

Suspending limitations on conference committee
jurisdiction, S.B. No. 7 (Hughes/Cain)

By: Hughes

S.R. No. 547

SENATE RESOLUTION

BE IT RESOLVED by the Senate of the State of Texas, 87th Legislature, Regular Session 2021, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on Senate Bill 7 (election integrity and security, including by preventing fraud in the conduct of elections in this state; increasing criminal penalties; creating criminal offenses; providing civil penalties) to consider and take action on the following matter:

(1) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill in proposed SECTION 2.04 of the bill, by adding amended Section 31.006, Election Code, to read as follows:

Sec. 31.006. REFERRAL [~~OF COMPLAINT~~] TO ATTORNEY GENERAL. (a) If, after receiving or discovering information indicating that [~~a complaint alleging~~] criminal conduct in connection with an election has occurred, the secretary of state determines that there is reasonable cause to suspect that [~~the alleged~~] criminal conduct occurred, the secretary shall promptly refer the information [~~complaint~~] to the attorney general. The secretary shall deliver to the attorney general all pertinent documents and information in the secretary's possession.

(b) The documents and information submitted under

Subsection (a) are not considered public information until:

(1) the secretary of state makes a determination that the information [~~complaint~~] received does not warrant an investigation; or

(2) if referred to the attorney general, the attorney general has completed the investigation or has made a determination that the information [~~complaint~~] referred does not warrant an investigation.

Explanation: The change is necessary to require the secretary of state to take certain actions upon the receipt or discovery of information indicating that criminal conduct in connection with an election has occurred.

(2) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill in proposed SECTION 2.05 of the bill, by adding Section 31.019, Election Code, to read as follows:

Sec. 31.019. ENFORCEMENT OF VOTER ROLL MAINTENANCE PROVISIONS. (a) In order to ensure compliance with voter roll maintenance provisions, the secretary of state shall monitor each county's list of registered voters to ensure that no county has a number of registered voters in the county equal to or greater than the number of people eligible to register to vote in the county.

(b) If the secretary of state determines that a county has a number of registered voters equal to or greater than the number of people eligible to register to vote in the county, the

secretary of state shall notify the appropriate registrar in writing.

(c) Not later than 30 days after receiving notice under Subsection (b), a registrar must:

(1) refute, in writing, that the number of registered voters is equal to or greater than the number of people eligible to register to vote in the county and the failure to comply alleged by the notice; or

(2) develop a remediation plan to address failures to comply with voter roll maintenance provisions and send a copy of the plan to the secretary of state.

(d) If a voter registrar fails to respond to a notice under Subsection (c), refutes an allegation under Subsection (c)(1), or fails to comply with a provision of the remediation plan developed by the registrar under Subsection (c)(2), the secretary of state shall:

(1) require the registrar to attend a training course developed under Subsection (h);

(2) publish notice that the county is undergoing an audit under this subsection on the secretary of state's Internet website;

(3) audit the voter registration list for the county in which the registrar serves; and

(4) identify voter roll maintenance provisions with which the registrar is failing to comply and provide a list to the registrar.

(e) If the secretary of state determines that a voter

registrar has not performed any overt actions in pursuance of compliance with the provisions identified under Subsection (d)(4) within 14 days of receiving the list under Subsection (d)(4), the secretary of state shall:

(1) withhold distribution of state funds for financing voter registration to the county until the registrar takes action in pursuance of compliance; and

(2) inform the attorney general that the county which the registrar serves may be subject to a civil penalty under Subsection (f).

(f) A county is liable to this state for a civil penalty of \$1,000 for each day after the 14th day following the receipt of a list under Subsection (d)(4) that the county's voter registrar fails to take overt action to comply with provisions identified under that subsection. The attorney general may bring an action to recover a civil penalty imposed under this section.

(g) A civil penalty collected by the attorney general under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(h) The secretary of state shall develop and implement a three-hour training course for county clerks and registrars on the maintenance of voter rolls required and permitted by law.

(i) The secretary of state shall adopt rules and prescribe procedures for the implementation of this section.

