

BILL ANALYSIS

Senate Research Center
82R29043 JRJ-D

C.S.H.B. 2817
By: Taylor, Larry (Duncan)
State Affairs
5/17/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.H.B. 2817 amends current law relating to certain election practices and procedures.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Secretary of State of Texas in SECTION 21 (Section 87.126, Election Code) and SECTION 22 (Section 101.013, Election Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 4.004(a), Election Code, to require a notice of a general or special election to state the nature and date of the election, except as provided by Subsection (c) (relating to giving notice of an election by posting the notice in the various election precincts), the location of each polling place, rather than including each early voting polling place, the hours that the polls will be open, and any other information required by other law.

SECTION 2. Amends Section 18.064, Election Code, to provide that if a registrar fails to substantially comply with Sections 15.083 (Delivery of List to Secretary of State), 16.032 (Cancellation Following End of Suspense List Period), 18.061 (Statewide Computerized Voter Registration List), or with rules adopted by the secretary of state (SOS) implementing the statewide computerized voter registration list, the registrar is not entitled to receive state funds for financing voter registration in the county.

SECTION 3. Amends Section 18.065(a), Election Code, to make a conforming change.

SECTION 4. Amends Subchapter C, Chapter 18, Election Code, by adding Section 18.068, as follows:

Sec. 18.068. VOTING HISTORY. Requires the registrar, not later than the 30th day after the date of the primary, runoff primary, or general election or any special election ordered by the governor, to electronically submit to SOS the record of each voter participating in the election.

SECTION 5. Amends Section 19.002(d), Election Code, to make a conforming change.

SECTION 6. Amends Section 31.006, Election Code, as follows:

Sec. 31.006. REFERRAL OF COMPLAINT TO ATTORNEY GENERAL. (a) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Provides that the documents submitted to the attorney general under Subsection (a) are not considered public information until the attorney general has completed the investigation or has made a determination that the complaint referred does not warrant an investigation.

SECTION 7. Amends Section 31.092(b), Election Code, to delete existing text requiring a contract under this subsection to be binding, to be approved in writing by SOS, and providing that the execution of a contract is not completed until written approval is obtained.

SECTION 8. Amends Section 31.093(a), Election Code, to delete existing text requiring SOS, if the contracting parties are unable to reach an agreement, on referral by either party, to either prescribe terms that the administrator is required accept or instruct the administrator to decline to enter into a contract with the requesting party.

SECTION 9. Amends Section 32.002(c), Election Code, to require the first person meeting the applicable eligibility requirements from the list submitted by the party whose candidate for governor received the highest number of votes in the county, if the candidates for governor of two political parties received the same number of votes in the precinct, to be appointed as the presiding judge and the first person meeting the applicable eligibility requirements from the list submitted by the party whose candidate for governor received the second highest number of votes in the county to be appointed as the alternate presiding judge.

SECTION 10. Amends Section 33.006(b), Election Code, as follows:

(b) Requires a certificate of appointment to:

(1)-(5) Makes no changes to this subsection; and

(6) contain an affidavit executed by the appointee stating that the appointee will not have possession of a device capable of recording images or sound, rather than any mechanical or electronic means, or that the appointee will disable or deactivate the device while serving as a watcher.

SECTION 11. Amends Section 33.051(c), Election Code, to make a conforming change.

SECTION 12. Amends Section 66.058, Election Code, by amending Subsection (a) and adding Subsection (h), as follows:

(a) Requires that, except as otherwise provided by this code, the precinct records be preserved by the authority to whom they are distributed:

(1) in an election involving a federal office, for at least 22 months after election day in accordance with federal law; or

(2) in an election not involving a federal office, for at least six months after election day.

(h) Requires SOS to instruct the affected authorities on the actions necessary to comply with federal law and otherwise implement this section for the preservation of precinct election records in an election involving a federal office.

