

- SUBJECT:** Provisional voting by a person who applied for a ballot by mail
- COMMITTEE:** Elections — committee substitute recommended
- VOTE:** 5 ayes — Denny, Bohac, Anderson, J. Jones, T. Smith  
0 nays  
2 absent — Anchia, Hughes
- WITNESSES:** For — Robert Howard, Libertarian Party of Texas (*Registered, but did not testify*; Dana DeBeauvoir, Legislative Committee of the Texas County and District Clerks Association; George Hammerlein, Harris County Tax Assessor-Collector Paul Bettencourt; Suzy Woodford, Common Cause Texas; Audrey McDonald)  
Against — None  
On — Ann McGeehan, Secretary of State's Office
- BACKGROUND:** Under Election Code, sec. 84.032, a voter who has applied for an early mail ballot is not allowed to cast a ballot on election day unless the voter first cancels the application to vote by mail. In order to cancel, the voter must sign an affidavit in person at the early voting clerk's main office. This can create a hardship for voters who may not realize the procedure fully until election day when they arrive at the polling place to vote and can be especially difficult for elderly or disabled voters, a majority of whom cast mail ballots.
- DIGEST:** CSHB 963 would amend the Election Code to state that a person to whom the early voting clerk was required to provide an early voting ballot by mail and who did not vote early by mail could cast a provisional ballot on election day if the person signed an affidavit stating that the person was a registered voter in the precinct in which he or she sought to vote and that the person did not vote early by mail. The bill would provide that a form for the affidavits required for provisional voting would be printed on an envelope in which the provisional ballot could be placed.

The bill would permit an applicant who did not vote early by mail to submit a request in person on election day at the applicant's precinct polling place, executing an affidavit, and casting a provisional ballot. A ballot cancelled under this provision would be treated as a ballot rejected under sec. 87.041, which governs the acceptance of early voting ballots by mail.

The bill would amend Election Code, sec. 87.0241 and rename it "Time of Processing Ballots." The early voting ballot board would be authorized to determine preliminarily whether to accept early ballots voted by mail at any time after the ballots were delivered to the early voting ballot board. The board could not finally determine whether to accept early voting ballots voted by mail or count early voting ballots until all provisional ballots were delivered to the general custodian of election records and the board had had an opportunity to compare the provisional ballots to the early voting mail ballots. The secretary of state would prescribe any procedures necessary for implementation.

The bill would stipulate that an early mail ballot would be accepted if the voter had not requested cancellation of the application to vote early by mail. In making a determination about acceptance, the early voting ballot board would compare the affidavits located on the outside of the envelopes for provisional ballots cast on election day to the carrier envelopes for ballots voted by mail.

CSHB 963 would repeal Election Code, 87.082(b), which provides that a determination of whether to accept ballots voted by mail could be made before election day, but the votes could not be registered on a machine until election day.

The bill would take effect October 1, 2005 and would apply only to an election held on or after that date.

**NOTES:**

The committee substitute differs from the introduced version by requiring voters casting a provisional ballot to affirm that they did not vote the early mail ballot for which they applied. The substitute added a provision providing an alternative for canceling an application to vote early by mail and permitting the person to vote provisionally on election day. The substitute also added provisions involving processing and accepting mail ballot, including requiring envelopes for mail ballots to be compared to envelopes for provisional ballots. It would delete existing language

related to counting of early voting ballots by mail once the polls open on election day or in a county with a population of 100,000 or more, the end of the period for early voting by personal appearance. The substitute also would repeal a provision permitting early votes cast by mail to be registered on a mechanical voting machine.