By:  Hughes S.B. No. 9

(In the Senate - Filed March 7, 2019; March 7, 2019, read first time and referred to Committee on State Affairs; April 1, 2019, reported adversely, with favorable Committee Substitute by the following vote: Yeas 7, Nays 2; April 1, 2019, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Huffman         X

Hughes          X

Birdwell        X

Creighton       X

Fallon          X

Hall            X

Lucio               X

Nelson          X

Zaffirini           X

COMMITTEE SUBSTITUTE FOR S.B. No. 9 By:  Hughes

A BILL TO BE ENTITLED

AN ACT

relating to election integrity; increasing criminal penalties; creating a criminal offense; creating civil penalties.

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

ARTICLE 1. CRIMINAL PROVISIONS

SECTION 1.01.  Article 12.01, Code of Criminal Procedure, is amended to read as follows:

Art. 12.01.  FELONIES. Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

(1)  no limitation:

(A)  murder and manslaughter;

(B)  sexual assault under Section 22.011(a)(2), Penal Code, or aggravated sexual assault under Section 22.021(a)(1)(B), Penal Code;

(C)  sexual assault, if:

(i)  during the investigation of the offense biological matter is collected and subjected to forensic DNA testing and the testing results show that the matter does not match the victim or any other person whose identity is readily ascertained; or

(ii)  probable cause exists to believe that the defendant has committed the same or a similar sexual offense against five or more victims;

(D)  continuous sexual abuse of young child or children under Section 21.02, Penal Code;

(E)  indecency with a child under Section 21.11, Penal Code;

(F)  an offense involving leaving the scene of an accident under Section 550.021, Transportation Code, if the accident resulted in the death of a person;

(G)  trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code;

(H)  continuous trafficking of persons under Section 20A.03, Penal Code; or

(I)  compelling prostitution under Section 43.05(a)(2), Penal Code;

(2)  ten years from the date of the commission of the offense:

(A)  theft of any estate, real, personal or mixed, by an executor, administrator, guardian or trustee, with intent to defraud any creditor, heir, legatee, ward, distributee, beneficiary or settlor of a trust interested in such estate;

(B)  theft by a public servant of government property over which he exercises control in his official capacity;

(C)  forgery or the uttering, using or passing of forged instruments;

(D)  injury to an elderly or disabled individual punishable as a felony of the first degree under Section 22.04, Penal Code;

(E)  sexual assault, except as provided by Subdivision (1);

(F)  arson;

(G)  trafficking of persons under Section 20A.02(a)(1), (2), (3), or (4), Penal Code; or

(H)  compelling prostitution under Section 43.05(a)(1), Penal Code;

(3)  seven years from the date of the commission of the offense:

(A)  misapplication of fiduciary property or property of a financial institution;

(B)  securing execution of document by deception;

(C)  a felony violation under Chapter 162, Tax Code;

(D)  false statement to obtain property or credit under Section 32.32, Penal Code;

(E)  money laundering;

(F)  credit card or debit card abuse under Section 32.31, Penal Code;

(G)  fraudulent use or possession of identifying information under Section 32.51, Penal Code;

(H)  exploitation of a child, elderly individual, or disabled individual under Section 32.53, Penal Code;

(I)  Medicaid fraud under Section 35A.02, Penal Code; or

(J)  bigamy under Section 25.01, Penal Code, except as provided by Subdivision (6);

(4)  five years from the date of the commission of the offense:

(A)  theft or robbery;

(B)  except as provided by Subdivision (5), kidnapping or burglary;

(C)  injury to an elderly or disabled individual that is not punishable as a felony of the first degree under Section 22.04, Penal Code;

(D)  abandoning or endangering a child; [~~or~~]

(E)  insurance fraud; or

(F)  a felony offense under the Election Code;

(5)  if the investigation of the offense shows that the victim is younger than 17 years of age at the time the offense is committed, 20 years from the 18th birthday of the victim of one of the following offenses:

(A)  sexual performance by a child under Section 43.25, Penal Code;

(B)  aggravated kidnapping under Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually; or

(C)  burglary under Section 30.02, Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with the intent to commit an offense described by Subdivision (1)(B) or (D) of this article or Paragraph (B) of this subdivision;

(6)  ten years from the 18th birthday of the victim of the offense:

(A)  trafficking of persons under Section 20A.02(a)(5) or (6), Penal Code;

(B)  injury to a child under Section 22.04, Penal Code; or

(C)  bigamy under Section 25.01, Penal Code, if the investigation of the offense shows that the person, other than the legal spouse of the defendant, whom the defendant marries or purports to marry or with whom the defendant lives under the appearance of being married is younger than 18 years of age at the time the offense is committed; or

(7)  three years from the date of the commission of the offense: all other felonies.