SECTION 13. Amends Section 84.007(b), Election Code, to require an application to be submitted to the early voting clerk by mail, common or contract carrier, or a means of sending an electronic copy prescribed by SOS, rather than by telephonic facsimile machine if the applicant is absent from the county and if a machine is available in the clerk's office.

SECTION 14. Amends Section 85.004, Election Code, as follows:

Sec. 85.004. New heading: PUBLIC NOTICE OF MAIN POLLING PLACE LOCATION. Requires that the election order and the election notice state the location of the main early voting polling place, rather than state the location of each early voting polling place.

SECTION 15. Amends Sections 85.032(b), (d), and (f), Election Code, as follows:

(b) Provides that the procedures prescribed by Sections 127.064 (Seals for Ballot Boxes), 127.065 (Sealing Ballot Box; Delivery to Polling Place), 127.066 (Sealing Deposit Slot; Delivery of Sealed Ballot Box to Counting Station), and 127.068 (Receiving Sealed

Ballot Box at Counting Station) governing the use of sealed ballot boxes in electronic voting system elections apply to the use of sealed ballot boxes under this title to the extent those procedures can be made applicable, rather than-with references to the central counting station being applied to the early voting ballot board (board).

(d) Requires each custodian to retain possession of the key entrusted to the custodian until it is delivered to the presiding judge of the central counting station, rather than delivered to the board under Subchapter B (Delivering Materials to Board), Chapter 87 (Processing Early Ballot Votes).

(f) Deletes existing text requiring the procedures to include security measures covering the transfer of the ballots between the early voting clerk and the board.

SECTION 16. Amends Section 87.021, Election Code, as follows:

Sec. 87.021. **BALLOTS AND OTHER MATERIALS DELIVERED TO BOARD.** Requires the early voting clerk to deliver to the early voting ballot board:

(1) in an election in which regular paper ballots are used for early voting by personal appearance, each ballot box, in accordance with Section 85.032(b), containing the early voting ballots voted by personal appearance and the clerk's key to each box;

(2) the jacket envelopes containing the early voting ballots voted by mail, regardless of the ballot type or voting system used;

(3)-(4) Makes no changes to these subdivisions; and

(5) a ballot transmittal form that includes a statement of the number of early voting ballots voted by mail, regardless of the ballot type or voting system used, that are delivered to the early voting ballot board, and in an election in which regular paper ballots are used for early voting by personal appearance, the number of names appearing on the poll lists prepared in connection with early voting by personal appearance.

SECTION 17. Amends Subchapter B, Chapter 87, Election Code, by adding Section 87.0211, as follows:

Sec. 87.0211. **ELECTRONIC DELIVERY OF MATERIALS RECORDED ELECTRONICALLY.** Authorizes the early voting clerk, if ballot materials and ballot applications are recorded electronically as provided by Section 87.126, to deliver those materials to the board through electronic means.

SECTION 18. Amends Section 87.0221(a), Election Code, to authorize the materials in an election in which regular paper ballots are used for early voting by personal appearance or by mail to be delivered to the board between the end of the period for early voting by personal appearance and the closing of the polls on election day, or as soon after closing as practicable, at the time or times specified by the presiding judge of the board.

SECTION 19. Amends Section 87.023(a), Election Code, to authorize the ballots voted by mail to be automatically counted to be delivered to the board between the end of the period for early voting by personal appearance and the closing of the polls on election day, or as soon after closing as practicable, at intervals specified by the presiding judge of the board in an election in which early voting ballots are to be counted by automatic tabulating equipment at a central counting station.

SECTION 20. Amends Section 87.027, Election Code, by adding Subsection (m), to authorize the signature verification committee, if ballot materials or ballot applications are recorded electronically as provided by Section 87.126, to use an electronic copy of a carrier envelope

certificate or the voter's ballot application in making the comparison under Subsection (i) (relating to signature comparisons by the signature verification committee).

