

BILL ANALYSIS

Senate Research Center
82R25535 JRJ-D

C.S.S.B. 849
By: Duncan
State Affairs
5/3/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Every election cycle presents new situations that often result in the need to clarify or adjust state election laws to allow local jurisdictions more flexibility and direction in the election process.

C.S.S.B. 849 makes various changes to the Election Code with regard to state and local election processes. These changes address frequently asked questions to and from election officials and will result in more efficient elections.

C.S.S.B. 849 amends current law relating to certain election practices and procedures.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the secretary of state in SECTION 16 (Section 101.013, Election Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 18.064, Election Code, as follows:

Sec. 18.064. SANCTION FOR NONCOMPLIANCE. Provides that if a registrar fails to substantially comply with Section 15.083 (Delivery of List to Secretary of State), 16.032 (Cancellation Following End of Suspense List Period), or 18.061 (Statewide Computerized Voter Registration List), rather than Section 15.083, 16.032, 18.042 (Preelection Registration Statement), or 18.061, 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 2. Amends Section 18.065(a), Election Code, to require SOS to monitor each registrar for substantial compliance with Sections 15.083, 16.032, and 18.061 and with rules implementing the statewide computerized voter registration list. Makes a conforming change.

SECTION 3. 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 4. Amends Section 19.002(d), Election Code, to prohibit the comptroller of public accounts (comptroller) from issuing a warrant if on June 1 of the year in which the warrant is to be issued the most recent notice received by the comptroller from SOS under Section 18.605 indicates that the registrar is not in substantial compliance with Section 15.083, 16.032, or 18.065 or with rules implementing the registration service program. Makes a conforming change.

SECTION 5. 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 6. Amends Section 31.092(b), Election Code, as follows:

(b) Authorizes the county election officer to contract with the county executive committee of a political party holding a primary election in the county to perform election services, as provided by this subchapter, in the party's general primary election or runoff primary election, or both. Deletes 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 7. Amends Section 31.093(a), Election Code, as follows:

(a) Requires the county elections administrator, if requested to do so by a political subdivision or political party, to enter into a contract to furnish the election services requested, in accordance with a cost schedule agreed on by the contracting parties. Deletes 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 must accept or instruct the administrator to decline to enter into a contract with the requesting party.

SECTION 8. Amends Section 32.002(c), Election Code, to require that 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, be appointed as the presiding judge and to require that 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 be appointed as the alternative presiding judge.

SECTION 9. Amends Section 33.006(b), Election Code, to require that a certificate of appointment meet certain criteria, including that it contain an affidavit executed by the appointee stating that the appointee will not have possession of a device capable, rather possession of than any mechanical or electronic means, of recording images or sound or that the appointee will disable or deactivate the device while serving as a watcher.

SECTION 10. Amends Section 33.051(c), Election Code, to prohibit a watcher from being accepted for service if the watcher has possession of a device capable of recording images or sound unless the watcher agrees to disable or deactivate the device. Makes a conforming change.

SECTION 11. Amends Section 66.058, Election Code, by amending Subsection (a) and adding Subsection (h), as follows:

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

SECTION 12. Amends Sections 85.032(b), (d), and (f), Election Code, as follows:

(b) Provides that the procedure prescribed by Sections 127.064, 127.065, 127.066, 127.068 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 to the extent those procedures can be made applicable with references to the central counting station being applied to the early voting ballot 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 early voting ballot board under Subchapter B (Delivering Materials to Board), Chapter 87.

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

SECTION 13. 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) the poll lists prepared in connection with early voting by personal appearance;
- (4) the list of registered voters used in conducting early voting; 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 numbers of names appearing on the poll lists prepared in connection with early voting by personal appearance.

SECTION 14. 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 early voting ballot 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 early voting ballot board.

SECTION 15. Amends Section 87.023(a), Election Code, to authorize the ballots voted by mail to be automatically counted, in an election in which early voting ballots are to be counted by automatic tabulating equipment at a central counting station, to be delivered to the early voting ballot 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 as closing as practicable, at intervals specified by the presiding judge of the early voting ballot board.

SECTION 16. Amends Section 101.013, Election Code, as follows:

Sec. 101.013. DESIGNATION OF SECRETARY OF STATE. (a) Provides that SOS is designated as the state office to provide information regarding voter registration procedures and absentee ballot procedures, including procedures related to the federal write-in absentee ballot, to be used by persons eligible to vote under the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et seq.), as amended.

