

By: Duncan

S.B. No. 1646

A BILL TO BE ENTITLED

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AN ACT

relating to certain election practices and procedures; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 2.051, Election Code, is amended to read as follows:

(a) Except as provided by Sections 2.055 and 2.056, this subchapter applies only to an election for officers of a political subdivision other than a county in which write-in votes may be counted only for names appearing on a list of write-in candidates and in which

~~[(1)]~~ each candidate for an office that is to appear on the ballot is unopposed, except as provided by Subsection (b) ~~[, and~~

~~[(2) no proposition is to appear on the ballot]~~. For purposes of this section, a special election of a political subdivision is considered to be a separate election with a separate ballot from:

(1) a general election for officers of the political subdivision held at the same time as the special election; or

(2) another special election of the political subdivision held at the same time as the special election.

SECTION 2. Section 2.053, Election Code, is amended to read as follows:

Sec. 2.053. ACTION ON CERTIFICATION. (a) On receipt of

1 the certification, the governing body of the political subdivision
2 by order or ordinance may declare each unopposed candidate elected
3 to the office. If no election is to be held on election day by the
4 political subdivision, a copy of the order or ordinance shall be
5 posted on election day at each polling place used or that would have
6 been used in the election.

7 (b) If a declaration is made under Subsection (a), the
8 election is not held. [~~A copy of the order or ordinance shall be~~
9 ~~posted on election day at each polling place that would have been~~
10 ~~used in the election.~~]

11 (c) The ballots used at a separate election held at the same
12 time as an election that would have been held if the candidates were
13 not declared elected under this section shall include the offices
14 and names of the candidates declared elected under this section
15 listed separately after the measures or contested races in the
16 separate election under the heading "Unopposed Candidates Declared
17 Elected." The candidates shall be grouped in the same relative
18 order prescribed for the ballot generally. No votes are cast in
19 connection with the candidates.

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

24 (e) A certificate of election shall be issued to each
25 candidate in the same manner and at the same time as provided for a
26 candidate elected at the election. The candidate must qualify for
27 the office in the same manner as provided for a candidate elected at

1 the election.

2 SECTION 3. Subsection (a), Section 2.054, Election Code, is
3 amended to read as follows:

4 (a) In an election that may be subject to this subchapter, a
5 ~~[A]~~ person commits an offense if by intimidation or by means of
6 coercion the person influences or attempts to influence a person
7 to:

8 (1) not file an application for a place on the ballot
9 or a declaration of write-in candidacy; or

10 (2) withdraw as a candidate ~~[in an election that may be~~
11 ~~subject to this subchapter].~~

12 SECTION 4. Chapter 2, Election Code, is amended by adding
13 Subchapter D to read as follows:

14 SUBCHAPTER D. CANCELLATION OF ELECTIONS

15 Sec. 2.081. CANCELLATION OF MOOT MEASURE. (a) If an
16 authority that orders an election on a measure determines that the
17 action to be authorized by the voters may not be taken, regardless
18 of the outcome of the election, the authority may declare the
19 measure moot and remove the measure from the ballot.

20 (b) If a measure is declared moot under this section and is
21 removed from the ballot, the authority holding the election shall
22 post notice of the declaration during early voting by personal
23 appearance and on election day, at each polling place that would
24 have been used for the election on the measure.

25 Sec. 2.082. SPECIFIC AUTHORITY FOR CANCELLATION REQUIRED.
26 An authority that orders an election may cancel the election only if
27 the power to cancel the election is specifically provided by

1 statute.

2 SECTION 5. Subsection (a), Section 4.004, Election Code, is
3 amended to read as follows:

- 4 (a) The notice of a general or special election must state:
5 (1) the nature and date of the election;
6 (2) except as provided by Subsection (c), the location
7 of each polling place, including each early voting polling place;
8 (3) the hours that the polls will be open; and
9 (4) any other information required by other law.

10 SECTION 6. Subsection (a), Section 16.031, Election Code,
11 is amended to read as follows:

- 12 (a) The registrar shall cancel a voter's registration
13 immediately on receipt of:
14 (1) notice under Section 13.072(b) or 15.021 or a
15 response under Section 15.053 that the voter's residence is outside
16 the county;
17 (2) an abstract of the voter's death certificate under
18 Section 16.001(a) or an abstract of an application indicating that
19 the voter is deceased under Section 16.001(b);
20 (3) an abstract of a final judgment of the voter's
21 mental incompetence, conviction of a felony, or disqualification
22 under Section 16.002, 16.003, or 16.004;
23 (4) notice under Section 112.012 that the voter has
24 applied for a limited ballot in another county;
25 (5) notice from a voter registration official in
26 another state that the voter has registered to vote outside this
27 state; [~~or~~]

1 (6) notice from the early voting clerk under Section
2 101.0041 that a federal postcard application submitted by an
3 applicant states a voting residence address located outside the
4 registrar's county; or

5 (7) notice from the secretary of state that the voter
6 has registered to vote in another county, as determined by the
7 voter's driver's license number or personal identification card
8 number issued by the Department of Public Safety or social security
9 number.