SECTION 21. Amends Subchapter G, Chapter 87, Election Code, by adding Section 87.126, as follows:

Sec. 87.126. ELECTRONIC RECORDING OF BALLOT MATERIALS AND APPLICATIONS. (a) Authorizes the early voting clerk to electronically record applications for a ballot to be voted by mail, jacket envelopes, carrier envelopes, and ballots.

(b) Authorizes SOS to adopt rules providing requirements for the electronic image quality and storage of the electronic images of the documents described by Subsection (a).

SECTION 22. Amends Section 101.013, Election Code, as follows:

Sec. 101.013. DESIGNATION OF SECRETARY OF STATE. (a) Creates this subsection from existing text. Makes no further changes.

(b) Designates SOS as the state coordinator between military and overseas voters and county election officials. Requires a county election official to:

(1) cooperate with SOS to ensure that military and overseas voters timely receive accurate balloting materials that a voter is able to cast in time for the election; and

(2) otherwise comply with the federal Military and Overseas Voter Empowerment Act (Pub. L. No. 111-84, Div. A, Title V, Subt. H).

(c) Authorizes SOS to adopt rules as necessary to implement this section.

SECTION 23. Amends Section 112.002(a), Election Code, to provide that, after changing residence to another county, a person is eligible to vote a limited ballot by personal appearance during the early voting period or by mail under certain circumstances, including the person is registered to vote in the county of former residence at the time the person submitted a voter registration application in the county of new residence.

SECTION 24. Amends Section 127.007, Election Code, as follows:

Sec. 127.007. PLAN FOR COUNTING STATION OPERATION. (a) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Requires the plan required under this section to address the process for comparing the number of voters who signed the combination form with the number of votes cast for the entire election.

SECTION 25. Amends Section 127.201, Election Code, by adding Subsection (g), to provide that this section does not apply to the tabulation of electronic voting system results for a voting system that uses direct recording electronic voting machines.

SECTION 26. Amends Section 129.023(c), Election Code, to require the general custodian of election records to adopt certain procedures for testing, including procedures that verify that each contest position, as well as each precinct and ballot style, on the ballot can be voted and is accurately counted, rather than verify that each contest position on the ballot can be voted and is accurately counted for each precinct and ballot style.

SECTION 27. Amends Section 141.040, Election Code, as follows:

Sec. 141.040. NOTICE OF DEADLINES. (a) Creates this subsection from existing text. Requires the authority with whom an application for a place on the ballot under this subchapter must be filed to post notice of the dates of the filing period in a public place in a building in which the authority has an office not later than the 30th day before:

- (1) the first day on which a candidate may file the application; or
- (2) the last day on which a candidate may file the application, if this code does not designate a first day on which the candidate may file the application.

(b) Provides that this section does not apply to an office filled at the general election for state and county officers.

Deletes existing text requiring the authority with whom the application must be filed, not later than the 30th day before the first day on which a candidate is authorized to file an application for a place on the ballot under this subchapter, to post notice of the dates of the filing period in a public place in a building in which the authority has an office.

SECTION 28. Amends Section 145.001, Election Code, by amending Subsection (b) and adding Subsection (d-1), as follows:

(b) Requires a withdrawal request to be in writing and be signed and acknowledged by the candidate and be timely filed with the appropriate authority or an agent of an authority only as expressly provided by this code. Deletes existing text requiring a withdrawal, to be effective, to be in writing and be signed and acknowledged by the candidate.

(d-1) Provides that a withdrawal that is not filed in compliance with Subsection (b) has no legal effect and is not considered filed.

SECTION 29. Amends Section 145.005, Election Code, as follows:

Sec. 145.005. New heading: EFFECT OF VOTES CAST FOR DECEASED, WITHDRAWN, OR INELIGIBLE CANDIDATE. (a) Requires the votes cast for the candidate, if the name of a deceased, withdrawn, or ineligible candidate appears on the ballot under this chapter, to be counted and entered on the official election returns in the same manner as for the other candidates.

