

## **BILL ANALYSIS**

S.B. 5  
By: Hancock  
Elections  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties contend that mail ballots are particularly vulnerable to voting fraud and vote harvesting. The goal of S.B. 5 is to detect and prevent mail ballot voting fraud.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

S.B. 5 amends the Election Code to create the Class A misdemeanor offense of election fraud for a person who knowingly or intentionally makes any effort to influence the independent exercise of the vote of another in the presence of the ballot or during the voting process; to cause a voter registration application, ballot, or vote to be obtained or cast under false pretenses; or to cause any intentionally misleading statement, representation, or information to be provided to an election official or on an application for ballot by mail, carrier envelope, or other official election-related form or document. The bill enhances the penalty for the offense to the next higher category of offense if it is shown on the trial of the offense that the defendant was previously convicted of an Election Code offense, the offense involved a voter 65 years of age or older, or the defendant committed another such offense in the same election. The bill authorizes the prosecution of an actor under such an offense, under any other law, or under both that applicable offense or the other law if the actor's conduct that constitutes the offense also constitutes an offense under any other law.

S.B. 5 expands the conduct that constitutes the offense of illegal voting to include knowingly marking or attempting to mark any portion of another person's ballot without specific direction from that person how to mark the ballot; clarifies that the conduct constituting illegal voting that involves knowingly marking or attempting to mark another person's ballot without the consent of that person applies to any portion of the ballot; and revises the conduct constituting illegal voting that involves knowingly impersonating another person to vote or attempting to vote as the impersonated person to instead specify that a person commits such an offense if the person knowingly votes or attempts to vote a ballot belonging to another person, or by impersonating another person. The bill establishes a uniform period for the preservation of precinct election records by the authority to whom they are distributed by removing a statutory provision setting the minimum preservation period for an election not involving a federal office at six months and by removing the specification that the 22-month preservation period applies to elections

involving a federal office.

S.B. 5 renames the offense of providing false information on an application for an early voting ballot as fraudulent use of an application for ballot by mail, revises the conduct of knowingly providing false information on an application for an early voting ballot to specify that such application is instead an application for a ballot by mail, and expands the conduct constituting the offense to include a person intentionally causing false information to be provided on such an application, a person knowingly submitting such an application without the knowledge and authorization of the voter, or a person knowingly and without the voter's authorization altering information provided by the voter on the voter's application for ballot by mail. The bill enhances the penalty for the offense from a state jail felony to the next higher category of offense if it is shown on the trial of the offense that the defendant was previously convicted of an Election Code offense, the offense involved a voter 65 years of age or older, or the defendant committed another such offense in the same election. The bill removes certain circumstances under which the penalty for the offense is decreased to a Class A misdemeanor and specifies that an offense involving a person knowingly altering information provided by a voter on a voter's application for ballot by mail without the voter's authorization does not apply to an early voting clerk or deputy early voting clerk who receives and marks an application for administrative purposes only.

S.B. 5 increases from a Class B misdemeanor to a Class A misdemeanor the penalty for the offense involving an action relating to a carrier envelope by a person other than a voter and makes certain revisions to requirements, exemptions, and the enhancement relating to that offense. The bill authorizes the prosecution of an actor under such an offense, under any other law, or under both that applicable offense or the other law if the actor's conduct that constitutes the offense also constitutes an offense under any other law.

S.B. 5 makes certain revisions to the persons exempt from the offense involving the knowing possession of an official ballot or official carrier envelope provided to another person. The bill changes the penalty for such an offense from a range of penalties based on the number of ballots or carrier envelopes possessed, enhanced depending on whether the actor had the consent of the relevant voters, to a Class A misdemeanor, enhanced to a third degree felony if the defendant possessed the ballot or carrier envelope without the request of the voter. The bill further enhances the penalty for such an offense to the next higher category of offense if it is shown on the trial of the offense that the defendant was previously convicted of an Election Code offense, the offense involved an individual 65 years of age or older, or the defendant committed another such offense in the same election. The bill authorizes the prosecution of an actor under such an offense, under any other law, or under both that applicable offense or the other law if the actor's conduct that constitutes the offense also constitutes an offense under any other law.

S.B. 5 authorizes a voter with a disability who is physically unable to deposit a ballot voted by mail and the associated carrier envelope in the mail to select a person other than the voter's employer, an agent of the voter's employer, or an officer or agent of a labor union to which the voter belongs to assist the voter by depositing a sealed carrier envelope in the mail. The bill specifies that the person subject to the offense of unlawfully assisting a voter voting a ballot by mail is the person who assists the voter, expands the conduct that constitutes the offense to include failing to comply with the requirement to sign a written oath that is part of the certificate on the official carrier envelope, and increases the penalty for such an offense from a Class A misdemeanor, with certain enhancements, to a state jail felony. The bill replaces an exception from the offense of unlawfully assisting a voter voting a ballot by mail that is based on the person being registered to vote at the same address as the applicant with an exception that is based on the person physically living in the same dwelling as the voter at the time of the event. The bill enhances the penalty for such an offense to the next higher category of offense if it is shown on the trial of the offense that the defendant was previously convicted of an Election Code offense, the offense involved a voter 65 years of age or older, or the defendant committed another such offense in the same election. The bill authorizes the prosecution of an actor under

such an offense, under any other law, or under both that applicable offense or the other law if the actor's conduct that constitutes the offense also constitutes an offense under any other law.

S.B. 5 replaces the authorization for a signature verification committee to compare the signature on each carrier envelope certificate, except those signed for a voter by a witness, and the signature on the voter's ballot application with the signature on the voter's registration application to confirm that the signatures are those of the same person with an authorization for the committee to compare such signatures with any two or more signatures of the voter made within the preceding six years and on file with the county clerk or voter registrar to determine whether the signatures are those of the same person. The bill removes the prohibition against the committee using the registration application signature to determine that the signatures are not those of the same person. The bill authorizes the early voting ballot board to compare a voter's signature on a ballot application or carrier envelope certificate with two or more signatures of the voter made within the preceding six years and on file with the county clerk, in addition to the board's existing authority to make such a comparison with signatures on file with the voter registrar, to determine whether the signatures are those of the same person. The bill removes the prohibition against the board using such signatures on file to determine that the signatures are not those of the same person.

S.B. 5 requires the presiding judge of an early voting ballot board, not later than the 30th day after election day, to deliver written notice to the attorney general, including certified copies of the carrier envelope and corresponding ballot application, of any ballot rejected because the voter was deceased, the voter already voted in person in the same election, the signatures on the carrier envelope and ballot application were not executed by the same person, the carrier envelope certificate lacked a witness signature, or the carrier envelope certificate was improperly executed by an assistant.

**EFFECTIVE DATE**

December 1, 2017.