SECTION 1.02.  Section 1.018, Election Code, is amended to read as follows:

Sec. 1.018.  APPLICABILITY OF PENAL CODE. Titles 1 through 4 [~~In addition to Section 1.03, Penal Code, and to other titles of the Penal Code that may apply to this code, Title 4~~], Penal Code, apply [~~applies~~] to offenses prescribed by this code.

SECTION 1.03.  Sections 13.007(b) and (c), Election Code, are amended to read as follows:

(b)  An offense under this section is a state jail felony [~~Class B misdemeanor~~].

(c)  If conduct that constitutes an offense under this section also constitutes an offense under other law, the actor may be prosecuted under this section, the other law, or both. [~~For purposes of this code, an offense under this section is considered to be perjury, but may be prosecuted only under this section.~~]

SECTION 1.04.  Subchapter A, Chapter 61, Election Code, is amended by adding Section 61.0045 to read as follows:

Sec. 61.0045.  IMPEDING ACCESS TO POLLING PLACE. (a)  A person commits an offense if the person impedes a walkway, sidewalk, parking lot, or roadway within 500 feet of a polling place in a manner that hinders a person from entering the polling place.

(b)  An offense under this section is a Class B misdemeanor.

SECTION 1.05.  Section 64.012, Election Code, is amended by adding Subsections (c) and (d) to read as follows:

(c)  It is sufficient for the purposes of Subsection (a)(1) to establish that the person had knowledge of the person's ineligibility to vote if the person was aware of the facts or circumstances causing the person's ineligibility under this code.

(d)  It is not a defense to prosecution that the ballot was not finally counted.

SECTION 1.06.  Section 64.036(d), Election Code, is amended to read as follows:

(d)  An offense under this section is a state jail felony [~~Class A misdemeanor~~].

SECTION 1.07.  Subchapter A, Chapter 273, Election Code, is amended by adding Section 273.005 to read as follows:

Sec. 273.005.  DEFENSE TO PROSECUTION FOR PERSON CONDUCTING INVESTIGATION UNDER THIS CODE. It is a defense to prosecution of an offense under this code that a person employed by a law enforcement agency in the commission of the offense is engaged in:

(1)  the investigation or prosecution of a violation of a law under this code; or

(2)  official activities investigating a weakness in the electoral process.

SECTION 1.08.  (a)  The change in law made by this article in amending Article 12.01, Code of Criminal Procedure, does not apply to an offense if the prosecution of that offense becomes barred by limitation before the effective date of this Act. The prosecution of that offense remains barred as if this article had not taken effect.

(b)  The changes in law made by this article apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

ARTICLE 2. VOTERS, ASSISTANTS, AND WATCHERS

SECTION 2.01.  Section 13.002, Election Code, is amended by adding Subsection (c-1) to read as follows:

(c-1)  A registration application must require the applicant to affirmatively indicate all information provided on the application. An application may not be accepted if any box or space on the application was filled at the time the applicant received the application.

SECTION 2.02.  Section 33.004(b), Election Code, is amended to read as follows:

(b)  To be eligible to participate in the appointment under this section of a watcher for a precinct polling place, a person must be a registered voter of the precinct. To be eligible to participate in the appointment under this section of a watcher for an early voting polling place, the meeting place of an early voting ballot board or signature verification committee, or a central counting station, a person must be a registered voter of the territory served by that facility.

SECTION 2.03.  Section 33.006(b), Election Code, is amended to read as follows:

(b)  A certificate of appointment must:

(1)  be in writing and signed by the appointing authority or, for an appointment for a write-in candidate under Section 33.004, by each of the voters making the appointment;

(2)  indicate the capacity in which the appointing authority is acting;

(3)  state the name, residence address, and voter registration number of the appointee and be signed by the appointee;

(4)  identify the election and the precinct polling place or other location at which the appointee is to serve;

(5)  in an election on a measure, identify the measure if more than one is to be voted on and state which side of the measure the appointee represents; and

(6)  contain an affidavit executed by the appointee stating that the appointee will not use [~~have possession of~~] a device capable of recording images or sound [~~or that the appointee will disable or deactivate the device~~] while serving as a watcher except as permitted by Section 61.014(b).

SECTION 2.04.  Section 33.007(a), Election Code, is amended to read as follows:

(a)  Each appointing authority may appoint not more than two watchers for each precinct polling place, meeting place for an early voting ballot board or signature verification committee, or central counting station involved in the election.