Explanation: The change is necessary to require the secretary of state to take certain actions in order to ensure compliance with voter roll maintenance provisions.

(3) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill in proposed SECTION 3.05 of the bill, by adding to amended Section 64.007(c), Election Code, the following:

The secretary of state shall create and promulgate a form to be used for this purpose.

Explanation: The change is necessary to require the secretary of state to create and promulgate a form to be used by an election officer in maintaining a register of spoiled ballots at the polling place.

(4) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill in proposed SECTION 3.07 of the bill, by adding Section 66.004, Election Code, to read as follows:

SECTION 3.07. Subchapter A, Chapter 66, Election Code, is amended by adding Section 66.004 to read as follows:

Sec. 66.004. CLOSING POLLING PLACE. The secretary of state shall adopt rules and create a checklist or similar guidelines to assist the presiding judge of a polling place in processing forms and conducting procedures required by this code at the closing of the polling place.

Explanation: The change is necessary to require the secretary of state to adopt rules and create a checklist or similar guidelines to assist in the closing of a polling place.

(5) Senate Rule 12.03(1) is suspended to permit the

committee to amend text not in disagreement in proposed SECTION 3.10 of the bill, in amended Section 85.006(e), Election Code, to read as follows:

(e) In a primary election or the general election for state and county officers in a county with a population of 30,000 [~~100,000~~] or more, the early voting clerk shall order voting by personal appearance [~~voting~~] at the main early voting polling place to be conducted on the last Saturday of the early voting period for at least 12 hours, except that voting may not be conducted earlier than 6 a.m. or later than 9 p.m., [~~on the last Saturday~~] and on the last Sunday of the early voting period for at least six [~~five~~] hours, except that voting may not be conducted earlier than 1 p.m. or later than 9 p.m. [~~on the last Sunday of the early voting period~~]. The early voting clerk shall order voting to be conducted at those times in those elections in a county with a population under 30,000 [~~100,000~~] on receipt of a written request for those hours submitted by at least 15 registered voters of the county. The request must be submitted in time to enable compliance with Section 85.007. This subsection supersedes any provision of this subchapter to the extent of any conflict.

Explanation: The change is necessary to regulate the hours for voting on a Saturday or Sunday in counties with population of 30,000 or more and certain counties with a population under 30,000.

(6) Senate Rule 12.03(1) is suspended to permit the committee to amend text not in disagreement in proposed

SECTION 4.06 of the bill, in added Section 33.063, Election Code, to read as follows:

SECTION 4.06. Subchapter C, Chapter 33, Election Code, is amended by adding Section 33.063 to read as follows:

Sec. 33.063. RELIEF. (a) A watcher, or the appointing authority for a watcher, who believes that the watcher was unlawfully prevented or obstructed from the performance of the watcher's duties may seek:

(1) injunctive relief under Section 273.081, including issuance of temporary orders;

(2) a writ of mandamus under Section 161.009 or 273.061; and

(3) any other remedy available under law.

(b) The relief provided by this section is available to a state inspector appointed under Chapter 34 or any other election inspector authorized by law.

Explanation: The change is necessary to provide relief for a watcher, the appointing authority for a watcher, or any election inspector authorized by law, who believes that they were unlawfully prevented or obstructed from the performance of their duties.

(7) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill in proposed SECTION 4.16 of the bill, by adding Section 127.131(f), Election Code, to read as follows:

SECTION 4.16. Section 127.131, Election Code, is amended

by adding Subsection (f) to read as follows:

(f) The presiding judge of the central counting station shall provide and attest to a written reconciliation of votes and voters at the close of tabulation for election day and again after the central counting station meets for the last time to process late-arriving ballots by mail and provisional ballots. The secretary of state shall create and promulgate rules and a form to facilitate compliance with this subsection. The form shall be posted on a website maintained by the county along with election returns and results.

Explanation: The change is necessary to regulate the duties of the presiding judge of the central counting station and the secretary of state regarding the preparing of election returns.