(b) Requires the resulting vacancy, if the deceased, withdrawn, or ineligible candidate receives the vote required for election, to be filled in the regular manner.

(c) Provides that if the deceased, withdrawn, or ineligible candidate and another candidate tie for the most votes in an election in which a plurality vote is sufficient for election, the other candidate is considered to be elected. Requires the winner of the election, if more than one other candidate is tied with the deceased, withdrawn, or ineligible candidate, to be determined by resolving the tie between the other candidates in the regular manner for resolving a tie vote in the election.

(d) Requires the candidates in the runoff, in a race in which a runoff is required, if the deceased, withdrawn, or ineligible candidate received the vote that would entitle the candidate to a place on the runoff election ballot or tied for that number of votes, to be determined in the regular manner but without regard to the votes received by the deceased, withdrawn, or ineligible candidate.

SECTION 30. Amends Sections 145.092(a) and (d), Election Code, as follows:

(a) Prohibits a candidate, except as otherwise provided by this section, from withdrawing from an election after 5 p.m. of the third day after the deadline for filing the candidate's application for a place on the ballot, rather than the second day before the beginning of early voting by personal appearance.

(d) Prohibits a candidate in a runoff election from withdrawing from the election after 5 p.m. of the third day after the date of the main election, rather than following a main election subject to Subsection (b).

SECTION 31. Amends Section 145.094(a), Election Code, as follows:

(a) Requires the name of a candidate to be omitted from the ballot if the candidate:

(1) dies before the second day before the date of the deadline for filing the candidate's application for a place on the ballot;

(2) withdraws or is declared ineligible within the time prescribed by Section 145.092(a) (relating to withdrawal in an election after certain times) in an election subject to that section, rather than before 5 p.m. of the second day before the beginning of early voting by personal appearance in an election subject to Section 145.092(a);

(3) withdraws or is declared ineligible within the time prescribed by Section 145.092(b) (relating to withdrawals from election regarding application deadlines), in an election subject to that section, rather than withdrawals or is declared ineligible before 5 p.m. of the 53rd day before election day, in an election subject to Section 145.092(b); or

(4) withdraws or is declared ineligible within the time prescribed by Section 145.092(f) (relating to withdrawal of a candidate in regards to filing deadlines), in an election subject to that section, rather than withdrawals or is declared ineligible before 5 p.m. of the 67th day before election day, in an election subject to Section 145.092(f).

SECTION 32. Amends Section 172.052(a), Election Code, to prohibit a candidate for nomination from withdrawing from the general primary election after the first day after the deadline for filing the candidate's application, rather than the 62nd day before general primary election day, for a place on the general primary election ballot.

SECTION 33. Amends Section 172.057, Election Code, to require a candidate's name to be omitted from the general primary election ballot if the candidate withdraws, dies, or is declared ineligible within the time prescribed by Section 172.052(a) (relating to withdrawal of candidate for general elections), rather than on or before the 62nd day before general primary election day.

SECTION 34. Amends Sections 174.022(a), (b), and (c), Election Code, as follows:

(a) Authorizes the precinct conventions to be held in the regular county election precincts on:

(1) general primary election day; and

(2) a date determined by the county executive committee that occurs not later than the fifth day after the date of the general primary election, rather than in the regular county election precincts.

(b) Requires the county executive committee, consistent with Subsection (c), not later than the date of the regular drawing for position on the general primary election ballot, to set the hour and place for convening each precinct convention for the precincts served by the committee. Requires the county chair, if the county executive committee fails to do so, to set, consistent with Subsection (c), the hour and place.

(c) Provides that the hour set for convening the conventions, if precinct conventions are held on general primary election day, may not be earlier than 7 p.m. or later than 9 p.m., but may not convene until the last voter has voted at the precinct polling place. Requires the county executive committee, if precinct conventions are held on a day other than general primary election day, to set the hour for convening or a time frame in which the conventions is required to convene.