(b) Provides that SOS is designated 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 the SOS to adopt rules as necessary to implement this section.

SECTION 17. Amends Section 112.002(a), Election Code, to provide that after changing residence to another country, a person is eligible to vote a limited ballot by personal appearance during the early voting period under certain conditions, including if the person is registered to vote in the county of former residence at the time the person offers to vote in the county of new residence, or submitted a voter registration application in the county of new residence. Makes nonsubstantive changes.

SECTION 18. 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 that the plan required under this section address the process for comparing the number of voters who signed the combination form with the numbers of votes cast for the entire election.

SECTION 19. Amends Section 129.023(c), Election Code, as follows:

(c) Requires the general custodian of election records to adopt procedures for testing that:

(1) direct the testing board to cast votes;

(2) 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;

(3) include overvotes and undervotes for each race, if applicable to the system being tested;

(4) include straight-party votes and crossover votes;

(5) include write-in votes, when applicable to the election;

(6) include provisional votes, if applicable to the system being tested;

(7) calculate the expected results from the test ballots;

(8) ensure that each voting machine has any public counter reset to zero and presented to the testing board for verification before testing;

(9) require that, for each feature of the system that allows disabled voters to cast a ballot, at least one vote be cast and verified by a two-person testing board team using that feature; and

(10) require that, when all votes are cast, the general custodian of election records and the testing board observe the tabulation of all ballots and compare the actual results to the expected results.

SECTION 20. Amends Section 141.040, Election Code, as follows:

Sec. 141.040. NOTICE OF DEADLINES. (a) Requires the authority with whom an application for a place on the ballot under this subchapter is required to 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 the first day on which a candidate may file the application, or 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, rather than requiring the authority with whom the application is required to be filed, not later than the 30th day before the first day on which a candidate may 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.

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

SECTION 21. Amends Section 145.001, Election Code, by amending Subsection (b) and by adding Subsection (d-1), as follows:

(d) Requires that a withdrawal request 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, rather than requiring that to be effective, a withdrawal request be in writing and be signed and acknowledged by the candidate and be timely filed with the appropriate authority as provided by this code.

(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 22. 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 that the votes cast for the candidate be counted and entered on the official election returns in the same manner as for the other candidates if the name of a deceased, withdrawn, or ineligible candidate appears on the ballot under this chapter.

(b)-(d) Makes conforming changes.

SECTION 23. 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 after 5 p.m. the second day before the beginning of early voting by personal appearance.

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

SECTION 24. Amends Section 145.094(a), Election Code, as follows:

(a) Requires that the name of a candidate 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) 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) in an election subject to that section, rather than 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) in an election subject to that section, rather than before 5 p.m. of the 67th day before election day in an election subject to Section 145.092(f). Makes nonsubstantive changes.

SECTION 25. 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 for a place on the general primary election ballot, rather than after the 62nd day before general primary election day.

SECTION 26. Amends Section 172.057, Election Code, to require that a candidate's name 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), rather than on or before the 62nd day before the general primary election day.

SECTION 27. Amends Section 213.013(i), Election Code, to provide that no device capable of, rather than no 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 28. Amends Section 216.002, Election Code, to provide that this title, except as otherwise provided by this chapter, including the notice requirement of Section 213.009 (Notice of Recount), applies to a recount conducted under this chapter with appropriate modifications as prescribed by SOS.

SECTION 29. 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 a contest of a primary or runoff primary election, or a general or special election for which a runoff is necessary according to the official result or will be necessary if the contestant prevails.

SECTION 30. 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.

(d) Requires TEC or county clerk, following, rather than on receipt of, certification of population under Subsection (a), as appropriate, 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 31. Amends Section 501.001, Election Code, by adding Subdivision (4), to define "political subdivision."

SECTION 32. 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 33. 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 Expenses), to require the applicants for a petition for a local option election to make a deposit before the issuance of the petition.

SECTION 34. Repealers: Sections 18.041 (Annual Registration Report), 18.042 (Preelection Registration Statement), and 145.092(c) (relating to withdrawal time for a candidate in a runoff election), Election Code.

SECTION 35. Effective date: September 1, 2011.