(8) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill in proposed SECTION 5.01 of the bill, by adding amended Section 82.002, Election Code, to read as follows:

ARTICLE 5. VOTING BY MAIL

SECTION 5.01. Section 82.002, Election Code, is amended to read as follows:

Sec. 82.002. DISABILITY. (a) A qualified voter is eligible for early voting by mail if the voter is not capable of ~~[has a sickness or physical condition that prevents the voter from]~~ appearing at the polling place on election day without ~~[a likelihood of]~~ needing personal assistance or ~~[or]~~ injuring the

voter's health due to the voter's:

(1) illness;

(2) injury;

(3) medical confinement ordered by a health care professional; or

(4) mental or physical disability.

(b) The following do not constitute [~~Expected or likely confinement for childbirth on election day is~~] sufficient cause to entitle a voter to vote under Subsection (a):

(1) a lack of transportation;

(2) an illness, injury, or disability that does not prevent the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring the voter's health; or

(3) a requirement to appear at the voter's place of employment on election day.

(c) An application for a ballot to be voted by mail on the ground of disability must require the applicant to specifically select the grounds on which the voter is eligible under Subsection (a).

Explanation: The change is necessary to regulate qualified voters eligible for early voting by mail on the grounds of disability.

(9) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill in proposed SECTION 5.02 of the bill, by adding amended Section 84.001(b), Election Code, to read

as follows:

(b) An application must be submitted in writing and signed by the applicant using ink on paper. An electronic signature or photocopied signature is not permitted.

Explanation: The change is necessary to regulate the manner in which an application for an early voting ballot to be voted by mail may be submitted and signed.

(10) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill in proposed SECTION 5.03 of the bill, by adding amended Section 84.002(a), Election Code, and Section 84.002(c) to read as follows:

SECTION 5.03. Section 84.002, Election Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) An early voting ballot application must include:

(1) the applicant's name and the address at which the applicant is registered to vote;

(1-a) the following information:

(A) the number of the applicant's driver's license or personal identification card issued by the Department of Public Safety;

(B) if the applicant has not been issued a number described by Paragraph (A), the last four digits of the applicant's social security number; or

(C) a statement by the applicant that the applicant has not been issued a number described by Paragraph (A)

or (B);

(2) for an application for a ballot to be voted by mail on the ground of absence from the county of residence, the address outside the applicant's county of residence to which the ballot is to be mailed;

(3) for an application for a ballot to be voted by mail on the ground of age or disability:

(A) the address of the hospital, nursing home or other long-term care facility, or retirement center, or of a person related to the applicant within the second degree by affinity or the third degree by consanguinity, as determined under Chapter 573, Government Code, if the applicant is living at that address and that address is different from the address at which the applicant is registered to vote; and

(B) if applicable, the selected specific grounds on which the voter is eligible for a ballot to be voted by mail on the ground of disability, as required by Section 82.002(c);

(4) for an application for a ballot to be voted by mail on the ground of confinement in jail, the address of the jail or of a person related to the applicant within the degree described by Subdivision (3);

(5) for an application for a ballot to be voted by mail on any ground, an indication of each election for which the applicant is applying for a ballot; and

(6) an indication of the ground of eligibility for early voting.

(c) A person may use the number of a driver's license or personal identification card that has expired for the purpose of fulfilling the requirement under Subsection (a)(1-a) if the license or identification is otherwise valid.

Explanation: The change is necessary to regulate the content of an application for an early voting ballot.

(11) Senate Rule 12.03(1) is suspended to permit the committee to amend text not in disagreement in proposed SECTION 5.04 of the bill, in amended Section 84.011(a), Election Code, by amending Section 84.011(a)(1) and adding Section 84.011(a)(3-a), to read as follows:

(1) immediately preceding the signature space the statement: "I certify that the information given in this application is true, and I understand that giving false information in this application is a crime.";

(3-a) a space for entering the information required under Section 84.002(a)(1-a); and

Explanation: The change is necessary to regulate the contents of the officially prescribed application form for an early voting ballot.

(12) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill in proposed SECTION 5.06 of the bill, by adding Section 86.001(f), Election Code, to read as follows:

(f) If the information required under Section 84.002(a)(1-a) included on the application does not match the

information on the applicant's application for voter registration under Section 13.002(c)(8), the clerk shall reject the application.

