

BILL ANALYSIS

C.S.S.B. 1
By: Hughes
Constitutional Rights & Remedies, Select
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Full, free, and fair elections are the very foundation of a stable constitutional democracy and Texas voters must have faith and confidence in the ability to exercise their right to vote in the state's elections. To fulfill that fundamental promise of democracy, it is in the interest of the state for elections to be conducted consistently and securely, protected from fraud or abuse, with the assurance that every lawful vote is counted.

C.S.S.B. 1, the Election Integrity Protection Act of 2021, seeks to provide for the uniform application of the state's election laws in a variety of ways, among them eliminating the potential for counties to create inconsistent ad hoc voting procedures, improving mail-in ballot security, providing for appropriate voting assistance to elderly and disabled voters, banning "vote harvesting," and ensuring poll watchers are allowed to observe election activities in polling places and ballot counting areas.

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 rulemaking authority is expressly granted to the secretary of state in SECTION 3.07 of this bill.

ANALYSIS

General Provisions

C.S.S.B. 1 amends the Election Code to revise the conduct of elections in Texas, including with regard to election officers and observers, voting by mail, assistance of voters, fraud and other unlawful practices, and ineligible voters and related reforms and amends the Government Code to provide for the prioritization of certain election proceedings in the Texas Supreme Court, the courts of appeals, and the trial courts. The bill requires election officials and other public officials to strictly construe the provisions of the Election Code to effect the intent of the legislature that the application of those provisions and the conduct of elections be uniform and consistent throughout Texas to reduce the likelihood of fraud in the conduct of elections, protect the secrecy of the ballot, promote voter access, and ensure that all legally cast ballots are counted. The bill makes general principles of criminal responsibility under the Penal Code applicable to offenses prescribed by the Election Code. The bill sets out certain legislative findings and provides for the severability of its provisions.

Registration of Voters

C.S.S.B. 1 requires the contents of a voter registration application to be supplied by the person desiring to register to vote. The bill revises the procedures for providing notice of unlawful voting by a person who is not registered to vote to a prosecutor, and in some cases to the attorney general, by requiring a voter registrar who determines that a person who is not eligible to vote either registered to vote or voted in an election to execute and deliver to the attorney general, the secretary of state, and the county or district attorney having jurisdiction in the territory covered by the election an affidavit stating the relevant facts.

C.S.S.B. 1, with respect to the notice of change in registration information by a voter, extends to any voter, rather than only a voter who continues to reside in the county of registration, the authorization to correct information on the voter's registration certificate by digital transmission of information under a program administered by the secretary of state and the Department of Information Resources. The bill provides the following:

- if the signed notice of the incorrect information and corresponding correction indicates that a voter no longer resides in the county in which the voter is registered, the voter registrar must forward the notice and the voter's original application for registration to the registrar of the county in which the voter resides;
- the registrars must coordinate to ensure that the voter's existing registration is canceled immediately after the voter is registered in the voter's county of residence; and
- a registrar who receives a voter's notice and application from another registrar must treat it as an original application for voter registration and must register the voter if the voter resides in the county and is otherwise eligible for registration.

Conduct and Security of Elections

Election of Unopposed Candidate

C.S.S.B. 1 requires, rather than authorizes, the governing body of a political subdivision, on receipt of certification that a candidate is unopposed for election to an office, to declare by order or ordinance the unopposed candidate elected to the office. The bill requires, rather than authorizes, a certifying authority to declare an unopposed candidate elected to an office of the state or county government if, were the election held, only the votes cast for that candidate may be counted.

Countywide Polling Place Program

C.S.S.B. 1 expands the eligibility criteria for participation in the countywide polling place program to include counties that, in addition to meeting the other eligibility criteria, use ballot marking devices, hand-marked scannable paper ballots that are printed and scanned at the polling place, or any other voting system equipment the secretary of state determines is capable of processing votes for each type of ballot to be voted in the county.

Prohibition on Voting From Inside a Motor Vehicle

C.S.S.B. 1 prohibits a voter from casting a vote from inside a motor vehicle unless the voter meets the requirements for a voter unable to enter a polling place.

Spoiled Ballot Register

C.S.S.B. 1 requires the secretary of state to create and promulgate a form to be used for the register of spoiled ballots at a polling place.

Closing Polling Place

C.S.S.B. 1 requires the secretary of state to adopt rules and create a checklist or similar guidelines to assist the presiding judge of a polling place in processing forms and conducting procedures required by the Election Code at the closing of the polling place.

