BILL ANALYSIS

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2691 makes multiple changes to the Texas Election Code with regard to election policies and procedures.

Specifically, H.B. 2691 addresses concerns regarding the appointment process of election judges for countywide polling places and the incidents of voter fraud and disenfranchisement in residential care facilities.

Additionally, H.B. 2691 expands the number of counties allowed to participate in a countywide polling program and removes the cap on pay assigned to poll workers.

All of these provisions are designed to clarify and/or improve processes and guidelines relating to elections in this state. (Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 2691 amends current law relating to certain election practices and procedures.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas secretary of state in SECTION 13 (Sections 107.004 and 107.016, Election Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 32.002, Election Code, by adding Subsection (c-1), as follows:

(c-1) Requires the county chair, for purposes of this subsection, to provide a list of names of persons eligible for appointment as election judges. Requires judges of countywide polling places established under Section 43.007 (Countywide Polling Place Program) to be appointed from a list of names of persons submitted by a county chair in compliance with Subsection (c) except that in appointing a person from the list the commissioners is required to apportion the number of judges in direct proportion to the percentage of precincts located in each county commissioner's precinct won by each party in the last gubernatorial election, the commissioners court is not required to make the appointments based on specific polling locations or precincts, a presiding judge or alternate presiding judge is not required to serve in a polling place located in the precinct in which the judge resides, and more than one presiding judge or alternate presiding judge may be selected from the same precinct to serve in polling places not located in the precinct in which the judges reside. Authorizes the county chairs to submit, and the commissioners court to preapprove, the appointment of more presiding judges or alternate presiding judges than necessary to fill available positions. Authorizes the county clerk to select an individual whose appointment was preapproved by the commissioners court to fill a vacancy in a position that was held by an individual from the same political party. Provides that other that a judge's party affiliation, nothing in this subsection precludes a county clerk from placing an election officer at a countywide polling place based on the need for services at that location.

SECTION 2. Amends Section 32.006(a), Election Code, as follows:

(a) Requires that the county chair of a political party holding a primary election appoint for each primary the judges for each precinct in which the election will be held in the county and fill any vacancy that occurs in the position of presiding judge or alternate presiding judge. Deletes existing text requiring the county chair have approval from the county executive committee.

SECTION 3. Amends Section 32.009(d), Election Code, as follows:

(d) Requires a notice to a presiding judge to state the name, address, and any available telephone number and e-mail address of the alternate, and a notice to an alternate to state the name, address, and any available telephone number and e-mail address of the presiding judge. Makes nonsubstantive changes.

SECTION 4. Amends Subchapter A, Chapter 32, Election Code, by adding Section 32.012, as follows:

Sec. 32.012. PROVISION OF INFORMATION RELATING TO ELECTION JUDGES APPOINTED BY COMMISSIONERS COURT. (a) Requires the county clerk, after the commissioners court appoints a presiding election judge and an alternate presiding judge, to provide to the county chair of each political party a list of the individuals appointed by the commissioners court.

(b) Requires the appointment list to be provided in writing.

SECTION 5. Amends Subchapter A, Chapter 32, Election Code, by adding Section 32.013, as follows:

Sec. 32.013. ELECTION JUDGES FOR EARLY VOTING AT RESIDENTIAL CARE FACILITY; QUALIFICATIONS; OATH. (a) Requires additional election judges to be selected to serve at a residential care facility under Chapter 107 in the same manner as election judges are selected to serve at a polling place for early voting by personal appearance under this chapter (Election Judges and Clerks). Requires the county chair of a political party to indicate on the list of names of persons if a person is willing to serve as an election judge under Chapter 107.

(b) Authorizes an election judge serving at a residential care facility to be a volunteer, an employee of the authority conducting the election, or compensated by the authority conducting the election in the same manner as an election judge for a polling place for early voting by personal appearance.

(c) Prohibits a person from serving as an election judge for a residential care facility if at any time during the two years preceding the election, the person has been employed at a residential care facility in the county where the person seeks to serve as an election judge.

(d) Requires that each individual appointed to serve as an election judge at a residential care facility, before beginning the duties of an election judge under Chapter 107, to sign and date a certain oath. Sets forth the contents of the oath.

