

1-1 By: Duncan S.B. No. 1970
1-2 (In the Senate - Filed March 12, 2009; March 24, 2009, read
1-3 first time and referred to Committee on State Affairs;
1-4 April 8, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 8, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1970 By: Carona

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to certain election practices and procedures; providing
1-11 penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsection (a), Section 2.051, Election Code, is
1-14 amended to read as follows:

1-15 (a) Except as provided by Sections 2.055 and 2.056, this
1-16 subchapter applies only to an election for officers of a political
1-17 subdivision other than a county in which write-in votes may be
1-18 counted only for names appearing on a list of write-in candidates
1-19 and in which[+]

1-20 [~~(1)~~] each candidate for an office that is to appear on
1-21 the ballot is unopposed, except as provided by Subsection (b) [~~+, and~~

1-22 [~~(2) no proposition is to appear on the ballot~~]. For
1-23 purposes of this section, a special election of a political
1-24 subdivision is considered to be a separate election with a separate
1-25 ballot from:

1-26 (1) a general election for officers of the political
1-27 subdivision held at the same time as the special election; or

1-28 (2) another special election of the political
1-29 subdivision held at the same time as the special election.

1-30 SECTION 2. Section 2.053, Election Code, is amended to read
1-31 as follows:

1-32 Sec. 2.053. ACTION ON CERTIFICATION. (a) On receipt of
1-33 the certification, the governing body of the political subdivision
1-34 by order or ordinance may declare each unopposed candidate elected
1-35 to the office. If no election is to be held on election day by the
1-36 political subdivision, a copy of the order or ordinance shall be
1-37 posted on election day at each polling place used or that would have
1-38 been used in the election.

1-39 (b) If a declaration is made under Subsection (a), the
1-40 election is not held. [A copy of the order or ordinance shall be
1-41 posted on election day at each polling place that would have been
1-42 used in the election.]

1-43 (c) The ballots used at a separate election held at the same
1-44 time as an election that would have been held if the candidates were
1-45 not declared elected under this section shall include the offices
1-46 and names of the candidates declared elected under this section
1-47 listed separately after the measures or contested races in the
1-48 separate election under the heading "Unopposed Candidates Declared
1-49 Elected." The candidates shall be grouped in the same relative
1-50 order prescribed for the ballot generally. No votes are cast in
1-51 connection with the candidates.

1-52 (d) The secretary of state by rule may prescribe any
1-53 additional procedures necessary to accommodate a particular voting
1-54 system or ballot style and to facilitate the efficient and
1-55 cost-effective implementation of this section.

1-56 (e) A certificate of election shall be issued to each
1-57 candidate in the same manner and at the same time as provided for a
1-58 candidate elected at the election. The candidate must qualify for
1-59 the office in the same manner as provided for a candidate elected at
1-60 the election.

1-61 SECTION 3. Subsection (a), Section 2.054, Election Code, is
1-62 amended to read as follows:

1-63 (a) In an election that may be subject to this subchapter, a

[A] person commits an offense if by intimidation or by means of coercion the person influences or attempts to influence a person to:

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

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

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

SUBCHAPTER D. CANCELLATION OF ELECTIONS

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

(b) If a measure is declared moot under this section and is removed from the ballot, the authority holding the election shall 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. An authority that orders an election may cancel the election only if the power to cancel the election is specifically provided by statute.

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

(a) The notice of a general or special election must state:

- (1) the nature and date of the election;
- (2) except as provided by Subsection (c), the location of each polling place, including each early voting polling place;
- (3) the hours that the polls will be open; and
- (4) any other information required by other law.

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

(a) The registrar shall cancel a voter's registration immediately on receipt of:

(1) notice under Section 13.072(b) or 15.021 or a response under Section 15.053 that the voter's residence is outside the county;

(2) an abstract of the voter's death certificate under Section 16.001(a) or an abstract of an application indicating that the voter is deceased under Section 16.001(b);

(3) an abstract of a final judgment of the voter's total mental incapacity, partial mental incapacity without the right to vote, conviction of a felony, or disqualification under Section 16.002, 16.003, or 16.004;

(4) notice under Section 112.012 that the voter has applied for a limited ballot in another county;

(5) notice from a voter registration official in another state that the voter has registered to vote outside this state; ~~[or]~~

(6) 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; or

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

SECTION 7. Subchapter A, Chapter 61, Election Code, is amended by adding Section 61.016 to read as follows:

Sec. 61.016. EMERGENCY PAPER BALLOTS. (a) An insufficient number of ballots or a malfunction of electronic voting system equipment must be remedied through the use of emergency paper ballots when no other method of voting is available during voting hours for a person whose acceptance for voting is required by this code.

(b) The secretary of state shall prescribe procedures for

the creation and use of emergency paper ballots as required by this section.

SECTION 8. Section 67.010, Election Code, is amended by adding Subsection (d) to read as follows:

(d) The presiding officer may make a clerical correction to the officially canvassed returns based on any authorized amended county canvass filed with the presiding officer.

