

BILL ANALYSIS

Senate Research Center
85R20274 ADM-D

C.S.S.B. 1666
By: Huffman
State Affairs
4/10/2017
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas conducts primary elections for both the Democratic Party and the Republican Party. The primaries are administered by a county chair in each county or by the state party chair where a county chair does not exist. The county chair may contract with the county clerk or county election administrator for any or all of the administrative actions. Primary elections are financed by a combination of candidate filing fees and general revenue appropriated to the secretary of state and distributed to county chairs based on actual expenditures for the election.

Because primary election administration has changed significantly with the introduction of computers, websites, and new technology, the underlying processes in the Election Code are outdated. S.B. 1666 simply updates the relevant sections of the code to reflect the modern primary. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1666 amends current law relating to the conduct of primary elections and increases a criminal penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas secretary of state (SOS) in SECTION 13 (Section 172.1114, Election Code), SECTION 27 (Section 172.127, Election Code), SECTION 29 (Section 172.130, Election Code), and SECTION 40 (Section 173.0833, Election Code) of this bill.

Rulemaking authority previously granted to SOS is modified in SECTION 20 (Section 172.117, Election Code) and SECTION 23 (Section 172.122, Election Code) of this bill.

Rulemaking authority previously granted to the state executive committee is rescinded in SECTION 43 (Section 172.119, Election Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 31.092(b), (d), and (e), Election Code, by transferring them to Section 31.093, Election Code, redesignating them as Sections 31.093(c), (d), and (e), Election Code, respectively, and amends them, as follows:

(c) Requires the county election officer, on request of the county chair of a political party holding a primary election in the county, to contract with the county executive committee of the party to perform election services in the party's general primary election and runoff primary election in accordance with a cost schedule agreed on by the contracting parties, rather than 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 in the party's general primary election or runoff primary election, or both.

(d) Prohibits the county election officer, in a contract required by Subsection (c), rather than in a contract authorized by Subsection (b), from preventing the county chair or the chair's designee from supervising the conduct of the primary election.

(e) Requires a county election officer, rather than requires a county election officer, if the officer enters into a contract with a county executive committee under Subsection (b) to perform election services, to offer to contract on the same terms with the county executive committee of each political party holding a primary election in the county.

SECTION 2. Amends Section 31.093(a), Election Code, to require the county elections administrator to, if requested to do so by a political subdivision, rather than a political subdivision or political party, enter into a contract to furnish the election services requested, in accordance with a cost schedule agreed on by the contracting parties.

SECTION 3. Amends Section 61.003(b)(1), Election Code, to redefine "electioneering."

SECTION 4. Amends Section 127.096, Election Code, by adding Subsection (a-1), as follows:

(a-1) Requires the custodian of the automatic tabulating equipment to, if the automatic tabulating equipment test is being conducted for a primary election, notify the county chair of the test at least 48 hours before the date of the test. Requires the county chair to confirm receipt of the notice.

SECTION 5. Amends Section 129.023, Election Code, by adding Subsection (b-1), as follows:

(b-1) Requires the general custodian of election records to, if the logic and accuracy test is being conducted for a primary election, notify the county chair of the test at least 48 hours before the date of the test. Requires the county chair to confirm receipt of the notice.

SECTION 6. Amends Section 162.004(c), Election Code, as follows:

(c) Authorizes the affiliation certificate to be combined with the notice provided under Section 172.1114. Provides that, if the combined form is used, an election officer is not required to comply with Subsection (b) (relating to requiring an election officer to stamp the party's name in the party affiliation space of each voter's registration certificate).

SECTION 7. Amends Section 162.014(b), Election Code, as follows:

(b) Provides that an offense under this section is a felony of the second degree unless the person is convicted of an attempt, rather than is a Class C misdemeanor. Provides that, in that case, the offense is a state jail felony.

SECTION 8. Amends Section 172.082, Election Code, by amending Subsections (b), (c), and (e) and adding Subsection (f), as follows:

(b) Requires the county chair, rather than the county executive committee, to conduct the drawing for the order of the candidates' names on the ballot unless the county executive committee provides by resolution that the drawing be conducted by the primary committee.

(c) Deletes existing requirement that the drawing be conducted at the county seat.

(e) Requires the notice containing certain information to be posted on the party's Internet website, if the party maintains a website, rather than on a certain bulletin board. Requires the notice to be posted on the bulletin board used for posting notice of meetings of the commissioners court, if the party does not maintain a website. Deletes existing text requiring the party to post the notice on the party's website, if the party maintains an Internet website.

