

BILL ANALYSIS

C.S.S.B. 1646
By: Duncan
Elections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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. Additionally, the implementation of the federal Help America Vote Act has made elections increasingly complex, both for those who administer them and for voters.

C.S.S.B. 1646 makes various changes to the Election Code with regard to state and local election processes to address frequently asked questions to and from election officials, resulting in more efficient elections.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the secretary of state in SECTION 2 of this bill.

ANALYSIS

SECTION 1. Amends Section 2.051(a), Election Code, as follows:

(a) Provides that, for purposes of this section, a special election of a political subdivision is considered to be a separate election with a separate ballot from a general election for officers of the political subdivision held at the same time as the special election or another special election of the political subdivision held at the same time as the special election. Deletes existing text requiring no proposition to appear on the ballot in order for this subchapter (Election of Unopposed Candidate) to apply. Makes nonsubstantive changes.

SECTION 2. Amends Section 2.053, Election Code, as follows:

Sec. 2.053. ACTION ON CERTIFICATION. (a) Requires that, if no election is to be held on election day by the political subdivision, a copy of the order or ordinance declaring each unopposed candidate elected to the office be posted on election day at each polling place used or that would have been used in the election.

(b) Deletes existing text requiring a copy of the order or ordinance declaring each unopposed candidate elected to the office to be posted on Election Day at each polling place used or that would have been used in the election.

(c) Requires that the ballots used at a separate election held at the same time as an election that would have been held if the candidates were not declared elected under this section include the offices and names of the candidates declared elected under this section separately after the measures or contested races in the separate election under a certain heading. Requires that the candidates be grouped in the same relative order prescribed for the ballot generally. Provides that no votes are cast in connection with the candidates.

(d) Authorizes the secretary of state by rule to prescribe any additional procedures necessary to accommodate a particular voting system or ballot style and to facilitate the efficient and cost-effective implementation of this section.

(e) Redesignated from existing Subsection (c).

SECTION 3. Amends Section 2.054(a), Election Code, to provide that, in an election that may be subject to this subchapter (Election of Unopposed Candidate), a person commits an offense if, by intimidation or other means of coercion, the person influences or attempts to influence a person to not file an application for a place on the ballot or a declaration of write-in candidacy or if, by intimidation or other means of coercion, the person influences or attempts to influence a person to withdraw as a candidate. Makes nonsubstantive changes.

SECTION 4. Amends Chapter 2, Election Code, by adding Subchapter D, as follows:

SUBCHAPTER D. CANCELLATION OF ELECTIONS

Sec. 2.081. CANCELLATION OF MOOT MEASURE. (a) Authorizes an authority that orders an election on a measure and determines that the action to be authorized by the voters is prohibited from being taken to declare the measure moot and remove the measure from the ballot, regardless of the outcome of the election.

(b) Requires the authority holding the election, if a measure is declared moot under this section and is removed from the ballot, to post notice of the declaration during early voting by personal appearance and on Election Day, at each polling place that would have been used for the election on the measure.

Sec. 2.082. SPECIFIC AUTHORITY FOR CANCELLATION REQUIRED. Authorizes an authority that orders an election to cancel the election only if the power to cancel the election is specifically provided by statute.

SECTION 5. Amends Section 4.004(a), Election Code, to require that, except as provided by Subsection (c), the notice of a general or special election states the location of each early voting polling place.

SECTION 6. Amends Section 16.031(a), Election Code, to require the registrar to cancel a voter's registration immediately on receipt of notice from the early voting clerk under Section 101.0041 that a federal postcard application submitted by an applicant states a voting residence address located outside the registrar's county. Makes nonsubstantive changes.

SECTION 7. Amends the heading to Section 31.009, Election Code to read as follows:

Sec. 31.009. DISTRIBUTION OF CERTAIN FUNDS.

SECTION 8. Amends Section 31.009(a), Election Code by including that if state funds are made available to reimburse political subdivisions for expenses incurred in conduction a special election that is held statewide, then the secretary of state is required to administer and distribute the funds appropriately.

SECTION 9. Amends Section 32.002, Election Code, by amending Subsection (c) and adding Subsection (g), as follows:

(c) Requires the county chair of a political party whose candidate for governor received the highest or second highest number of votes in the county cast for a candidate nominated by a political party in the most recent gubernatorial general election, before July of each year, to submit in writing to the commissioners court a list of names of persons in order of preference for each precinct who are eligible for appointment as an election judge.

(g) Requires the number of votes received in the precinct by a political party's gubernatorial candidate, if, since the most recent gubernatorial general election, the boundaries of a precinct have been changed, to be estimated as provided by Section 141.070 (Estimating Gubernatorial Vote for Territory With Changed Boundary) for the purpose of determining which political party's candidate for governor received the highest or second highest number of votes in the county.

SECTION 10. Amends Section 32.034, Election Code, by amending Subsection (b) and adding Subsection (f), as follows:

(b) Authorizes the county chair of a political party whose candidate for governor received the highest or second highest number of votes in the county cast for a candidate nominated by a political party in the most recent gubernatorial general election, to submit, not later than the 25th day before a general election or the 10th day before a special election to which Subsection (a) applies, to a presiding judge a list containing the names of at least two persons who are eligible for appointment as clerk.

(f) Requires that the number of votes received in the precinct by a political party's gubernatorial candidate, if, since the most recent gubernatorial general election, the boundaries of a precinct have been changed, be estimated as provided by Section 141.070 for the purpose of determining which political party's candidate for governor received the highest or second highest number of votes in the county.