Regular Days and Hours for Voting

For an election in which the county clerk is the early voting clerk, C.S.S.B. 1 does the following:

- changes the regular hours for early voting by personal appearance at the main early voting polling place on a weekday by providing that, instead of being conducted on the weekdays of the early voting period during the hours that the county clerk's main business office is regularly open for business, such voting must be conducted on each weekday of the early voting period that is not a legal state holiday for a period of at least nine hours, except that voting may not be conducted earlier than 6 a.m. or later than 10 p.m.;
- changes the regular hours for early voting by personal appearance at the main early voting polling place on a Saturday or Sunday by providing that, instead of being conducted for at least 12 hours on the last Saturday of the early voting period and for at least five hours on the last Sunday of that period, such voting must be conducted on the last Saturday of that period for at least 12 hours, except that voting may not be conducted earlier than 6 a.m. or later than 10 p.m., and on the last Sunday of that period for at least six hours, except that voting may not be conducted earlier than 9 a.m. or later than 10 p.m.; and
- lowers from 100,000 to 55,000 the minimum county population threshold that triggers the requirement for a county to conduct voting during the early voting period with extended hours in a primary election and the general election for state and county officers or in a special election ordered by the governor, as applicable.

For an election in which the county clerk is not the early voting clerk, C.S.S.B. 1 does the following:

- changes from at least eight hours each weekday to at least nine hours each weekday the number of hours that voting by personal appearance at the main early voting polling place must occur in a territory covered by the election that has 1,000 or more registered voters; and
- changes from at least three hours each weekday to at least four hours each weekday the number of hours that voting by personal appearance at the main early voting polling place must occur in a territory covered by the election that has fewer than 1,000 registered voters.

For an election in which a city secretary is the early voting clerk, C.S.S.B. 1 changes the regular hours for early voting by personal appearance at the main early voting polling place by providing that, instead of being conducted on the weekdays of the early voting period during the hours that the city secretary's main business office is regularly open for business, such voting must be conducted at least nine hours each weekday of that period unless the territory covered by the election has fewer than 1,000 registered voters, in which case such voting must be conducted at least four hours each day.

C.S.S.B. 1 removes the requirement for early voting by personal appearance at the main early voting polling place in an election ordered by a city to be conducted for at least 12 hours on certain weekdays depending on the length of the early voting period.

C.S.S.B. 1 entitles a voter who has not voted before the scheduled time for closing a polling place to vote after that time if the voter is in line at the polling place by closing time. The bill requires the secretary of state to promulgate any materials and provide any training to presiding judges necessary to properly process voters under this provision.

Temporary Branch and Permanent Branch Polling Places

C.S.S.B. 1 removes the authorization for the establishment of a temporary branch polling place that is located in a movable structure with the approval of the county clerk in a primary election, the general election for state and county officers, or a special election to fill a vacancy in the legislature or in congress.

C.S.S.B. 1 provides the following:

- an early voting polling place must be located inside, instead of at, a branch office, except that an early voting polling place may be located in another room inside the same building as the branch office regularly maintained for conducting general clerical functions of the county clerk if a suitable room is unavailable inside the branch office;
- a temporary polling place may be located inside any building, instead of in any stationary structure, and may not be located in a movable structure in the general election for state and county officers, general primary election, or runoff primary election; and
- the commissioners court of a county, in an election in which countywide polling places are used, must employ the same methodology it uses to determine the location of countywide polling places to determine the location of temporary branch polling places.

Arrangement of Voting System Ballots

C.S.S.B. 1 prohibits voting system ballots from being arranged in a manner that allows a political party's candidates to be selected in one motion or gesture.

Election Officers and Observers

Watchers and Their Purpose, Entitlements, Observations, and Duties

C.S.S.B. 1 prohibits a presiding judge from having a watcher duly accepted for service removed from the polling place for violating any provision of law relating to the conduct of elections, unless the violation was observed by an election judge or clerk after the watcher was previously warned that the watcher's conduct violated the law. However, a presiding judge may call a law enforcement officer to request that a poll watcher be removed if the poll watcher commits a breach of the peace or a violation of law.

C.S.S.B. 1 establishes that the purpose of provisions governing appointed watchers is to preserve the integrity of the ballot box in accordance with the Texas Constitution by providing for the appointment of watchers. The bill provides the following:

- it is the intent of the legislature that watchers duly accepted for service under those governing provisions be allowed to observe and report on irregularities in the conduct of any election;
- watchers may not interfere in the orderly conduct of an election; and
- to effect the applicable purpose, a watcher must:
 - observe without obstructing the conduct of an election; and
 - call to the attention of an election officer any observed or suspected irregularity or violation of law in the conduct of the election.