(e) Requires the Texas secretary of state (SOS) to provide training for an election judge serving under Chapter 107.

SECTION 6. Amends Section 32.114(e), Election Code, to provide that an election judge, early voting clerk, or deputy early voting clerk in charge of an early voting polling place is entitled to compensation for attending the training program at an hourly rate fixed by the appropriate authority in an amount that is equal to or greater than the federal minimum wage, rather than not to exceed $7.

SECTION 7. Amends Section 43.007, Election Code, by amending Subsections (a), (c), and (d) and adding Subsections (m) and (n), as follows:

(a) Requires SOS to implement a program to allow each commissioners court participating in the program to eliminate county election precinct polling places and establish countywide polling places for:

      (1) makes no change to this subdivision;

      (2) each election held on the uniform election date in May and any resulting runoff;

      (3) through (5) makes no changes to these subdivisions.

(c) Requires SOS, in conducting the program, to provide a training manual for election judges and clerks appointed to work at a countywide polling place and for an audit of the voting system units used, including any type of voting system unit described by Subsection (d)(4), rather than provide for an audit of the direct recording electronic voting units, before and after the election, and during the election to the extent such an audit is practicable.

(d) Requires SOS to select to participate in the program each county that:

      (1) through (3) makes no changes to these subdivisions;

      (4) uses either direct recording electronic voting machines or a voting system capable of printing all available ballot styles of that polling place; and

      (5) makes no change to this subdivision.

(m) Requires the county, in adopting a methodology under Subsection (f) (relating to requiring a county to adopt a methodology for determining where each polling place will be located), to ensure that each county commissioner's precinct contains at least one countywide polling place and the total number of permanent branch and temporary branch polling places open for voting in a county commissioner's precinct does not exceed more than twice the number of permanent branch and temporary branch polling places in another county commissioner's precinct.

(n) Requires countywide polling places, to the greatest extent possible, to be located in the precinct where the political party that received the greatest number of votes in the last gubernatorial election is the same political party with which the presiding judge is affiliated.

SECTION 8. Amends Section 85.009(b), Election Code, by changing references to election officer to judge.

SECTION 9. Amends Subchapter A, Chapter 85, Election Code, by adding Section 85.0091, as follows:

      Sec. 85.0091. EARLY VOTING ELECTION OFFICERS FOR PRIMARY ELECTIONS. (a) Requires the early voting clerk to select election officers for a primary election for the main early voting polling place and any branch polling place in a manner consistent with Section 85.009 (Election Officers for General Election for State and County Officers), except that the early voting clerk is required to prescribe the deadline by which county chairs are required to submit names of persons eligible to serve as election officers during early voting.

      (b) Provides that this section does not apply to a joint primary governed by Section 172.126 (Joint Primaries Authorized).

SECTION 10. Amends Subchapter C, Chapter 85, Election Code, by adding Section 85.0651, as follows:

Sec. 85.0651. MOVABLE POLLING PLACE OPERATION. (a) Requires early voting by personal appearance at a movable polling place established under Section 85.062 (Temporary Branch Polling Place), notwithstanding Sections 85.064 (Days and Hours for Voting: Temporary Branch in Populous County) and 85.065 (Days and Hours for Voting: Temporary Branch in Less Populous County), to be conducted for at least eight hours on each day voting is conducted.

(b) Authorizes the location of a movable polling place to be changed only after the polling place has been open for at least two days of voting at its current location.

SECTION 11. Amends Section 86.003, Election Code, by amending Subsections (a) and (b) and adding Subsection (e), as follows:

(a) Requires the balloting materials for voting by mail to be provided to the voter by mail, unless the ballot is delivered to a voter for early voting under Chapter 107.

(b) Changes a reference to mail to deliver.

(e) Provides that a voter who makes an application to vote early by mail on the grounds of age or disability requesting that the ballot be sent to the address of a residential care facility, as defined by Chapter 107, is required to vote as provided by that chapter if five or more applications for ballots to be voted by mail are made by residents of the same facility who request that the ballots be sent to that facility.

