



Mail Ballot Election Issues

One of the most significant voting proposals before the 2009 legislature is one that is the result of an interim election study on mail balloting. The mail ballot pilot program proposed in HB 18, sponsored by Rep. Pat Ingraham (R-Trout Creek), would test the use of mail ballots for elections in 2009 and 2010 in 17 volunteer counties. The pilot program is designed to collect statistical and other information to allow a subsequent legislature to evaluate the impacts on Montana voters of holding all elections by mail before deciding whether to allow the use of mail ballots on a wider basis.

Currently, Montana does not allow regularly scheduled federal or state elections to be conducted solely by mail ballot. Certain municipal and special elections may be conducted entirely by mail ballot. Many counties are interested in moving to mail balloting for federal and state elections because of the expense of conducting 'hybrid' elections involving polling places, absentee voting and late registration, as well as the difficulty in recruiting and training election judges for Montana's elections.

Throughout the interim study, many groups working on election laws have taken a cautious approach regarding the all mail ballot pilot study proposal, and elimination of polling places in Montana elections, noting that the structure of the pilot program and the analysis of the voting data will be very important. There is of particular concern in evaluating the potential impacts of moving to all-mail balloting on transitional populations such as young voters and low income residents, the Native American community, inactive and provisional electors, and people with disabilities who have previously been able to vote at their polling places.

Inactive and Provisional Voters and Electors with Disabilities

There is strong interest in ensuring that voters such as inactive and provisional electors and people with disabilities – those whose voting rights have traditionally best been exercised at polling places - are not disadvantaged or precluded from voting in an all-mail ballot system. The pilot program should minimize the need for electors to go to their county election offices on Election Day to reactivate their registration, vote provisionally, or use an Automark (a voting machine for people with disabilities and elderly), and should ensure that anyone who must go to the county election office on Election Day is accommodated. There is also concern about losing these electors as voters because of the inability to get to the courthouse on Election Day.

- **Inactive Voters**

Under existing law, a Montana voter who misses a single federal election and fails to respond to two address confirmation requests is placed on the inactive list. The elector can reactivate by showing up to vote at the elector's polling place and completing an address confirmation. Under the mail balloting proposal in HB 18, inactive voters would not be mailed

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a ballot. An inactive voter may not realize he or she has not received a ballot until close to Election Day, necessitating a trip to the county election office to confirm the voter's address and cast a ballot. The mail ballot pilot program must ensure that inactive but otherwise qualified voters are not denied reasonable opportunities to vote that are currently their right in elections that are held at polling places.

- **Provisional Voters**

In past elections, thousands of Montana electors have had to vote provisionally because they forgot their ID, were provisionally registered, their names were erroneously missing from the registration lists, they lost their absentee ballot, or for other reasons. These voters were able to cast provisional ballots at their polling places. Under a mail ballot system, all provisional voters could be required to go to the county election office to cast a ballot, which may be impossible for some voters, thus preventing them from voting. The mail ballot pilot program must incorporate outreach to potential provisional voters to minimize the need to go to the county courthouse on Election Day but also ensure that electors are accommodated on Election Day at the elections office and at staffed places of deposit elsewhere in the county.

- **Voters with disabilities**

Currently, Montana voters who cannot use traditional polling booths to cast their ballots have the option of using an Automark, a touch-screen and voice voting system located at each polling place that allows them to cast ballots in private. Under HB 18, Automarks could be established at as few as one staffed place of deposit in addition to the county election office, depending on the population (not geographic size) of the county, putting many people with disabilities at an extreme disadvantage. The federal Americans with Disabilities Act and state law prohibit discriminating against people with disabilities in providing governmental services like voting. The mail ballot pilot program must provide for sufficient staffed accessible places of deposit to accommodate Montana's voters with disabilities to ensure that it does not discriminate against them in violation of federal and state law.