C.S.S.B. 1 creates a Class B misdemeanor offense for an election officer who intentionally or knowingly refuses to accept a watcher for service when acceptance of the watcher is required by law. Before accepting a watcher, an election officer presented with a watcher's certificate of appointment must require the watcher to take an oath administered by the officer that the watcher swears or affirms that the watcher will not disrupt the voting process or harass voters in the discharge of the watcher's duties.

C.S.S.B. 1 prohibits a watcher from being denied free movement where election activity is occurring within the location at which the watcher is serving, but the bill explicitly excludes from that prohibition the observation at a voting station when a voter is preparing the voter's

ballot or is being assisted by a person of the voter's choice. The bill sets out a provision establishing that, in the Election Code, a watcher who is entitled to "observe" an election activity is entitled to sit or stand near enough to see and hear the activity.

C.S.S.B. 1 authorizes a watcher appointed to serve at a polling place in an election who is available at the time of the action to observe all election activities relating to closing the polling place, including the sealing and transfer of a memory card, flash drive, hard drive, data storage device, or other medium now existing or later developed used by the voting system equipment. The bill provides the following:

- a watcher duly accepted for service at a polling location is entitled to follow the transfer of election materials from the polling place at which the watcher was accepted to a regional tabulating center, the central counting station, or any other location designated to process election materials; and
- the authority responsible for administering a regional tabulating center or another location where election materials are processed must do the following:
 - accept duly appointed watchers for service in the same manner a watcher is accepted for service; and
 - accept a maximum of two watchers for each precinct polling place, meeting place for an early voting ballot board, or central counting station involved in the election.

C.S.S.B. 1 revises the conduct constituting the offense for unlawfully obstructing a watcher as follows:

- to include knowingly preventing a watcher from observing an activity the person knows the watcher is entitled to observe;
- to include knowingly preventing a watcher from observing a procedure the person knows the watcher is entitled to observe; and
- to include knowingly preventing such observation of an activity or procedure by taking any action to obstruct the view of a watcher or distance the watcher from the activity or procedure to be observed in a manner that would make observation not reasonably effective.

Relief, Writs, and Remedy

C.S.S.B. 1 authorizes the appointing authority for a watcher who believes that the watcher was unlawfully prevented or obstructed from the performance of the watcher's duties and authorizes the secretary of state, if the secretary of state believes that a state inspector was unlawfully prevented or obstructed from the performance of the inspector's duties, to seek the following:

- injunctive relief under the Election Code, including the issuance of temporary orders;
- an applicable writ of mandamus under the Election Code; and
- any other remedy available under law.

Receipt of a Marked Early Voting Mail-In Ballot Delivered In Person

C.S.S.B. 1 requires an in-person delivery of a marked early voting mail-in ballot to be received by an election official at the time of delivery. The receiving official must do the following:

- record on a roster prescribed by the secretary of state the voter's name, signature, and type of identification provided for acceptance to vote; and
- attest on the roster that the delivery complies with the method for returning a marked ballot.

Public Test of Logic and Accuracy

C.S.S.B. 1 requires the general custodian of election records, if a public test of logic and accuracy of a voting system is being conducted for an election in which a county election board has been established, to notify each member of the board of the test at least 48 hours before the

date of the test. If the county election board chooses to witness the test, each member of the board must sign the requisite statement providing a full and accurate account of the condition of a given voting machine. In addition, a public test of logic and accuracy of a voting system must also require the general custodian of election records to demonstrate, using a representative sample of voting system equipment, that the source code of the equipment has not been altered.

Voting by Mail

Contents of Early Voting Ballot by Mail Application and Carrier Envelope

C.S.S.B. 1 requires an applicant's signature on an application for an early voting ballot by mail to be submitted in writing using ink on paper, prohibits the use of a photocopied signature, and clarifies that the signing of the application is subject to signing by a witness on the grounds of disability or illiteracy. The bill includes the following information among the required contents of the application for a ballot voted early by mail and the carrier envelope of the ballot:

- the voter's or applicant's driver's license number or the number of a personal identification card issued by the Department of Public Safety (DPS);
- if the voter or applicant has not been issued either number, the last four digits of the voter's or applicant's social security number; or
- a statement by the voter or applicant that the voter or applicant has not been issued any of the specified numbers.