SECTION 12. Amends Section 86.004, Election Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Creates an exception under Subsection (c).

(c) Requires an application to vote early by mail on the grounds of age or disability requesting that the ballot be sent to the address of a residential care facility, as defined by Chapter 107, to be held until the earlier of:

(1) the date on which five or more applications for ballots to be voted by mail made by residents of the same facility who request that the ballots be sent to that facility have been received, in which case ballots are prohibited to be mailed to the voters and voting is required to be conducted under Chapter 107; or

(2) the last day on which an application for a ballot to be voted by mail may be received, after which the ballot is required to promptly be mailed to the voter.

SECTION 13. Amends Subtitle B, Title 7, Election Code, by adding Chapter 107, as follows:

CHAPTER 107. EARLY VOTING AT A RESIDENTIAL CARE FACILITY

Sec. 107.001. PURPOSE. Provides that this chapter is enacted to facilitate voting in a nursing home, other long-term care facility, or retirement center in which a significant number of occupants, patients, or residents lack adequate transportation to an appropriate polling place, need assistance in voting, are 65 years of age or older or are disabled, or are indefinitely confined.

Sec. 107.002. DEFINITION. Defines "residential care facility."

Sec. 107.003. APPLICABILITY OF EARLY VOTING BY PERSONAL APPEARANCE PROVISIONS. Provides that to the extent applicable and not in conflict with this chapter, Chapter 85 (Conduct of Voting by Personal Appearance) applies to voting at a residential care facility under this chapter.

Sec. 107.004. EARLY VOTING AT RESIDENTIAL CARE FACILITY REQUIRED. (a) Requires that a voter residing in a residential care facility who has applied to vote early by mail on the grounds of age or disability and who requested that the ballot be sent to the address of the facility vote as provided by this chapter if five or more applications for ballots to be voted by mail were made by residents of the same facility who requested that the ballots be sent to the facility.

(b) Authorizes SOS, if a residential care facility has fewer than five residents qualified to vote under this chapter on January 1 of each calendar year, to exempt a residential care facility from the requirements of this chapter. Requires the Department of State Health Services (DSHS) and the facility director, for this exemption to apply, to provide written confirmation that the exemption applies to the residential care facility. Requires SOS to adopt rules to implement this subsection.

Sec. 107.005. VOTING LOCATION. (a) Requires the administrator of the residential care facility to make available an area located in a common area of the facility for the purposes of voting under this chapter. Requires the area to allow a voter to cast a secret ballot.

(b) Requires the facility administrator to allow posting of required notices during the period that voting is conducted under this chapter.

(c) Authorizes an election judge to enter the private room of a voter who requests that balloting materials be brought to the voter.

Sec. 107.006. NOTICE OF ELECTION IN RESIDENTIAL CARE FACILITY; DETERMINATION OF TIME FOR VOTING. (a) Requires the early voting clerk, if early voting at a residential care facility is required under this chapter, to give notice that early voting will occur at the facility and appoint election judges for the purpose of conducting voting under this chapter.

(b) Requires the election judges, not later than 5 p.m. on the sixth business day before election day, to, with the input of the administrator of the residential care facility, designate one or more times for voting to be conducted. Authorizes voting to be conducted not earlier than the 29th day before election day and not later than the fourth day preceding election day.

(c) Requires the notice of the time or times for conducting the election to be posted at the residential care facility by the election judge and on the appropriate county's Internet website as soon as practicable after determining the time and not later than the fifth day before the first day on which voting will be conducted at the facility.

(d) Requires SOS with the assistance of DSHS to create a list of all residential care facilities eligible under this chapter on January 1 of each calendar year in an early voting clerk's jurisdiction. Requires SOS to provide the list to the early voting clerk.

(e) Requires the early voting clerk to maintain a public list of all residential care facilities in the clerk's jurisdiction at which voting is conducted under this chapter. Requires the list to be available on the Internet website of the authority conducting the election or posted at the location where public notices are posted in the county courthouse or authority's public building, as applicable, and for each facility state the name of the facility, the address of the facility, the dates and times for voting at the facility, and the names of the election judges for the facility.