10 SECTION 7. Section 32.002, Election Code, is amended by
11 amending Subsection (c) and adding Subsection (g) to read as
12 follows:

13 (c) The presiding judge and alternate presiding judge must
14 be affiliated or aligned with different political parties, subject
15 to this subsection. Before July of each year, the county chair of a
16 political party whose candidate for governor received the highest
17 or second highest number of votes in the county cast for a candidate
18 nominated by a political party in the most recent gubernatorial
19 general election shall submit in writing to the commissioners court
20 a list of names of persons in order of preference for each precinct
21 who are eligible for appointment as an election judge. The county
22 chair may supplement the list of names of persons until the 20th day
23 before a general election or the 15th day before a special election
24 in case an appointed election judge becomes unable to serve. The
25 commissioners court shall appoint the first person meeting the
26 applicable eligibility requirements from the list submitted in
27 compliance with this subsection by the party with the highest

1 number of votes in the precinct as the presiding judge and the first
2 person meeting the applicable eligibility requirements from the
3 list submitted in compliance with this subsection by the party with
4 the second highest number of votes in the precinct as the alternate
5 presiding judge. The commissioners court may reject the list if the
6 persons whose names are submitted on the list are determined not to
7 meet the applicable eligibility requirements.

8 (g) If, since the most recent gubernatorial general
9 election, the boundaries of a precinct have been changed, the
10 number of votes received in the precinct by a political party's
11 gubernatorial candidate shall be estimated as provided by Section
12 141.070 for the purpose of determining which political party's
13 candidate for governor received the highest or second highest
14 number of votes in the county.

15 SECTION 8. Section 32.034, Election Code, is amended by
16 amending Subsection (b) and adding Subsection (f) to read as
17 follows:

18 (b) The county chair of a political party whose candidate
19 for governor received the highest or second highest number of votes
20 in the county cast for a candidate nominated by a political party in
21 the most recent gubernatorial general election may, not later than
22 the 25th day before a general election or the 10th day before a
23 special election to which Subsection (a) applies, submit to a
24 presiding judge a list containing the names of at least two persons
25 who are eligible for appointment as a clerk. If a timely list is
26 submitted, the presiding judge shall appoint at least one clerk
27 from the list, except as provided by Subsection (c).

1 (f) If, since the most recent gubernatorial general
2 election, the boundaries of a precinct have been changed, the
3 number of votes received in the precinct by a political party's
4 gubernatorial candidate shall be estimated as provided by Section
5 141.070 for the purpose of determining which political party's
6 candidate for governor received the highest or second highest
7 number of votes in the county.

8 SECTION 9. Subsection (a), Section 33.058, Election Code,
9 is amended to read as follows:

10 (a) While on duty, a watcher may not:

11 (1) converse with an election officer regarding the
12 election, except to call attention to an irregularity or violation
13 of law;

14 (2) converse with a voter; ~~or~~

15 (3) communicate in any manner with a voter regarding
16 the election;

17 (4) use a mobile telephone; or

18 (5) use any mechanical or electronic means of
19 recording images or sound.

20 SECTION 10. Subsection (a), Section 41.0052, Election Code,
21 is amended to read as follows:

22 (a) The governing body of a political subdivision other than
23 a county may, not later than December 31, 2007 [~~2005~~], change the
24 date on which it holds its general election for officers to another
25 authorized uniform election date.

26 SECTION 11. Subsection (e), Section 85.001, Election Code,
27 is amended to read as follows:

1 (e) For an election held on the uniform election date in May
2 and any resulting runoff election, the period for early voting by
3 personal appearance begins on the 12th day before election day and
4 continues through the fourth day before election day.