Explanation: The change is necessary to require an early voting clerk to reject an application for a ballot to be voted by mail if certain information included in the application does not match the information on the applicant's application for voter registration.

(13) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill in proposed SECTION 5.07 of the bill, by adding Sections 86.002(g), (h), and (i), Election Code, to read as follows:

(g) The carrier envelope must include a space that is hidden from view when the envelope is sealed for the voter to enter the following information:

(1) the number of the voter's driver's license or personal identification card issued by the Department of Public Safety;

(2) if the voter has not been issued a number described by Subdivision (1), the last four digits of the voter's social security number; or

(3) a statement by the applicant that the applicant has not been issued a number described by Subdivision (1) or (2).

(h) A person may use the number of a driver's license or personal identification card that has expired for purposes of Subsection (g) if the license or identification is otherwise

valid.

(i) No record associating an individual voter with a ballot may be created.

Explanation: The change is necessary to regulate the contents of the carrier envelope for a ballot to be voted by mail.

(14) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill in proposed SECTION 5.15 of the bill, by adding Sections 87.128, Election Code, to read as follows:

Sec. 87.128. NOTES. Each member of an early voting ballot board and each member of a signature verification committee is entitled to take and keep any notes reasonably necessary to perform the member's duties under this chapter.

Explanation: The change is necessary to provide that members of early voting ballot boards and of signature verification committees may take and keep certain notes.

(15) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill in proposed SECTION 8.04 of the bill, by amending Sections 232.008(b), (c), and (d), Election Code, to read as follows:

(b) Except as provided by Subsection (c), a contestant must file the petition not later than the later of the 45th [~~30th~~] day after the date the election records are publicly available under Section 1.012 or the official result of the contested election is determined.

(c) A contestant must file the petition not later than the later of the 15th [~~10th~~] day after the date the election records are publicly available under Section 1.012 or the official result is determined in a contest of:

- (1) a primary or runoff primary election; or
- (2) a general or special election for which a runoff is necessary according to the official result or will be necessary if the contestant prevails.

(d) A contestant must deliver, electronically or otherwise, a copy of the petition to the secretary of state by the same deadline prescribed for the filing of the petition.

Explanation: The change is necessary to regulate the filing and delivery of a petition in an election contest.

(16) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill in proposed SECTION 8.04 of the bill, by adding Section 232.063, Election Code, to read as follows:

Sec. 232.063. OVERTURNING ELECTION. If the number of votes illegally cast in the election is equal to or greater than the number of votes necessary to change the outcome of an election, the court may declare the election void without attempting to determine how individual voters voted.

Explanation: The change is necessary to provide certain circumstances in which a court may declare an election void.

(17) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house

or senate version of the bill in proposed SECTION 8.06 of the bill, by amending Section 273.061, Election Code, to read as follows:

Sec. 273.061. JURISDICTION. (a) The supreme court or a court of appeals may issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the holding of an election or a political party convention, regardless of whether the person responsible for performing the duty is a public officer.

(b) The court of criminal appeals may issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the provision, sequestration, transfer, or impoundment of evidence in or records relating to a criminal investigation conducted under this code or conducted in connection with the conduct of an election or political party convention. If a writ of mandamus is issued under this subsection, it shall include an order requiring the provision, sequestration, transfer, or impoundment of the evidence or record.

Explanation: The change is necessary to permit the court of criminal appeals to issue writs of mandamus to compel the performance of certain duties relating to elections.

(18) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill in proposed SECTION 8.09 of the bill, by adding Sections 23.301(c), (d), and (e), Government Code, to read as follows:

(c) Notwithstanding any other law or rule, a proceeding entitled to priority under Section 23.101(b-1) relating to a temporary injunction shall have a court assigned under Subsection (b) not later than 24 hours after the proceeding is filed and, if a temporary injunction is granted, the injunction may not remain in effect for longer than four days.