(f) Authorizes the early voting clerk, at any time during the year and regardless of whether five or more voters at a residential care facility have requested ballots to

be voted by mail, to post notice of the dates on which voting will be conducted at the facility under this chapter for each election. Requires the names of the election judges and the hours during which voting will be conducted, if the early voting clerk posts notice under this subsection, to be posted at least 48 hours before voting is conducted at the facility, notwithstanding Subsection (c).

Sec. 107.007. CONDUCT OF ELECTION. (a) Requires the early voting clerk, in an election conducted under this chapter, to deliver to the election judges for a residential care facility the balloting materials for any qualified voters who have requested a mail ballot for an election that would have been otherwise mailed to the voter at the facility under Chapter 86 (Conduct of Voting by Mail).

(b) Requires the election judges for a residential care facility to deliver the balloting materials to the voter at the facility.

(c) Requires the voter to mark and seal the ballot in the same manner as a voter voting under Chapter 86.

(d) Requires both election judges for the residential care facility to sign the carrier envelope as witnesses. Requires each election judge, in the space for the address of the witness, to write in "Residential Care Facility Election Judge."

(e) Requires the election judges to accept the carrier envelope and place the envelope in a secure bag or ballot container for transport to the early voting clerk's office.

(f) Requires ballots voted a residential care facility to be processed for counting in the manner provided by Chapter 86 for a ballot voted by mail.

Sec. 107.008. VOTING BY ADDITIONAL QUALIFIED VOTERS. (a) Requires the early voting clerk to produce a list of all additional qualified voters who reside at, and are registered to vote at, a residential care facility where voting is conducted under this chapter.

(b) Requires the clerk to supply the election judges for the residential care facility with sufficient additional ballots and voting materials to allow any additional qualified voter who resides at the facility to vote under this chapter. Authorizes any registered voter who resides at the facility, during the voting period, to complete an application to request a mail ballot as if they were voting by mail. Requires an election judge for the facility to serve as a witness for any person who is unable to sign the person's name and authorizes an election judge to witness multiple applications.

(c) Requires an election judge for the residential care facility to accept a properly completed application for a ballot made under this section, and to provide a ballot to the voter. Requires the election judge to make a notation on an application that it was made under this section.

(d) Requires a voter who applies for a ballot under this section to vote in the manner provided by Section 107.007, except that the voter's ballot is required to be stored with the voter's application, and the voter's ballot is prohibited from being counted if the voter was not a qualified voter for the election as demonstrated from the information contained in the voter's application.

(e) Authorizes an election judge at the residential care facility to assist and witness a ballot received by a voter who resides at the facility and is not registered to vote at the facility while the election judge is present at the facility.

(f) Authorizes SOS to prescribe an application for a voter to request a ballot under Subsection (b).

Sec. 107.009. RETENTION OF RECORDS. (a) Requires the election judges for the residential care facility to record the number of ballots voted. Requires both of the election judges for each facility and the early voting clerk to sign and attest to the number of ballots issued.

> (b) Requires the election judges, on completion of voting under this chapter, to record the number of completed ballots, spoiled ballots, and unused returned ballots.

Sec. 107.010. PROOF OF IDENTIFICATION PRESENTED AT RESIDENTIAL CARE FACILITY. (a) Authorizes a voter voting under this chapter, notwithstanding Section 63.0101 (Documentation of Proof of Identification) or any other law, to submit a statement as proof of identification signed by both election judges for the residential care facility that contains the name and address of the voter and verifies that the voter is a resident of the facility and appears on the list of registered voters.

> (b) Requires the election judges to enclose the statement in the carrier envelope.

Sec. 107.011. ASSISTING VOTER; NOTICE. (a) Authorizes the clerk, on written request to the early voting clerk by a relative of a registered voter in a residential care facility, to notify the relative of the time or times at which election judges will conduct voting at the facility. Authorizes the relative to be present at the facility while voting is conducted.

> (b) Authorizes a voter to receive assistance in the same manner as provided by Subchapter B (Assisting Voter), Chapter 64 (Voting Procedures).

> (c) Requires an election judge to seal a ballot if the voter receives assistance from a person who is not an election judge.