SECTION 9. Subsection (e), Section 85.001, Election Code, is amended to read as follows:

(e) For an election held on the uniform election date in May and any resulting runoff election, 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 10. Section 85.004, Election Code, is amended to read as follows:

Sec. 85.004. PUBLIC NOTICE OF ~~[MAIN]~~ POLLING PLACE LOCATION. The election order and the election notice must state the location of each ~~[the main]~~ early voting polling place.

SECTION 11. Chapter 101, Election Code, is amended by adding Section 101.0041 to read as follows:

Sec. 101.0041. ACTION BY EARLY VOTING CLERK ON CERTAIN APPLICATIONS. The early voting clerk shall 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 12. Subsection (a), Section 112.002, Election Code, is amended to read as follows:

(a) After changing residence to another county, a person is eligible to vote a limited ballot by personal appearance during the early voting period or by mail if:

(1) the person would have been eligible to vote in the county of former residence on election day if still residing in that county;

(2) the person is ~~[was]~~ registered to vote in the county of former residence at the time the person offers to vote in the county of new ~~[when the voter changed]~~ residence; and

(3) a voter registration for the person in the county of new residence is not effective on or before election day.

SECTION 13. Subchapter A, Chapter 125, Election Code, is amended by adding Section 125.010 to read as follows:

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

(b) On the request of the authority holding the election, a voting system technician may 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 14. Subchapter B, Chapter 141, Election Code, is amended by adding Section 141.040 to read as follows:

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

SECTION 15. Subsection (a), Section 146.0301, Election Code, as amended by Chapters 1107 (H.B. 2309) and 1109 (H.B. 2339), Acts of the 79th Legislature, Regular Session, 2005, is reenacted to read as follows:

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

SECTION 16. Subsection (b), Section 172.116, Election Code, is amended to read as follows:

(b) The committee shall convene to conduct the local canvass at the county seat ~~[not earlier than 6 p.m.]~~ on the second Thursday ~~[or later than 1 p.m. on the second Friday]~~ after election day at the hour specified by the county chair.

SECTION 17. Section 172.120, Election Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) The state executive committee shall convene to conduct the state canvass for the general primary election not later than:

(1) ~~[on]~~ the second Sunday ~~[Wednesday]~~ after general primary election day, for an election in which three or more candidates are seeking election to the same office; or

(2) the 22nd day after general primary election day, for an election not described by Subdivision (1).

(b-1) Not later than the third ~~[second]~~ Saturday after runoff primary election day, the committee shall convene at the call of the state chair to conduct the state canvass of the runoff primary election.

SECTION 18. Section 192.031, Election Code, is amended to read as follows:

Sec. 192.031. PARTY CANDIDATE'S ENTITLEMENT TO PLACE ON BALLOT. (a) A political party is entitled to have the names of its nominees for president and vice-president of the United States placed on the ballot in a presidential general election if:

(1) the nominees possess the qualifications for those offices prescribed by federal law;

~~(2) [before 5 p.m. of the 70th day before presidential election day,]~~ the party's state chair signs ~~[and delivers to the secretary of state]~~ a written certification of:

(A) the names of the party's nominees for president and vice-president; and

(B) the names and residence addresses of presidential elector candidates nominated by the party, in a number equal to the number of presidential electors that federal law allocates to this state; ~~[and]~~

(3) the party's state chair delivers the written certification to the secretary of state before the later of:

(A) 5 p.m. of the 70th day before presidential election day; or

(B) 5 p.m. of the first business day after the date of final adjournment of the party's national presidential nominating convention; and

(4) the party is:

(A) required or authorized by Subchapter A of Chapter 172 to make its nominations by primary election; or

(B) entitled to have the names of its nominees placed on the general election ballot under Chapter 181.

(b) If the state chair's certification of the party's nominees is delivered by mail, it is considered to be delivered at the time of its receipt by the secretary of state.

SECTION 19. Subsection (b), Section 192.033, Election Code, is amended to read as follows:

~~(b) The [Not later than the 62nd day before presidential election day, the] secretary of state shall deliver the certification to the authority responsible for having the official ballot prepared in each county before the later of the 62nd day before presidential election day or the second business day after the date of final adjournment of the party's national presidential nominating convention.~~

SECTION 20. Subsection (a), Section 201.054, Election Code, is amended to read as follows:

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

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

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

(3) 5 p.m. of a day fixed by the authority ordering the election, which day must be not earlier than the fifth day after the date the election is ordered and not later than the 20th day before

election day, if election day is before the 36th day after the date the election is ordered.