5 SECTION 12. Subsection (f), Section 86.006, Election Code,
6 is amended to read as follows:

7 (f) A person commits an offense if the person knowingly
8 possesses an official ballot or official carrier envelope provided
9 under this code to another. Unless the person possessed the ballot
10 or carrier envelope with intent to defraud the voter or the election
11 authority, it is an exception to the application of [~~affirmative
12 defense to prosecution under~~] this subsection that the person, on
13 the date of the offense, was:

14 (1) related to the voter within the second degree by
15 affinity or the third degree by consanguinity, as determined under
16 Subchapter B, Chapter 573, Government Code;

17 (2) registered to vote at the same address as the
18 voter;

19 (3) an early voting clerk or a deputy early voting
20 clerk;

21 (4) a person who possesses the carrier envelope in
22 order to deposit the envelope in the mail or with a common or
23 contract carrier and who provides the information required by
24 Section 86.0051(b) in accordance with that section;

25 (5) an employee of the United States Postal Service
26 working in the normal course of the employee's authorized duties;
27 or

1 (6) a common or contract carrier working in the normal
2 course of the carrier's authorized duties if the official ballot is
3 sealed in an official carrier envelope that is accompanied by an
4 individual delivery receipt for that particular carrier envelope.

5 SECTION 13. Chapter 101, Election Code, is amended by
6 adding Section 101.0041 to read as follows:

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

12 SECTION 14. Section 123.035, Election Code, is amended by
13 adding Subsection (a-1) to read as follows:

14 (a-1) A contract for the acquisition of direct recording
15 electronic voting machine equipment may not prohibit the
16 transportation of the equipment across county lines, and a contract
17 provision that violates this subsection is void.

18 SECTION 15. Subchapter A, Chapter 125, Election Code, is
19 amended by adding Section 125.010 to read as follows:

20 Sec. 125.010. PRESENCE OF VOTING SYSTEM TECHNICIAN
21 AUTHORIZED. (a) In this section, "voting system technician" means
22 a person who as a vocation repairs, assembles, maintains, or
23 operates voting system equipment.

24 (b) On the request of the authority holding the election, a
25 voting system technician may be present at a polling place, a
26 meeting of the early voting ballot board, or a central counting
27 station for the purpose of repairing, assembling, maintaining, or

1 operating voting system equipment.

2 SECTION 16. Subchapter B, Chapter 141, Election Code, is
3 amended by adding Section 141.040 to read as follows:

4 Sec. 141.040. NOTICE OF DEADLINES. Not later than the 30th
5 day before the first day on which a candidate may file an
6 application for a place on the ballot under this subchapter, the
7 authority with whom the application must be filed shall post notice
8 of the dates of the filing period in a public place in a building in
9 which the authority has an office.

10 SECTION 17. Subsection (a), Section 146.0301, Election
11 Code, as amended by Chapters 1107 and 1109, Acts of the 79th
12 Legislature, Regular Session, 2005, is reenacted to read as
13 follows:

14 (a) A write-in candidate may not withdraw from the election
15 after the 67th day before election day.

16 SECTION 18. Subsection (a), Section 201.054, Election Code,
17 is amended to read as follows:

18 (a) Except as provided by Subsection (f), a candidate's
19 application for a place on a special election ballot must be filed
20 not later than:

21 (1) 5 p.m. of the 62nd [~~67th~~] day before election day,
22 if election day is on or after the 70th day after the date the
23 election is ordered;

24 (2) 5 p.m. of the 31st day before election day, if
25 election day is on or after the 36th day and before the 70th day
26 after the date the election is ordered; or

27 (3) 5 p.m. of a day fixed by the authority ordering the

1 election, which day must be not earlier than the fifth day after the
2 date the election is ordered and not later than the 20th day before
3 election day, if election day is before the 36th day after the date
4 the election is ordered.

5 SECTION 19. Subsections (b) through (i), Section 213.013,
6 Election Code, are amended to read as follows:

7 (b) In a recount of an election on an office, each candidate
8 for the office is entitled to be present at the recount and have
9 watchers [~~representatives~~] present in the number corresponding to
10 the number of counting teams designated for the recount. If only
11 one counting team is designated or the recount is conducted on
12 automatic tabulating equipment, each candidate is entitled to two
13 watchers [~~representatives~~].

14 (c) In a recount of an election on an office for which a
15 political party has a nominee or for which a candidate is aligned
16 with a political party, the party is entitled to have watchers
17 [~~representatives~~] present in the same number prescribed for
18 candidates under Subsection (b).

19 (d) In a recount of an election on a measure, watchers
20 [~~representatives~~] may be appointed by the campaign treasurer or
21 assistant campaign treasurer of a specific-purpose political
22 committee that supports or opposes the measure in the number
23 corresponding to the number of counting teams designated for the
24 recount. If only one counting team is designated or the recount is
25 conducted on automatic tabulating equipment, each eligible
26 specific-purpose political committee is entitled to two watchers
27 [~~representatives~~].