Sec. 107.012. SECURITY OF BALLOTS AND MATERIALS. (a) Requires the election judges for the facility, on completion of the voting each day on which voting is conducted at a residential care facility under this chapter, to seal the ballot envelopes and any absentee ballot applications inside a secure envelope and to seal the envelope and sign the seal. Requires the election judges to place the envelope inside a ballot bag or container.

> (b) Requires the election judges, as soon as possible after conducting voting at a residential care facility, but not later than 18 hours after leaving the facility, to deliver the ballot bag or container to the early voting clerk.

Sec. 107.013. PROVISION OF MAIL BALLOT TO CERTAIN VOTERS. (a) Requires the election judges for the facility, if a qualified voter residing at a residential care facility and seeking to vote at the facility under this chapter is not able to cast a ballot during any time when voting is conducted at the facility, to inform the early voting clerk not later than the fourth day before election day. Requires the clerk to mail the ballot to the voter not later than the fourth day before the election day.

> (b) Authorizes any registered voter who did not cast a ballot at the residential care facility to cast a ballot by voting in person on election day or voting by mail.

> (c) Requires an election judge to leave a ballot package for a voter who meets certain criteria.

> (d) Provides that if a voter who requested a ballot to be voted by mail under this chapter is temporarily located at another location, including by hospitalization, the early voting clerk is authorized to mail the ballot to the voter's temporary address, if known, or the early voting judge is authorized to personally deliver the ballot package to the voter's temporary address, if known.

(e) Authorizes the election judge, if an election judge personally delivers a ballot package under Subsection (d), to allow the ballot to be returned by mail or accept the marked ballot personally.

Sec. 107.014. WATCHERS. (a) Authorizes a watcher, in an election held under this chapter, to observe the process of ballot distribution in the common areas of a residential care facility in a manner consistent with Chapter 33 (Watchers).

(b) Authorizes a political party entitled to have the name of its nominees placed on the general election ballot to appoint a watcher to accompany the election judges to a residential care facility.

(c) Requires a political party seeking to appoint a watcher to serve at a residential care facility to submit the name of the watcher to the county election officer of the county in which the facility is located not later than the close of business on the last business day before the date the watcher seeks to observe the conduct of the election under this chapter.

(d) Requires that a watcher present the watcher's certificate of appointment to an election judge for the residential care facility on arrival at the facility.

(e) Provides that a watcher has access to the same areas of the residential care facility as an election judge.

Sec. 107.015. LIMITATIONS ON APPLICABILITY OF CHAPTER. (a) Provides that the early voting clerk is not required to send election judges to conduct an election at a residential care facility unless there are at least five registered voters who are residents of the facility.

(b) Provides that this chapter does not prevent a registered voter from voting early by personal appearance, voting on election day, or voting by mail from an address other than the residential care facility, including from the address of a family member designated under Section 84.002 (Contents of Application).

Sec. 107.016. RULES. Authorizes SOS to adopt rules and prescribe procedures for voting a residential care facility in accordance with this chapter.

SECTION 14. Amends Subchapter A, Chapter 242, Health and Safety Code, by adding Section 242.0181, as follows:

Sec. 242.0181. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING EARLY VOTING. Requires an institution to comply with Chapter 107, Election Code.

SECTION 15. Amends Subchapter A, Chapter 247, Health and Safety Code, by adding Section 247.008, as follows:

Sec. 247.008. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING EARLY VOTING. Requires an assisted living facility to comply with Chapter 107, Election Code.

SECTION 16. Repealers: Sections 32.006(b) (relating to authorizing the county chair to fill the vacancies of the presiding judge and the alternate judge if certain circumstances arise), 32.010 (Furnishing Precinct Boundary Information to Judges), 42.002(c) (relating to a certain subsection not applying to an election held on the May uniform election date by a certain political subdivision) and 43.007(i) (relating to authorizing SOS to select only six certain counties to participate in the program), Election Code.

SECTION 17. Makes application of Sections 242.0181 and 247.008, Health and Safety Code, as added by this Act, prospective.

SECTION 18. Effective date: September 1, 2017.