SECTION 2.05.  Section 33.051(a), Election Code, is amended to read as follows:

(a)  A watcher appointed to serve at a precinct polling place, a meeting place for an early voting ballot board or signature verification committee, or a central counting station must deliver a certificate of appointment to the presiding judge at the time the watcher reports for service. A watcher appointed to serve at an early voting polling place must deliver a certificate of appointment to the early voting clerk or deputy clerk in charge of the polling place when the watcher first reports for service.

SECTION 2.06.  Section 33.054, Election Code, is amended to read as follows:

Sec. 33.054.  HOURS OF SERVICE AT EARLY VOTING BALLOT BOARD MEETING OR SIGNATURE VERIFICATION COMMITTEE MEETING. (a)  A watcher serving at the meeting place of an early voting ballot board or signature verification committee may be present at any time the board or committee is processing or counting ballots and until the board or committee completes its duties. The watcher may serve during the hours the watcher chooses, except as provided by Subsection (b).

(b)  A watcher serving at the meeting place of an early voting ballot board may not leave during voting hours on election day without the presiding judge's permission if the board has recorded any votes cast on voting machines or counted any ballots, unless the board has completed its duties and has been dismissed by the presiding judge.

SECTION 2.07.  Section 33.056, Election Code, is amended by adding Subsections (e) and (f) to read as follows:

(e)  A watcher serving at the meeting place of an early voting ballot board or signature verification committee is entitled to inspect a form submitted in accordance with Section 64.0322.

(f)  A watcher serving at a polling place is entitled to inspect any identifying documentation presented by a person assisting a voter in accordance with Subchapter B, Chapter 64.

SECTION 2.08.  Section 33.057, Election Code, is amended to read as follows:

Sec. 33.057.  OBSERVING PREPARATION OF VOTER'S BALLOT. (a)  In this section, "family member" means a person related to the voter within the second degree by affinity or third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code.

(b)  A watcher or election officer is entitled to be present at the voting station when a voter is being assisted by a person who is not a family member [~~an election officer~~], and the watcher or election officer is entitled to examine the ballot before it is deposited in the ballot box to determine whether it is prepared in accordance with the voter's wishes.

(c) [~~(b)~~]  A watcher or election officer may not be present at the voting station when a voter is preparing the voter's ballot or is being assisted by a family member [~~person of the voter's choice~~].

SECTION 2.09.  Section 33.060(a), Election Code, is amended to read as follows:

(a)  On request of a watcher, an election officer who delivers election records from a precinct polling place, an early voting polling place, a meeting place for an early voting ballot board or signature verification committee, or a central counting station shall permit the watcher appointed to serve at that location to accompany the officer in making the delivery.

SECTION 2.10.  Section 61.014(b), Election Code, is amended to read as follows:

(b)  A person, other than a watcher solely recording the counting of ballots, may not use any mechanical or electronic means of recording images or sound within 100 feet of a voting station.

SECTION 2.11.  Section 64.009, Election Code, is amended by adding Subsections (e), (f), and (g) to read as follows:

(e)  A person who assists at least three voters voting under this section at the same time by providing the voters with transportation to the polling place must complete and sign a form that:

(1)  requires the person to affirm that the voters are physically unable to enter the polling place without personal assistance or likelihood of injuring their health; and

(2)  contains the following information:

(A)  the person's name and address; and

(B)  whether the person is providing assistance to the voters solely under this section or under both this section and Subchapter B.

(f)  Subsection (e) does not apply to a person if the person is a family member of all voters that the person provides with transportation to the polling place. For purposes of this subsection, "family member" has the meaning assigned by Section 33.057(a).

(g)  The secretary of state shall prescribe the form described by Subsection (e).

SECTION 2.12.  Subchapter B, Chapter 64, Election Code, is amended by adding Section 64.0322 to read as follows:

Sec. 64.0322.  SUBMISSION OF FORM BY ASSISTANT. (a)  Before a person, other than an election officer, assists a voter in accordance with this chapter, the person must complete a form stating:

(1)  the name and address of the person assisting the voter;

(2)  the manner in which the voter requires assistance;

(3)  the reason the assistance is necessary; and

(4)  the relationship of the assistant to the voter.

(b)  The secretary of state shall prescribe the form required by this section. The form must be incorporated into the official carrier envelope if the voter is voting an early voting ballot by mail and receives assistance under Section 86.010, or must be submitted to an election officer before the voter may be accepted for voting if the voter is voting at a polling place or under Section 64.009.

(c)  An election officer may, at the officer's discretion, make a copy of a form submitted under this section and deliver the copy to the secretary of state.