In addition, the bill provides the following:

- a person may use the number of a driver's license or personal identification card that has expired for these purposes if the license or identification is otherwise valid; and
- no record associating an individual voter with a ballot may be created.

C.S.S.B. 1 provides for the respective spaces for entering the newly required information on the officially prescribed application form for the ballot voted early by mail and on the carrier envelope and requires the space on the carrier envelope to be hidden from view when the envelope is sealed. The bill requires the early voting clerk to reject the application if the newly required information on the application does not match the information on the applicable voter registration application. The bill provides that a ballot may be accepted only if, among other requirements for acceptance, the applicable information matches the information on the voter's application for voter registration, in which case the signature on the ballot application and on the carrier envelope are rebuttably presumed to be the signatures of the voter.

Certain Ballots Retained

C.S.S.B. 1 requires early voting mail-in ballots that were not timely returned to be retained in a locked container for the period for preserving the precinct election records.

Comparison of Voter's Signatures

C.S.S.B. 1 revises the provisions that currently authorize a signature verification committee and early voting ballot board, respectively, to compare two or more signatures of a voter made within the preceding six years that are on file with a county clerk or voter registrar for purposes of ballot acceptance. The bill authorizes the committee and board to compare the signatures instead with any known signature of the voter on file with such officials. The bill also requires an early voting ballot board, in order to determine whether the signatures on a ballot application and the carrier envelope certificate are those of the voter, to request from DPS any signature of the voter's on file with DPS and compare the signatures of the voter on the ballot application and the carrier envelope certificate with any signature provided.

Opportunity to Correct Defect of Early Voting Ballot by Mail

C.S.S.B. 1 requires a signature verification committee and early voting ballot board, not later than the second business day after discovering an applicable defect with an early voting ballot voted by mail and before deciding whether to accept or reject a timely delivered ballot, to do the following:

- return the carrier envelope to the voter by mail, if the committee or board determines that it would be possible to correct the defect and return the carrier envelope before the time the polls are required to close on election day; or
- notify the voter of the defect by telephone or email and inform the voter that the voter may do the following:
 - request to have the voter's application to vote by mail canceled; or
 - come to the early voting clerk's office in person not later than the sixth day after election day to correct the defect.

The bill establishes that the committee or board, if the respective entity takes either such action, must take the action with respect to each ballot in the election to which the opportunity to correct the defect applies. A poll watcher is entitled to observe such an action and the secretary of state may prescribe any procedures necessary to implement the correction process. The bill prohibits a ballot from being finally rejected for certain reasons regarding the carrier envelope certificate, voter signature on the certificate and ballot application, or statement of residence, before the seventh day after election day. These bill provisions regarding the opportunity to correct a defect apply only to an early voting ballot voted by mail:

- for which the voter did not sign the carrier envelope certificate;
- for which it cannot immediately be determined whether the signature on the carrier envelope certificate is that of the voter;
- missing any required statement of residence; or
- containing incomplete information with respect to a witness.

Notice of Rejected Ballot

C.S.S.B. 1 requires the early voting clerk, not later than the 30th day after election day, to deliver notice to the attorney general, including certified copies of the carrier envelope and corresponding ballot application, of any ballot rejected because the signature verification committee or the early voting ballot board determined that any Election Code violation occurred.

Counting Ballots and Preparing Returns

C.S.S.B. 1 requires ballots voted early by mail to be tabulated and stored separately from the ballots voted early by personal appearance and to be separately reported on the returns.

C.S.S.B. 1 requires electronic records made of early voting ballot materials and applications to record both sides of the records for provision to the early voting ballot board, the signature verification committee, or both.

Notes

C.S.S.B. 1 entitles each member of an early voting ballot board and each member of a signature verification committee to take and keep any notes reasonably necessary to perform the member's duties regarding the processing of early voting results.

Assistance of Voters

Eligibility for Assistance

C.S.S.B. 1 makes a voter eligible to receive assistance in reading a ballot if the voter cannot read the ballot because of a physical disability that renders the voter unable to write or see or because of an inability to read the language in which the ballot is written.

Submission of Form by Assistant

C.S.S.B. 1 requires a person, other than an election officer, who lawfully assists a voter to complete a form stating the following:

- the name and address of the person assisting the voter;
- the relationship to the voter of the person assisting the voter; and
- whether the person assisting the voter received or accepted any form of compensation or other benefit from a candidate, campaign, or political committee.