(f) Requires the state chair to conduct the drawing if the county chair requests that the state chair conduct the drawing or fails to conduct the drawing by the deadline set in this section.

SECTION 9. Amends Section 172.083, Election Code, to require the county chair to submit the format for the official ballot to the primary committee for its review and approval, if a primary committee was established.

SECTION 10. Amends Section 172.084(a), Election Code, to require the order of the candidates' names on the runoff primary election ballot for each county to be in the same order as on the general primary election ballot, rather than requires the order of the candidates' names on the runoff primary election ballot for each county, except as provided by this section, to be determined by a drawing conducted in the same manner as the regular drawing for position on the general primary election ballot.

SECTION 11. Amends Section 172.1111, Election Code, as follows:

Sec. 172.1111. New heading: **POSTING NOTICE OF CONVENTIONS REQUIRED.** (a) Requires the presiding judge to, before the opening of the polls, post at certain doors a certain notice in bold print of the date, hour, and place for each precinct, county, senatorial, or state convention that a voter in the precinct may be eligible to attend during the election year, rather than a certain notice including in bold print of the date, hour, and place for convening the precinct convention.

(b) Authorizes the notice posted under this section to include certain information.

(b-1) Requires the state chair to develop a form for the notice that may be used statewide. Requires the judge to include any information required by this section.

(b-2) Requires a state chair, county chair, or precinct chair to provide the presiding judge with the necessary information respecting the chair's associated convention.

(c) Makes no changes to this subsection.

SECTION 12. Amends Section 172.1112(a), Election Code, as follows:

(a) Requires the county clerk, rather than the county chair, to post a certain notice. Requires the notice of the election to be posted on the party's Internet website, if the party maintains a website, rather than a certain bulletin board. Requires the notice to be posted on the bulletin board used for posting notice of meetings of the commissioners court, if the party does not maintain a website.

SECTION 13. Amends Subchapter E, Chapter 172, Election Code, by adding Section 172.1114, as follows:

Sec. 172.1114. **DISTRIBUTION OF NOTICE OF CONVENTIONS.** (a) Authorizes a political party to prepare a notice not larger than letter-sized for distribution to each voter participating in the party's primary election at the time the voter is accepted for voting.

(b) Authorizes the notice to include certain information.

(c) Requires the state chair of a political party to prescribe a form for a notice that may be used in any county. Authorizes a county chair of a political party to prescribe a specific notice for the county chair's county. Requires the same notice to be used in all precincts within a county.

(d) Requires that a notice be approved by the secretary of state (SOS). Provides that only the convention location and time, if a county chair of a political party uses the form of notice prescribed by the state chair, is authorized to be added without SOS's approval.

(e) Requires a county chair of a political party to supply a notice prepared according to this section to the authority conducting the election not later than the 30th day before the date early voting by personal appearance begins.

(f) Requires SOS to prescribe procedures and adopt rules as necessary to implement this section.

SECTION 14. Amends Section 172.112, Election Code, to delete the exception in the general primary election for the offices of county chair and precinct chair in regards to write-in voting.

SECTION 15. Amends Sections 172.113(a), (d), and (e), Election Code, as follows:

(a) Requires the authority establishing a central counting station, rather than the county chair, to prepare the unofficial tabulation of precinct results.

(d) Requires the authority to make certain announcements, including by posting the announcements on the Internet website of the county, if the county maintains a website, rather than requires the county chair to make certain announcements.

(e) Requires the authority to deliver the tabulation to the general custodian or authorizes the authority to post the tabulation on the county's website or SOS's website, rather than requires the county chair to deliver the tabulation to the general custodian, on completing the tabulation.

SECTION 16. Amends Section 172.114, Election Code, to require the general custodian of election records to preserve the poll lists maintained for a primary election for 22 months, rather than until the end of the voting year in which the primary election is held.

SECTION 17. Amends Section 172.1141, Election Code, as follows:

Sec. 172.1141. LIST OF REGISTERED VOTERS FOR CONVENTION. (a) Creates this subsection from existing text and makes no further changes to this subsection.

(b) Authorizes the county chair to request an electronic document listing the persons who voted in the party primary if a county records the acceptance of a voter electronically.

SECTION 18. Amends Section 172.115(a), Election Code, to require the voter registrar to, subject to Subsection (b) (relating to returning certain lists to responsible authorities), preserve each precinct list of registered voters that is used for a primary election for 22 months, rather than until the end of the voting year in which the primary election is held.

SECTION 19. Amends Section 172.116, Election Code, by adding Subsections (c) and (d), as follows:

(c) Requires the county clerk to prepare and submit to SOS a report of the results of the canvass, which is required to include certain information.

