy of a letter from the commanding officer of the member of the armed forces that indicates that the voter is a spouse or dependent of the member and is residing overseas; and

(4) requests that balloting materials be sent by electronic mail.

(d) Requires that balloting materials sent to an electronic mail address under Subsection (c) include a signature sheet for the voter. Requires the secretary of state to prescribe procedures to allow for the signature sheet to be signed by a voter using a digital signature.

(e) Requires the early voting clerk, if the clerk provides a ballot to a voter at an electronic mail address under the Subsection (c), to provide ballots to all voters who qualify under the subsection.

(f) Requires the early voting clerk to amend the voter's federal postcard application for future elections with the voter's current address, if the clerk provides a ballot to a voter at an electronic mail address under Subsection (c).

(g) Requires that a ballot sent to an electronic mail address under Subsection (c) be returned with the signature sheet by the method provided by Section 101.008 (Return of Voted Ballot) or Section 105.001 (Electronic Transmission of Completed Ballot), regardless of whether the voter would qualify under that section.

(h) Provides that an electronic mail address provided under this section is confidential and does not constitute public information for purposes of Chapter 552 (Public Information), Government Code. Requires the early voting clerk to ensure that an electronic mail address provided under this section is excluded from disclosure.

(i) Authorizes only the ballot that was provided electronically to be counted, if a voter returns both a voted ballot mailed to the voter under Section 101.007(a) and a voted ballot provided electronically to the voter under this section. Requires a ballot returned under this chapter be processed in the same manner as any other ballot voted by mail as provided by Chapter 87 (Processing Early Voting Results).

(j) Provides that all other provisions of this code that would normally apply to a ballot voted under this chapter apply to a ballot voted under this section, including the deadline provided by Section 86.007 (Deadline for Returning Marked Ballot) and electronic transmission of a ballot under Section 105.001.

(k) Authorizes the secretary of state to adopt rules as necessary to implement this section.

(1) Provides that nothing in this section may be construed to impose liability with respect to the electronic mail ballot program created under this section on an Internet service provider, an interactive computer service, as defined by 47 U.S.C. Section 230, a telecommunications service, as defined by 47 U.S.C. Section 153, or a cable operator, as defined by 47 U.S.C. Section 552.

SECTION 2. Effective date: September 1, 2009.