SECTION 21. Section 212.112, Election Code, is amended to read as follows:

Sec. 212.112. AMOUNT OF DEPOSIT. ~~The [(a) Subject to Subsection (d), the]~~ amount of the recount deposit is ~~[determined by the number of precincts for which a recount is requested in the document that the deposit accompanies, in accordance with the following schedule]:~~

(1) ~~\$60 [five times the maximum hourly rate of pay for election judges,] for each [a] precinct in which[+~~

~~[(A)] regular paper ballots were used; and~~

(2) ~~\$100 for each precinct in which an electronic voting system was used [(B) electronic voting system ballots, other than printed images of ballots cast using direct recording electronic voting machines, are to be recounted manually; or~~

~~[(C) both write-in votes and voting system votes are to be recounted;~~

~~[(2) 10 times the maximum hourly rate of pay for election judges, for a precinct in which printed images of ballots cast using direct recording electronic voting machines are to be recounted manually;~~

~~[(3) three times the maximum hourly rate of pay for election judges, for a precinct in which ballots are to be recounted by automatic tabulating equipment and no write-in votes are to be recounted; and~~

~~[(4) two times the maximum hourly rate of pay for election judges, for a precinct in which:~~

~~[(A) voting machines were used and no write-in votes are to be recounted; or~~

~~[(B) only the write-in votes cast in connection with a voting system are to be recounted].~~

~~[(b) In a recount of an election for which a majority vote is required for nomination or election to an office, the rate prescribed by Subsection (a)(1)(C) applies to each precinct in which a voting system was used, regardless of whether any write-in votes were cast in the precinct, if:~~

~~[(1) the original election results show that write-in votes were cast in the election; and~~

~~[(2) an exclusion of write-in votes from the recount is not obtained under Section 212.136.~~

~~[(c) If more than one method of voting is used for early voting, each additional method of voting used for the early voting shall be treated as constituting an additional precinct in determining the amount of a recount deposit for a recount of early voting votes.~~

~~[(d) The minimum amount of a deposit accompanying a petition for a recount is \$50.]~~

SECTION 22. Subsections (b), (c), (d), (e), (f), (g), (h), and (i), Section 213.013, Election Code, are amended to read as follows:

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

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

(d) In a recount of an election on a measure, watchers ~~[representatives]~~ may be appointed by the campaign treasurer or assistant campaign treasurer of a specific-purpose political committee that supports or opposes the measure in the number corresponding to the number of counting teams designated for the recount. If only one counting team is designated or the recount is

conducted on automatic tabulating equipment, each eligible specific-purpose political committee is entitled to two watchers ~~[representatives]~~.

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

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

(1) the printed name and the signature of the watcher ~~[representative]~~;

(2) the election subject to the recount;

(3) the time and place of the recount;

(4) the measure, candidate, or political party being represented;

(5) the signature and the printed name of the person making the appointment; and

(6) an indication of the capacity in which the appointing authority is acting.

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

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

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

SECTION 23. Section 213.016, Election Code, is amended to read as follows:

Sec. 213.016. PRINTING IMAGES OF BALLOTS CAST USING DIRECT RECORDING ELECTRONIC VOTING MACHINES. During any printing of images of ballots cast using direct recording electronic voting machines for the purpose of a recount, the full recount committee is not required to be present. The recount committee chair shall determine how many committee members must be present during the printing of the images. Each candidate is entitled to be present and to have representatives present during the printing of the images in the same number as ~~[prescribed by]~~ Section 213.013(b) prescribes for watchers for a recount ~~[during the printing of the images]~~.

SECTION 24. Subsection (b), Section 221.014, Election Code, is amended to read as follows:

(b) The county shall pay the expenses of a new election ordered in the contest of a local option election [~~held under the Alcoholic Beverage Code~~] that was financed from money deposited by the applicants for the petition requesting the election.

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

(a) If the elections ordered by the authorities of two or more political subdivisions are to be held on the same day in all or part of the same county [~~territory~~], the governing bodies of the political subdivisions may 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.

(b) If an election ordered by the governor and the elections ordered by the authorities of one or more political subdivisions are to be held on the same day in all or part of the same county [~~territory~~], the commissioners court of a county in which the election ordered by the governor is to be held and the governing bodies of the other political subdivisions may 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.

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

SECTION 26. Section 277.001, Election Code, is amended to read as follows:

Sec. 277.001. APPLICABILITY OF CHAPTER. This chapter applies to a petition authorized or required to be filed under a law outside this code in connection with an election[, ~~except a petition for a local option election held under the Alcoholic Beverage Code~~].

SECTION 27. Section 1.016, Subsection (d), Section 32.051, Subsection (b), Section 33.031, Subsection (b), Section 41.0041, and Subsection (d), Section 65.002, Election Code, are repealed.

SECTION 28. The change in law made by the repeal of Section 1.016, Election Code, by this Act does not affect the validity of a person's action taken before the effective date of this Act, including a person's registration to vote, if the person was qualified to take such action before the effective date of this Act.

SECTION 29. The changes in law made by this Act apply only to an election ordered on or after September 1, 2009.

SECTION 30. This Act takes effect September 1, 2009.

* * * * *