SECTION 35. Amends Section 174.023, Election Code, as follows:

Sec. 174.023. New heading: NOTICE OF DATE, HOUR, AND PLACE. (a) Requires the county chair to post a notice of the date, hour, and place for convening each precinct convention on the bulletin board used for posting notice of meetings of the commissioners court.

(b) Requires the county chair, not later than the 10th day before the date of the precinct conventions, to deliver to the county clerk written notice of the date, hour, and place for convening each precinct convention.

(c) Makes no changes to this subsection.

SECTION 36. Amends Section 213.013(i), Election Code, to provide that no device capable of recording images or sound, rather than mechanical or electronic means of recording images or sound, is allowed inside the room in which the recount is conducted, or in any hallway or corridor in the building in which the recount is conducted within 30 feet of the entrance to the room, while the recount is in progress unless the person entitled to be present at the recount agrees to disable or deactivate the device.

SECTION 37. Amends Section 216.002, Election Code, to provide that this title, including the notice requirement of Section 213.009 (Notice of Recount), except as otherwise provided by this chapter, applies to a recount conducted under this chapter with appropriate modifications as prescribed by SOS.

SECTION 38. Amends Section 232.008(c), Election Code, to require a contestant to file the petition not later than the 10th day after the date the official result is determined in certain contests, including a runoff primary election.

SECTION 39. Amends Section 253.167, Election Code, as follows:

Sec. 253.167. CERTIFICATION OF POPULATION; NOTICE OF CONTRIBUTION AND EXPENDITURE LIMITS. (a) Requires the Texas Ethics Commission (TEC), rather than SOS, for purposes of this subchapter only, not later than June 1 of each odd-numbered year, to:

(1) make, rather than deliver to TEC, a written certification of the population of each judicial district for which a candidate for judge or justice must file a campaign treasurer appointment with TEC; and

(2) deliver to the county clerk of each county a written certification of the county's population, if the county comprises an entire judicial district under Chapter 26 (Constitutional County Courts), Government Code, or has a statutory county court or statutory probate court, other than a multicounty statutory county court created under Subchapter D (Multicounty Statutory County Courts), Chapter 25 (Statutory County Courts), Government Code.

(b) Requires TEC or the county clerk, as appropriate, following certification of population under Subsection (a), rather than on receipt of the certification, to make available to each candidate for an office covered by this subchapter written

notice of the contribution and expenditure limits applicable to the office the candidate seeks.

SECTION 40. Amends Section 501.001, Election Code, by adding Subdivision (4) to define "political subdivision."

SECTION 41. Amends Section 501.023(a), Election Code, as follows:

(a) Requires the county clerk of the county, if 10 or more qualified voters of any county, justice precinct, or municipality file a written application and provide proof of publication of notice in a newspaper of general circulation in that political subdivision, to issue to the applicants a petition to be circulated among the qualified voters of the political subdivision for the signatures of those qualified voters who desire that a local option election be called for the purpose of determining whether the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be prohibited or legalized in the political subdivision. Requires that the notice include:

- (1) the individual or entity that is applying for the petition to gather signatures for a local option liquor election;
- (2) the type of local option liquor election;
- (3) the name of the political subdivision in which the petition will be circulated; and
- (4) the name and title of the person with whom the application will be filed.

SECTION 42. Amends Section 501.108(a), Election Code, to require the county clerk, if a county is not required to pay the initial expense, regardless of any authority to receive reimbursement, of a local option election under Section 501.107 (County Payment of Election Expense), to require the applicants for a petition for a local option election to make a deposit before the issuance of the petition.

SECTION 43. Repealers: Sections 18.041 (Annual Registration Report), 18.042 (Preelection Registration Statement), and 145.092(c) (relating to early voting clerk notifying county chair of nominees), Election Code.

SECTION 44. Effective date: September 1, 2011.