(d) Provides that the final canvass is concluded when the chair digitally certifies the canvass report on SOS's website. Provides that the posting on the site that the results are final completes the canvass report. Provides that the chair is not required to file any additional notice or report with the county clerk.

SECTION 20. Amends Sections 172.117(a), (a-1), and (a-2), Election Code, as follows:

(a) Requires the county chair to digitally execute, rather than execute and file with the county clerk, a certain affidavit. Requires, rather than authorizes, SOS to adopt, by rule, a certain process.

(a-1) Requires the notations describing each candidate to include certain designations, including "declared ineligible." Makes nonsubstantive changes.

(a-2) Requires the county chair to notify the state chair, who is required to update the notation on the website, rather than requires the county chair to update the notation on the website, after any withdrawal or death of a candidate, and subsequent replacement of the candidate on the ballot.

SECTION 21. Amends Section 172.118, Election Code, as follows:

Sec. 172.118. NOTICE OF PERSONS ELECTED AS PARTY OFFICERS. (a) Requires the county chair to post on SOS's website, rather than to deliver written notice to the state chair and county clerk of, certain names, not later than a certain day. Deletes existing text authorizing the notice to be given by electronic means or through an electronic submission system adopted by the state executive committee of the party.

(b) Requires the notice to include certain information, including each precinct officer's phone number and e-mail address, if supplied by the officer. Makes nonsubstantive changes

(c) Requires SOS to make information described by Subsections (b)(1) and (3) available to the state chair, but not available to the public. Deletes existing text requiring the county clerk to preserve the notice until the county clerk receives notice of the party officers elected at the succeeding primary election.

(d) Requires any appointment to fill a vacancy in the office of precinct or county chair to be posted on SOS's website. Deletes existing text requiring the state chair to deliver to SOS written notice of the names and addresses of the party's county chairs, on request of SOS. Deletes existing text authorizing this notice to be given in electronic format as set out in rules adopted by SOS.

SECTION 22. Amends Section 172.121, Election Code, as follows:

Sec. 172.121. CERTIFICATION OF CANDIDATES FOR STATEWIDE AND DISTRICT OFFICES FOR PLACEMENT ON RUNOFF BALLOT. (a) Requires the state chair to certify on SOS's website, rather than in writing, for placement on the runoff primary election ballot certain names.

(b) Requires the state chair to deliver the certification by posting next to the candidate's name on SOS's website whether the person lost in the primary or is in a runoff for the position, rather than deliver certification to the county chair in each affected county, as soon as practicable after the state canvass of the general primary election is completed.

SECTION 23. Amends Section 172.122(a), Election Code, as follows:

(a) Requires the state chair to execute and file digitally, rather than file, with SOS a certain affidavit. Requires, rather than authorizes, SOS to adopt, by rule, a certain process. Makes no further changes to this subsection.

SECTION 24. Amends Section 172.123, Election Code, by adding Subsection (c), to authorize the requirements of this section to be met by entering the results on SOS's website if SOS maintains a website for that purpose.

SECTION 25. Amends Section 172.124(b), Election Code, to require the county clerk, rather than the county chair, to deliver the report to SOS not later than a certain day.

SECTION 26. Amends Section 172.126, Election Code, by amending Subsection (e) and adding Subsection (g-1), as follows:

(e) Requires the county clerk to obtain the candidates' names that are to appear on the primary ballot, office sought, and candidate and office ballot order from the certified list on SOS's website. Deletes existing text requiring a written certification of the candidates' names that are to appear on the primary ballot to be delivered to the county clerk in accordance with rules prescribed by SOS.

(g-1) Requires a voter to be allowed privacy to the extent possible when indicating the voter's choice as to which political party's primary the voter chooses to vote in. Authorizes a voter to indicate, without verbalizing, the voter's choice by pointing to which party's ballot the voter chooses. Requires SOS to prescribe a sign to inform voters of this option, and requires the co-judges of each polling place to post the sign beside the signature roster.

SECTION 27. Amends Section 172.127, Election Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Authorizes the presiding judge or alternate presiding judge for the precinct to post signs at a polling place for a primary election or a primary runoff election that, rather than requires that a sign used to indicate the location of a polling place for a primary election or a primary runoff election either:

(1) identify the names of, or symbols representing, any political parties holding an election at the polling place; and, rather than not contain the name of, or symbol representing, any political party that is holding an election at the polling place; or

(2) do not refer to a candidate or measure on the ballot, rather than contain each name of, or each symbol representing, a political party that is holding an election at the polling place.