The secretary of state must prescribe the form. The bill provides the following additional requirements for the form:

- the form must be incorporated into the official carrier envelope if the voter is voting an early voting ballot by mail and receives assistance; or
- the form must be submitted to an election officer at the time the voter casts a ballot if the voter is voting at a polling place or, if the voter is unable to enter the polling place, is voting at the polling place entrance or curb.

Oath Required Before Providing Assistance

C.S.S.B. 1 revises the oath required to be taken by a person selected to provide assistance to a voter by including a specification in the oath language that the person is swearing or affirming the oath under penalty of perjury and by doing the following:

- clarifying that the person required to take the oath before providing the assistance is a person other than an election officer;
- requiring the person taking the oath to swear or affirm that the voter being assisted represented that the voter is eligible to receive assistance because of a physical disability that renders the voter unable to write or see or an inability to read the language in which the ballot is written;
- requiring the person taking the oath to swear or affirm that the person will confine the assistance to reading the ballot to the voter, directing the voter to read the ballot, marking the voter's ballot, or directing the voter to mark the ballot;
- removing the requirement for the person taking the oath to swear or affirm that the person will confine the assistance to answering the voter's questions, to stating propositions on the ballot, and to naming candidates and, if listed, their political parties;
- requiring the person taking the oath to swear or affirm that the person did not pressure or coerce the voter into choosing the person to provide assistance;
- requiring the person taking the oath to swear or affirm that the person will not communicate information about how the voter has voted to another person; and
- requiring the person taking the oath to swear or affirm that the person understands that if assistance is provided to a voter who is not eligible for assistance, the voter's ballot may not be counted.

Unlawfully Assisting Voter Voting Ballot by Mail

C.S.S.B. 1, with regard to the offense of unlawfully assisting a voter voting a ballot by mail, requires a person who lawfully assists a voter in preparing a ballot to be voted by mail, in addition to the statutorily required entry of the person's signature, printed name, and residence address on the official carrier envelope of the voter, to also enter the following information on the envelope:

- the relationship of the person providing the assistance to the voter; and
- whether the person received or accepted any form of compensation or other benefit from a candidate, campaign, or political committee in exchange for providing assistance.

Under current law, it is a state jail felony offense, with a penalty enhancement in certain circumstances, for a person who assists a voter in preparing a ballot to be voted by mail to knowingly:

- fail to sign the required written oath that is part of the certificate of the official carrier envelope of the ballot; or
- fail to enter the required information on the official carrier envelope.

Current law provides an exemption from the application of both elements of this offense if the person providing the assistance is related to the voter within the second degree by affinity or the third degree by consanguinity or was physically living in the same dwelling as the voter at the time of the event.

C.S.S.B. 1 provides a new exemption from the application of both elements of this offense if the voter is a person with a disability being assisted by a previously known attendant or caregiver.

With regard to the element of the offense of knowingly failing to enter the required information on the official carrier envelope, C.S.S.B. 1 eliminates:

- the current exemption from applicability of this offense for such a person who was physically living in the same dwelling as the voter at the time of the event; and
- the current penalty enhancement, in certain circumstances, for this conduct.

Unlawful Compensation for Assisting Voters

C.S.S.B. 1 changes the offense for unlawful compensation for assisting voters and the punishment for that offense by doing the following:

- removing the following as conduct constituting the offense:
 - compensating another person for assisting voters, as part of any performance-based compensation scheme based on the number of voters assisted or in which another person is presented with a quota of voters to be assisted;
 - engaging in another practice that causes another person's compensation from or employment status with the person to be dependent on the number of voters assisted; and
 - accepting compensation for either of those activities with knowledge that accepting compensation for such activity is illegal;
- providing that the following conduct instead constitutes the offense:
 - compensating or offering to compensate another person for unlawfully assisting voters; or
 - soliciting, receiving, or accepting compensation for unlawfully assisting voters;
- repealing the misdemeanor punishment for the offense and removing the penalty enhancement for two or more previous convictions of the offense;
- making the penalty for the revised offense a state jail felony without regard to the number of previous convictions; and
- revising the definition of compensation for purposes of the offense to provide that the term means an economic benefit as defined by a specified Penal Code provision.

The bill exempts from application of the offense a person assisting a voter who is an attendant or caregiver previously known to the voter.

Official Carrier Envelope for Early Voting Ballot

C.S.S.B. 1 requires an official carrier envelope for an early voting ballot to contain spaces on the reverse side of the envelope for indicating the relationship to the voter of a person other than the voter who deposits the carrier envelope in the mail or with a common or contract carrier.