SECTION 2.13.  Section 84.002, Election Code, is amended by adding Subsection (c) to read as follows:

(c)  An application for a ballot to be voted by mail on the ground of disability must require the applicant to affirmatively indicate that the applicant agrees with the statement "I am physically unable to enter a polling place without needing personal assistance or injuring my health," as prescribed by Section 82.002(a).

SECTION 2.14.  Section 86.013(f), Election Code, is amended to read as follows:

(f)  The oath of a person assisting a voter and the form described by Section 64.0322(a) must be included on the official carrier envelope as part of the certificate prescribed by Subsection (c).

SECTION 2.15.  Section 213.013(i), Election Code, is amended to read as follows:

(i)  No device capable of recording images or sound is 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 unless the person entitled to be present at the recount is a watcher or agrees to disable or deactivate the device. However, on request of a person entitled to appoint watchers 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. 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 to serve at the recount.

ARTICLE 3. ELECTION CONTESTS

SECTION 3.01.  Section 232.006(a), Election Code, is amended to read as follows:

(a)  The venue of an election contest for a statewide office is in Travis County or any county where a contestee resided at the time of the election. For purposes of this section, a contestee's residence is determined under Section 411.0257, Government Code.

SECTION 3.02.  Chapter 232, Election Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. CONTEST INVOLVING ALLEGED FRAUD

Sec. 232.061.  PETITION ALLEGING FRAUD. This subchapter applies to an election contest in which the contestant alleges in the petition that an opposing candidate, an agent of the opposing candidate, or a person acting on behalf of the opposing candidate with the candidate's knowledge committed a violation of any of the following sections of this code:

(1)  Section 13.007;

(2)  Section 64.012;

(3)  Section 64.036;

(4)  Section 84.003;

(5)  Section 84.0041;

(6)  Section 86.0051;

(7)  Section 86.006;

(8)  Section 86.010; or

(9)  Section 276.013.

Sec. 232.062.  EVIDENTIARY STANDARD. A contestant must prove an allegation described by Section 232.061 by a preponderance of the evidence.

Sec. 232.063.  CIVIL PENALTY. (a)  If the court in its judgment finds that the contestee, an agent of the contestee, or a person acting on behalf of the contestee with the contestee's knowledge committed one or more violations of a section described by Section 232.061, the contestee is liable to this state for a civil penalty of $1,000 for each violation.

(b)  A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

Sec. 232.064.  ATTORNEY'S FEES. In an election contest to which this subchapter applies, the court may award reasonable attorney's fees to the prevailing party.

SECTION 3.03.  The changes in law made by this article apply only to an election contest for which the associated election occurred after the effective date of this Act.

ARTICLE 4. STATE AND COUNTY OFFICERS

SECTION 4.01.  Section 18.061, Election Code, is amended by amending Subsection (b) and adding Subsection (f) to read as follows:

(b)  The statewide computerized voter registration list must:

(1)  contain the name and registration information of each voter registered in the state;

(2)  assign a unique identifier to each registered voter; and

(3)  be available to any election official in the state, including the attorney general, through immediate electronic access.

(f)  Appropriate state or local officials and agencies shall provide technological security measures to prevent unauthorized access to the statewide computerized voter registration list.

SECTION 4.02.  Section 18.062, Election Code, is amended by adding Subsection (c) to read as follows:

(c)  For the purposes of Subsection (a), the secretary of state may disclose a voter's social security number or date of birth to other states and jurisdictions.

SECTION 4.03.  Section 43.007, Election Code, is amended by adding Subsection (f-1) to read as follows:

(f-1)  The commissioners court of a county with a population of more than one million must designate a sufficient number of locations as countywide polling places to ensure that no voter who resides in the county must travel more than three miles from the voter's residence to a countywide polling place.

SECTION 4.04.  Section 67.007, Election Code, is amended by adding Subsection (f) to read as follows:

(f)  Not later than 24 hours after completing county election returns under this section, the county clerk shall post on the county's Internet website, if the county maintains a website:

(1)  the number of votes that were cast in the county; and

(2)  the number of registered voters in the county.

SECTION 4.05.  Section 216.001, Election Code, is amended to read as follows:

Sec. 216.001.  APPLICABILITY OF CHAPTER. (a)  Except as provided by Subsection (b), this [~~This~~] chapter applies only to an election that results in a tie vote as provided by Sections 2.002(i), 2.023(b) and (c), and 2.028.

(b)  If the results of an election show that the number of votes cast in an election precinct exceeds the number of registered voters in the precinct, the authority designated under Section 212.026 shall initiate an automatic recount for that precinct in accordance with this chapter.