Pilot Program Evaluation

The mail ballot pilot program is intended to provide sufficient statistical and other data to allow legislators and others to make the appropriate and necessary evaluation following the mail balloting pilot project. This evaluation should consider not only data from the 17 participating volunteer mail ballot counties who have agreed to collect certain data during the pilot program, but offer a meaningful comparison with traditional polling place counties, and across elections – such as benchmark data from 2008 - within the same counties. More than a dozen polling place counties have also agreed to collect certain election data to enable the necessary comparison, although their data collection is not specifically required in HB 18. As noted in HB 18, there is particular focus on understanding potential impacts to transitional populations such as young people and low income residents, the Native American population, and inactive voters who have previously reactivated at the polls, and people with disabilities. While the Secretary of State's office did not direct any specific data collection for the 2008 election, it is important that sufficient data be extracted from 2008 to make the appropriate evaluation. HB 18 should also include a requirement for data collection from the polling place counties during the pilot program period.

According to HB 18, the data are to be provided by the individual counties to the Secretary of State's office, the legislative State Administration and Veterans Affairs (SAVA) interim committee (excluding data from the 2010 general election) and the legislature. The bill, however, does not assign

responsibility for any of those entities to evaluate the data, make recommendations for changes, present the data to the legislature, or create a report to meet the requirements of 5-11-210 MCA, including the distribution of the report to the legislature during the first week of the session.

Furthermore, the bill specifically states that the data only needs to be collected to the extent the precincts are identified and detailed in advance by advocacy groups. The ability to meet the stated intent of HB 18 – “to test the use of mail ballot elections in select counties and collect statistical and other information to allow the legislature to evaluate the effects of holding all elections by mail before deciding whether to authorize the use of mail ballot elections on a wider scale” - should not be contingent on advocacy groups’ participation. Montana Conservation Voters provided certain district-level data to SAVA in 2008 at the request of committee members but additional data collection should be the responsibility of government, not private groups.

HB 18 Implementation

Successful implementation of a mail balloting program must ensure that the procedures used by election administrators meet minimum statewide standards so that electors are treated equally and fairly regardless of their place of residence. It also requires close coordination and communication with the US Postal Service which has ultimate responsibility for delivering the ballots to voters. This is particularly important where there are more transitional populations. In the all-mail ballot November 2007 municipal election, for example, a relatively large percentage of the mailed ballots were returned as undeliverable in the communities of Missoula and Bozeman – 9.6% and 14.3%, respectively. Additional steps are needed to minimize the universe of undeliverable ballots.

We suggest that the mail ballot pilot program incorporate the following procedures:

- Coordinated planning with the US Postal Service and university mail services (if applicable) at the state level and in each pilot county;
- A process for the handling and timing of mailed and returned ballots and outreach to voters with forwarding addresses;
- Establishment of systems to monitor, identify and correct instances of:
 - Ballots being delivered to old addresses,
 - Ballots being delivered late or not being received, or
 - The misdelivery of mail;
- A standardized ballot signature verification process; and
- Standardized timing of purging of voter lists and moving of voters to the inactive lists.

Recommendations for changes to HB 18

To address these issues, the mail ballot pilot program should clearly provide that:

- o All electors, including inactive, provisional and voters with disabilities, are accommodated through further outreach;
- o Additional accessible, staffed places of ballot deposit elsewhere in each participating county be established (the current proposal would allow for as little as one staffed, temporary place of deposit in addition to the county election office, which is insufficient);
- o Unstaffed but secure ‘drop sites’ for mail ballots be established at locations throughout each county, such as at post offices or libraries (HB 18 does not provide for such sites);
- o Sufficient time occurs between when the ballot is mailed and Election Day for election administrators to follow-up with voters for whom forwarding addresses are received in order to verify their new addresses and send them ballots in time to vote (the current proposal for as few as 15 days is not long enough);

- HB 18 should improve and clarify the commitment to data evaluation:
 - Identify data from 2008 (or earlier) that will be used in the data analysis;
 - Include a requirement for data collection from the polling place counties during the pilot program period;
 - Commit to having local and state governments identify appropriate districts for data collection and comparison; and
 - Identify which entity will be responsible for developing the report with evaluation and recommendations to the legislature and the timeframes for its completion.

Mail Ballot Referendum

Rep. Ingraham also has a bill draft request for a referendum on allowing voting by mail in all elections (LC 914). We would oppose any referendum that is not a pilot program and that does not include the same safeguards for voters as we have detailed here.

The position of Montana Conservation Voters is that changes noted above must be adopted as part of any mail ballot pilot project to ensure that qualified voters are not excluded from voting, and to ensure that Montana legislators and others will be able to appropriately evaluate the pilot program to make an informed decision about proceeding with a larger program.