SECTION 11. Amends Section 85.001(e), Election Code, to provide that, for any resulting runoff election from an election held on the uniform election date in May, the period for early voting by personal appearance begins on the 12th day before Election Day and continues through the fourth day before Election Day.

SECTION 12. Amends Chapter 101, Election Code, by adding Section 101.0041, as follows:

Sec. 101.0041. ACTION BY EARLY VOTING CLERK ON CERTAIN APPLICATIONS. Requires the early voting clerk to notify the voter registrar of a federal postcard application submitted by an applicant that states a voting residence address located outside the registrar's county.

SECTION 13. Amends Section 123.035, Election Code, by adding Subsection (a-1), to prohibit a contract for the acquisition of direct recording electronic voting machine equipment from prohibiting the transportation of the equipment across county lines, and to provide that a contract provision that violates this subsection is void.

SECTION 14. Amends Subchapter A, Chapter 125, Election Code, by adding Section 125.010, as follows:

Sec. 125.010. PRESENCE OF VOTING SYSTEM TECHNICIAN AUTHORIZED. Defines "voting system technician." Authorizes a voting system technician, on the request of the authority holding the election, to be present at a polling place, a meeting of the early voting ballot board, or a central counting station for the purpose of repairing, assembling, maintaining, or operating voting system equipment.

SECTION 15. Amends Subchapter B, Chapter 141, Election Code, by adding Section 141.040, as follows:

Sec. 141.040. NOTICE OF DEADLINES. Requires 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 is authorized to file an application for a place on the ballot under this subchapter (Application for Place on Ballot), 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 16. Reenacts Section 146.0301(a), Election Code, as amended by Chapters 1107 and 1109, Acts of the 79th Legislature, Regular Session, 2005, to prohibit a write-in candidate from withdrawing from the election after the 67th day before Election Day.

SECTION 17. Amends Subchapter B, Chapter 192, Election Code, is amended by adding Section 192.0311. to read as follows:

Sec. 192.0311. DELIVERY OF CERTIFICATION OF NOMINEES FOR 2008 PRESIDENTIAL ELECTION. (a) Notwithstanding Section 192.031 (2)(A), a political party is entitled to have the names of the party's nominees for president and vice president

of the United States placed on the ballot in the 2008 presidential election if the party's state chair delivers to the secretary of state a written certification of the names of the party's nominees for president and vice president on or before noon of the 60th day before the election.

(b) This section expires December 31, 2008.

SECTION 18. Amends Section 192.033, Election Code, by adding Subsection (d) to read as follows:

(d) Notwithstanding Subsection (b), the secretary of state is required to deliver the certification to the authority responsible for having the official ballot prepared in each county not later than the 60th day before Election Day for the 2008 presidential election. This subsection expires December 31, 2008.

SECTION 19. Amends Section 201.054(a), Election Code, to require that a candidate application for a place on a special election ballot be filed not later than 5:00 p.m. of the 62nd, rather than the 67th, day before Election Day if Election Day is on or after the 70th day after the date the election is ordered.

SECTION 20. Amends Sections 213.013(b)-(i), Election Code, as follows:

(b) Entitles, in a recount of an election on an office, each candidate for the office to be present at the recount and have watchers, rather than representatives, present in the number corresponding to the number of counting teams designated for the recount. Makes a conforming change.

(c)-(i) Makes conforming changes.

SECTION 21. Amends Sections 271.002(a), (b), and (c), Election Code, as follows:

(a) Authorizes the governing bodies of the political subdivisions, if the elections ordered by the authorities of two or more subdivisions are to be held on the same day in all or part of the same county, rather than territory, to enter into an agreement to hold the elections jointly in the election precincts that can be served by common polling places, subject to Section 271.003 (Location of Common Polling Place).

(b) and (c) Makes conforming changes.

SECTION 22. (a) The changes in law made by SECTIONS 1-6, 9-12, and 14-21 of this Act apply only to an election ordered on or after September 1, 2007.

(b) Section 123.035 (a-1), Election Code, as added by this Act, applies only to a contract executed on or after September 1, 2007. A contract executed before that date is governed by the law in effect when the contract was executed, and the former law is continued in effect for that purpose.

SECTION 23. Effective date: (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2007.

(b) SECTIONS 7 and 8 of this Act take effect immediately if this Act receives a vote of two-thirds of all the members of each house, as provided by Section 39, Article III, and Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Sections 7 and 8 of this Act take effect September 1, 2007.

EFFECTIVE DATE

September 1, 2007. SECTIONS 7 and 8 of this Act take effect immediately if proper vote is received from all members of each house.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The committee substitute differs from the original by removing SECTION 9 of the original bill relating to the use of a cell phone or any mechanical or electronic means of recording images; removing SECTION 10 of S.B. 1646 relating to a county being able to change the date on holding its general election; removing SECTION 12 of S.B. 1646 relating to possession of a mail ballot; and by removing SECTION 21 of S.B. 1646 repealing Subsection (b), Section 61.012, Election Code.

The committee substitute adds language making it clear that if there are state funds that become available to reimburse political subdivisions for the costs of special elections then the secretary of state is required to administer and distribute those funds appropriately, the original language in S.B. 1646 did not.

The committee substitute adds two sections that extend the time limit for a party to have its nominees certified and accepted by the secretary of state for placement on the ballot for the 2008 presidential election. This would expire December 31, 2008. S.B. 1646 did not include these provisions.