(c) Requires SOS to adopt rules to provide that signs posted as authorized by Subsection (b) in the same county have similar size and format.

SECTION 28. Amends Sections 172.128(a) and (c), Election Code, as follows:

(a) Includes a multicounty district office in the list of nominations for which a primary election is required.

(c) Authorizes the county clerk to combine voting precincts for an election held under this section to the extent necessary to adequately serve the voters, rather than authorizes the county to designate the location of the polling place for an election held under this section at the main early voting polling place or designate a location to serve as a polling place in the county seat of the county if the polling place is located so that it will adequately serve the voters.

SECTION 29. Amends Subchapter E, Chapter 172, Election Code, by adding Sections 172.129 and 172.130, as follows:

Sec. 172.129. STATEMENTS MADE BY ELECTION OFFICER WHEN PRIMARIES CONDUCTED AT SAME LOCATION. (a) Provides that this section applies only to a polling place used to hold an election for more than one political party.

(b) Prohibits an election officer conducting a primary election from suggesting a political party's ballot to a voter or discussing any race on the ballot with a voter.

Sec. 172.130. ACTION BY STATE CHAIR TO MEET DEADLINES FOR CONDUCT OF PRIMARY. (a) Authorizes the state chair, or the state chair's designee to, notwithstanding a conflicting provision of this code, perform certain administrative duties of the county chair or county executive committee.

(b) Requires the state chair to notify the county chair or county executive committee in writing or electronically that a duty has been performed under the authority of this section.

(c) Authorizes the county chair to request the state chair, or the state chair's designee, to perform the duty instead of the county chair, if a county chair has a reasonable impediment or lacks appropriate technology to perform any administrative duty of the county chair related to the conduct of a primary election within the time required by law.

(d) Authorizes the state chair to act in the role of the county chair for the purposes of Subchapter D (State Financing), Chapter 173 (Primary Election Financing), with the approval of SOS.

(e) Requires SOS to adopt rules to implement this section in accordance with the conduct of elections and with party rule.

SECTION 30. Amends Section 173.001(d), Election Code, to provide that each party chair or executive committee, rather than each party executive committee, is entitled to a proportionate share of the amount of certain funds according to that committee's percentage of the total amount requested and makes no further changes to this subsection.

SECTION 31. Amends Section 173.010, Election Code, as follows:

Sec. 173.010. New heading: FURNISHING RULES AND GUIDELINES. Requires SOS to post on SOS's website a current set of the rules and any available guidelines adopted under this subchapter (Primary Election Expenses Generally) during October preceding each primary election year, rather than requires SOS to deliver to the state chair and each county chair of each political party holding a primary election a current set of the rules adopted under this subchapter during November preceding each primary election year. Requires SOS to e-mail each state or county chair who has provided SOS an e-mail address when the rules and guidelines have been posted. Requires SOS to update the posting with the new rule or amendment, if a rule or amendment of a rule is adopted after the set is posted, rather than requires SOS to deliver a copy of the rule or amendment, if a rule or amendment of a rule is adopted after delivery of the set, not later than a certain day.

SECTION 32. Amends Section 172.032, Election Code, by adding Subsection (c), as follows:

(c) Authorizes the state chair, with the consent of SOS and the county executive committee, if one exists for the county, to accept money into the state primary fund on behalf of a county party. Requires the state chair to keep records to track the money that is attributable to a county.

SECTION 33. Amends Section 173.033, Election Code, as follows:

Sec. 173.033. USE OF PRIMARY FUND. (a) Deletes the county executive committee from entities that incur expenses to be paid using the county primary fund.

(b) Deletes the state executive committee from entities that incur expenses to be paid using the state primary fund.

(c) Creates an exception provided by Section 173.032(c).

SECTION 34. Amends Section 173.034, Election Code, to change a reference to the county executive committee to the county chair and to change a reference to the state executive committee to state chair.

SECTION 35. Amends Section 173.036(a), Election Code, to include a county primary fund among funds for which SOS is authorized to approve an expenditure of state funds for an audit.

SECTION 36. Amends the heading to Section 173.062, Election Code, to read as follows:

SEC. 173.062. FEE PAID TO STATE CHAIR FOR DISTRICT OFFICES REMITTED TO SECRETARY OF STATE.

SECTION 37. Amends Section 173.062(a), Election Code, to require a certain filing fee to be remitted to SOS and deposited in the state treasury for the financing of primary election expenses, rather than require the state chair to allocate a certain fee among the county executive committees serving the counties comprising the district.