(d) A person, including a public official, commits an offense if the person communicates with a county or district clerk with the intention of influencing or attempting to influence the court or judge assigned to a proceeding under this section.

(e) An offense under this section is a Class A misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the person committed the offense while acting in the person's official capacity as an election official.

Explanation: The change is necessary to regulate the assignment of certain election proceedings and describe the conduct constituting an offense under Section 23.301, Government Code, as well as the punishment for that offense.

(19) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill in proposed SECTION 8.09 of the bill, by adding Section 23.302, Government Code, to read as follows:

Sec. 23.302. DEADLINES IN CERTAIN ELECTION PROCEEDINGS.

(a) Not later than 24 hours after the proceeding is filed, a

judge to whom a case is assigned under Section 23.301(b) who wishes to be recused from the proceeding must, before recusal:

(1) hear an application for any emergency temporary relief sought;

(2) grant or deny any emergency temporary relief sought; and

(3) set a scheduling order that provides:

(A) a date for a hearing on any injunction sought not later than five days after the date on which the proceeding was filed; and

(B) discovery and deposition deadlines before the expiration of any emergency relief order entered.

(b) The presiding judge of an administrative region shall assign a new judge to a proceeding assigned under Section 23.301(b) not later than 12 hours after the original judge assigned to the proceeding is recused under Subsection (a).

(c) A final order in a proceeding filed under Section 273.081, Election Code, shall be submitted in writing to the parties not later than 24 hours after the judge makes a final determination in the proceeding.

(d) If a district judge does not comply with this section, a person may seek from the supreme court, the court of criminal appeals, or a court of appeals a writ of mandamus as provided by Section 273.061, Election Code, to compel compliance with this section.

(e) Notwithstanding Section 23.101(b-1), a proceeding relating to a permanent injunction being sought in connection to

a challenge under Section 141.034, Election Code, may be heard after the primary election has been canvassed.

Explanation: The change is necessary to provide for deadlines in certain election proceedings.

(20) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill in proposed SECTION 9.02 of the bill, by adding amended Article 42.01, Code of Criminal Procedure, to read as follows:

Sec. 4. The Court of Criminal Appeals [~~Office of Court Administration of the Texas Judicial System~~] shall promulgate a standardized felony judgment form that conforms to the requirements of Section 1 of this article. A court entering a felony judgment [~~judgement~~] shall use the form promulgated under this section.

Sec. 16. In addition to the information described by Section 1, the judgment should reflect the affirmative finding and instruction entered pursuant to Article 42.0194.

Explanation: The change is necessary to require the Court of Criminal Appeals to promulgate a standardized felony judgment form including certain information entered pursuant to Article 42.0194, Code of Criminal Procedure.

(21) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill in proposed SECTION 11.03(d) of the bill, in the transition language, to read as follows:

(d) The changes in law made by this Act apply only to an

application to vote an early voting ballot by mail submitted on or after the effective date of this Act. An application to vote an early voting ballot by mail submitted before the effective date of this Act is governed by the law in effect when the application was submitted, and the former law is continued in effect for that purpose.

Explanation: The change is necessary to ensure that any change in law made by the Act applies only to an application to vote an early voting ballot by mail submitted on or after the effective date of the Act.

(22) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill in proposed SECTION 11.04 of the bill, in the transition language, to read as follows:

SECTION 11.04. Not later than January 1, 2022, the secretary of state shall develop the training course required by Section 31.019, Election Code, as added by this Act.

Explanation: The change is necessary to require the secretary of state to develop the training course required by added Section 31.019, Election Code, before January 1, 2022.

(23) Senate Rule 12.03(1) is suspended to permit the committee to amend text not in disagreement in proposed SECTION 11.06 of the bill, providing for an effective, to read as follows:

SECTION 11.06. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas

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Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.

Explanation: The change is necessary to allow the provisions of the Act to take effect immediately if the measure receives a vote of two-thirds of all the members elected to each house.

President of the Senate

I hereby certify that the above Resolution was adopted by the Senate on May 29, 2021, by the following vote: Yeas 19, Nays 12.

Secretary of the Senate