ARTICLE 5. AUDITABLE VOTING SYSTEMS

SECTION 5.01.  Chapter 127, Election Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. RISK-LIMITING AUDIT

Sec. 127.301.  APPLICABILITY OF SUBCHAPTER. This subchapter applies to an election:

(1)  that occurs after August 31, 2024;

(2)  that contains a race or measure that is voted on statewide; and

(3)  in which an auditable voting system described by Section 129.003(a) is used.

Sec. 127.302.  RISK-LIMITING AUDIT. (a)  Not later than 24 hours after all ballots have been counted in an election, the general custodian of election records shall conduct a risk-limiting audit for a selected statewide race or measure.

(b)  The secretary of state shall select, in accordance with rules adopted by the secretary, the precincts to be counted and the office or proposition to be counted.

(c)  The general custodian of election records shall complete the audit not later than 24 hours before the time for conducting the canvass of the election.

(d)  The general custodian of election records shall post a notice of the date, hour, and place of the audit in the custodian's office and on the county's Internet website, if the county maintains a website.

(e)  A watcher may be present for the audit if appointed by a candidate in the election. A watcher must deliver a certificate of appointment to the general custodian of election records at the time the watcher reports for service. The certificate must be in writing and must include:

(1)  the printed name and signature of the watcher;

(2)  the election subject to the audit; and

(3)  the printed name and signature of the candidate making the appointment.

(f)  The secretary of state may appoint personnel to assist with the audit, including applicable voting system technicians or representatives and persons who have assisted with the design and implementation of the audit.

Sec. 127.303.  RULES. (a)  The secretary of state shall adopt rules prescribing procedures necessary to implement this subchapter.

(b)  Rules adopted under this subchapter must include a rule, using widely accepted statistical methods, that provides for the number or percentage of paper records that must be counted in a risk-limiting audit under Section 127.302.

Sec. 127.304.  PUBLICATION OF RESULTS. The results of a risk-limiting audit conducted under this subchapter must be published on the Internet website of the secretary of state not later than three days after the completion of the audit.

Sec. 127.305.  PILOT PROGRAM. (a)  Notwithstanding Section 127.301(1), the secretary of state shall conduct a pilot program, beginning with the election taking place November 3, 2020, of the risk-limiting audit program created under this subchapter.

(b)  The secretary of state shall adopt rules as necessary to implement this section.

(c)  This section expires August 31, 2024.

SECTION 5.02.  Subchapter A, Chapter 129, Election Code, is amended by adding Section 129.003 to read as follows:

Sec. 129.003.  PAPER AUDIT TRAIL REQUIRED. (a)  In this section, "auditable voting system" means a voting system that uses, creates, or displays a paper record that may be read and audited by the voter.

(b)  Except as otherwise provided by this section, a voting system that consists of direct recording electronic voting machines may not be used in an election unless the system is an auditable voting system.

(c)  Except for a recount under Title 13, or if a risk-limiting audit conducted under Section 127.302 fails to produce strong evidence that the reported outcome of the election matches the result that a full counting of the paper records would reveal, the electronic vote is the official record of the ballot. For a recount of ballots cast on a system involving direct recording electronic voting machines, or if an audit conducted under Section 127.302 fails to produce strong evidence that the reported outcome of the election matches the result that a full counting of the paper records would reveal, the paper record is the official record of the vote cast.

(d)  An authority that purchased a voting system other than an auditable voting system after September 1, 2014, and before September 1, 2019, may use available federal funding and, if federal funding is not available, available state funding to convert the purchased voting system into an auditable voting system in accordance with the following schedule:

(1)  if the voting system was converted into an auditable voting system not later than the election taking place November 3, 2020, the authority is eligible to have 100 percent of the cost of conversion reimbursed under this section; and

(2)  if the authority is not eligible for a 100 percent reimbursement of cost under Subdivision (1) and the voting system was converted into an auditable voting system not later than the election taking place November 5, 2024, the authority is eligible to have 50 percent of the cost of conversion reimbursed under this section.

(e)  Subsections (a)-(c) do not apply to an election held before September 1, 2024.

(f)  A paper record generated by an auditable voting system may be used only for the purposes described by this section and may not be retained by the voter.

(g)  Notwithstanding Subsection (b), a voter voting under Section 64.009 may use a direct recording electronic voting machine regardless of whether the direct recording electronic voting machine is part of an auditable voting system.

ARTICLE 6. REPEALER AND EFFECTIVE DATE

SECTION 6.01.  The following provisions of the Election Code are repealed:

(1)  Section 33.051(c);

(2)  Section 61.003(a-1); and

(3)  Section 85.036(b).

SECTION 6.02.  This Act takes effect September 1, 2019.

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