SECTION 38. Amends Section 173.081, Election Code, by amending Subsections (a) and (c) and adding Subsection (g), as follows:

(a) Requires a state or county chair to submit to SOS a certain written statement, rather than requires a certain statement to be submitted to SOS by certain individuals, regardless of whether state funds are requested for paying primary expenses. Makes nonsubstantive changes.

(c) Requires a statement for a general primary election to also, among certain other data, state the amount of certain contributions to the county chair or executive committee or to the state chair or executive committee.

(g) Authorizes the state chair of a party, or the state chair's designee, to submit a statement under this section on behalf of a county chair under certain conditions.

SECTION 39. Amends Section 173.0832, Election Code, to require SOS to, on request of a certain county election officer, rather than authorizes SOS, on request of a certain county election officer of a county with a population of 100,000 or more, to provide certain payment and makes no further changes to this section.

SECTION 40. Amends Subchapter D, Chapter 173, Election Code, by adding Section 173.0833, as follows:

Sec. 173.0833. DIRECT BILLING OF CERTAIN PRIMARY EXPENSES. (a) Provides that this section applies to election services and materials provided by a vendor for use in a primary election or primary runoff election, including certain services and materials.

(b) Requires a certain vendor to directly bill SOS for the cost of the services or materials used on election day for which state funding is available under this chapter.

(c) Requires certain county chairs or certain county election officers to direct the vendor to remit final invoices to SOS for payment and authorizes the chairs and officers to examine an invoice for accuracy after the invoice is submitted to SOS for payment.

(d) Requires the county chair or county election officer to notify the vendor and SOS, if after a review under Subsection (c)(2) an adjustment is required. Requires the vendor to submit a corrected invoice and SOS to adjust the payment accordingly.

(e) Requires an invoice submitted to SOS by a vendor for payment under this section to be in an electronic spreadsheet format prescribed by SOS and list each county to which the vendor provides election services or materials. Requires a submission to, for each county to which a vendor provides election services or materials, include certain information.

(f) Prohibits a vendor from submitting an invoice directly billing SOS for a primary election expense required to be paid by the county under Section 173.003 (Expenses Incurred by County).

(g) Provides that the direct payment by SOS of an invoice under this section does not affect the payments calculated for county chairs under Section 173.004 (State Compensation of County Chair and Secretary of County Executive Committee) or compensation of a county election officer under Section 31.100 (Disposition of Contract Money; Payment of Contracting Officer's Expenses).

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

SECTION 41. Amends Section 173.084, Election Code, by amending Subsections (b) and (d) and adding Subsection (b-1), as follows:

(b) Requires the authority preparing the expense report to file it with SOS not later than August 31 following the applicable primary election, rather than not later than the 30th day after runoff primary election day or not later than the 30th day after general primary election day if no runoff primary is held in the county, in certain cases.

(b-1) Creates this subsection from existing text. Authorizes SOS for good cause, including failure of a vendor or a county election officer contracted to conduct the election to provide complete invoices in a timely fashion, to extend the filing deadline, rather than authorizes SOS for good cause to extend the filing deadline.

(d) Requires, rather than authorizes, claimed compensation to be forfeited on the failure of a county chair to file a timely report.

SECTION 42. Amends Section 173.0851(a), Election Code, to require certain surplus to be remitted to SOS immediately after the final payment from the primary fund of the necessary expenses for holding the primary elections for that year upon request of SOS, rather than for that year, but not later than July 1 following the applicable primary election, and makes no further changes to this subsection.

SECTION 43. Repealers: Sections 172.084(b) (relating to the drawing for candidates for county and precinct offices), (c) (relating to conducting of the drawing for statewide and district office candidates), (d) (relating to posting notice of when the drawing for certain candidates occurs), and (e) (relating to required locations to post the notice), Election Code.

Repealer: Sections 172.113(b) (relating to delivery of precinct returns) and (c) (relating to entering certain information on unofficial tabulations), Election Code.

Repealer: Section 172.119 (County Election Returns), Election Code.

Repealer: Section 172.127(a) (relating to this section's applicability to a polling place meeting certain criteria), Election Code.

Repealers: Sections 173.062(b) (relating to the amount of a county committee's allocations), (c) (relating to delivery of each committee's allocations), and (d) (relating to deposit of the allocation), Election Code.

Repealer: Section 173.064 (Report of Fees by State Chair), Election Code.

Repealer: Section 173.088 (Availability of Guidelines), Election Code.

SECTION 44. Makes application of Section 162.014(b), Election Code, as amended by this Act, prospective.

SECTION 45. Effective date: September 1, 2017.