1 (e) A watcher [~~representative~~] appointed to serve at a
2 recount must deliver a certificate of appointment to the recount
3 committee chair at the time the watcher [~~representative~~] reports
4 for service. A watcher [~~representative~~] who presents himself or
5 herself for service at any time immediately before or during the
6 recount and submits a proper certificate of appointment must be
7 accepted for service unless the number of appointees to which the
8 appointing authority is entitled have already been accepted.

9 (f) The certificate must be in writing and must include:

- 10 (1) the printed name and the signature of the watcher
11 [~~representative~~];
12 (2) the election subject to the recount;
13 (3) the time and place of the recount;
14 (4) the measure, candidate, or political party being
15 represented;
16 (5) the signature and the printed name of the person
17 making the appointment; and
18 (6) an indication of the capacity in which the
19 appointing authority is acting.

20 (g) If the watcher [~~representative~~] is accepted for
21 service, the recount committee chair shall keep the certificate and
22 deliver it to the recount coordinator after the recount for
23 preservation under Section 211.007. If the watcher
24 [~~representative~~] is not accepted for service, the recount committee
25 chair shall return the certificate to the watcher [~~representative~~]
26 with a signed statement of the reason for the rejection.

27 (h) Each person entitled to be present at a recount is

1 entitled to observe any activity conducted in connection with the
2 recount. The person is entitled to sit or stand conveniently near
3 the officers conducting the observed activity and near enough to an
4 officer who is announcing the votes or examining or processing the
5 ballots to verify that the ballots are counted or processed
6 correctly or to an officer who is tallying the votes to verify that
7 they are tallied correctly. Rules concerning a watcher's
8 [~~representative's~~] rights, duties, and privileges are otherwise
9 the same as those prescribed by this code for poll watchers to the
10 extent they can be made applicable.

11 (i) No mechanical or electronic means of recording images or
12 sound are allowed inside the room in which the recount is conducted,
13 or in any hallway or corridor in the building in which the recount
14 is conducted within 30 feet of the entrance to the room, while the
15 recount is in progress. However, on request of a person entitled to
16 appoint watchers [~~representatives~~] to serve at the recount, the
17 recount committee chair shall permit the person to photocopy under
18 the chair's supervision any ballot, including any supporting
19 materials, challenged by the person or person's watcher
20 [~~representative~~]. The person must pay a reasonable charge for
21 making the copies and, if no photocopying equipment is available,
22 may supply that equipment at the person's expense. The person shall
23 provide a copy on request to another person entitled to appoint
24 watchers [~~representatives~~] to serve at the recount.

25 SECTION 20. Subsections (a), (b), and (c), Section 271.002,
26 Election Code, are amended to read as follows:

27 (a) If the elections ordered by the authorities of two or

1 more political subdivisions are to be held on the same day in all or
2 part of the same county [~~territory~~], the governing bodies of the
3 political subdivisions may enter into an agreement to hold the
4 elections jointly in the election precincts that can be served by
5 common polling places, subject to Section 271.003.

6 (b) If an election ordered by the governor and the elections
7 ordered by the authorities of one or more political subdivisions
8 are to be held on the same day in all or part of the same county
9 [~~territory~~], the commissioners court of a county in which the
10 election ordered by the governor is to be held and the governing
11 bodies of the other political subdivisions may enter into an
12 agreement to hold the elections jointly in the election precincts
13 that can be served by common polling places, subject to Section
14 271.003.

15 (c) If another law requires two or more political
16 subdivisions to hold a joint election, the governing body of any
17 other political subdivision holding an election on the same day in
18 all or part of the same county [~~territory~~] in which the joint
19 election is to be held may enter into an agreement to participate in
20 the joint election with the governing bodies of the political
21 subdivisions holding the joint election.

22 SECTION 21. Subsection (b), Section 61.012, Election Code,
23 is repealed.

24 SECTION 22. (a) Except as otherwise provided by this
25 section, the changes in law made by this Act apply only to an
26 election ordered on or after September 1, 2007.

27 (b) The governing body of a political subdivision other than

1 a county may change an election date as authorized by Subsection
2 (a), Section 41.0052, Election Code, as amended by this Act, at any
3 time on or after September 1, 2007.

4 (c) The change in law made by this Act to Subsection (f),
5 Section 86.006, Election Code, as amended by this Act, applies only
6 to conduct described by that section that occurs on or after
7 September 1, 2007. Conduct occurring before that date is governed
8 by the law in effect when the conduct occurred, and the former law
9 is continued in effect for that purpose.

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

15 SECTION 23. This Act takes effect September 1, 2007.