Fraud and Other Unlawful Practices

Verifying False Information in an Affidavit

C.S.S.B. 1 creates a state jail felony offense for an election judge who knowingly provides a voter with a form for an affidavit to verify the voter's identity for the purpose of being accepted

for voting if the form contains false information the judge entered on the form knowing it was false.

Unlawfully Prohibiting an Employee From Voting

C.S.S.B. 1 expands the conduct that constitutes the offense of unlawfully prohibiting an employee from voting to include the following:

- knowingly refusing to permit an employee to be absent from work to vote early in person; and
- knowingly subjecting or threatening to subject the employee to a penalty for such an absence.

The bill exempts from application of the offense a person whose conduct occurs in connection with an election in which the polls are open while early voting is in progress for voting for two consecutive hours outside of the voter's working hours.

Election Fraud

C.S.S.B. 1 does the following with respect to the offense of election fraud:

- revises the constituent conduct of an offense of election fraud involving any knowing or intentional effort to influence the independent exercise of the vote of another in the presence of the ballot or during the voting process to include the following as such constituent conduct:
 - altering the ballot of another; or
 - otherwise causing a ballot to not reflect the intent of the voter;
- expands the conduct constituting the offense of election fraud to include knowingly or intentionally making any effort to do the following:
 - prevent a voter from casting a legal ballot in an election in which the voter is eligible to vote; or
 - provide false information to a voter with the intent of preventing the voter from voting in an election in which the voter is eligible to vote; and
- enhances the penalty for the offense from a Class A misdemeanor to a state jail felony if the person committed the offense while acting in the person's official capacity as an election officer.

Vote Harvesting

C.S.S.B. 1 creates the third degree felony offense of vote harvesting for a person who does the following:

- directly or through a third party, knowingly provides or offers to provide vote harvesting services in exchange for compensation or other benefit;
- directly or through a third party, knowingly provides or offers to provide compensation or other benefit to another person in exchange for vote harvesting services; or
- knowingly collects or possesses a mail ballot or official carrier envelope in connection with vote harvesting services.

The bill exempts from application of the offense the following:

- an activity not performed in exchange for compensation or a benefit;
- interactions that do not occur in the presence of the ballot or during the voting process;
- interactions that are not conducted in-person with a voter; or
- activity that is not designed to deliver votes for or against a specific candidate or measure.

For purposes of the offense, the bill defines "benefit" by reference to the Penal Code to mean anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested and defines "vote harvesting services" to mean in-person interaction with one or more voters, in the presence of the ballot or during the voting process, intended to deliver votes for a specific candidate or measure. The bill further specifies the following:

- if conduct constituting the offense also constitutes another offense, the actor may be prosecuted for either offense or both offenses; and
- records necessary to investigate the offense or any other Election Code offense must be provided by an election officer in an unredacted form to a law enforcement officer upon request and are not subject to public disclosure.

Unlawful Solicitation and Distribution of Application to Vote by Mail

C.S.S.B. 1 creates a state jail felony offense for a public official who knowingly, while acting in an official capacity, does the following:

- solicits the submission of an application to vote by mail from a person who did not request an application;
- distributes an application to vote by mail to a person who did not request the application, unless the distribution is expressly authorized by the Election Code or access was provided to an application to vote by mail from a publicly accessible website;
- authorizes or approves the expenditure of public funds to facilitate third-party distribution of an application to vote by mail to a person who did not request the application; or
- completes any portion of an application to vote by mail and distributes the application to an applicant unless the public official engaged in the conduct while lawfully assisting the applicant.

The bill exempts from application of the offense a public official who provided general information about voting by mail, the vote by mail process, or the timelines associated with voting to a person or the public or who engaged in the applicable conduct while acting in the official's capacity as a candidate for a public office. The bill also establishes the following:

- a remedy provided under the Election Code with regard to provisions establishing certain miscellaneous offenses is cumulative and does not restrict any other remedies provided by the Election Code or by law; and
- a violation for the unlawful solicitation and distribution of an application to vote by mail is subject to injunctive relief or mandamus as provided by the Election Code.

Unlawful Distribution of Early Voting Ballots and Balloting Materials

C.S.S.B. 1 creates a Class A misdemeanor offense for an early voting clerk or other election official who knowingly mails or otherwise provides an early voting ballot by mail or other early voting by mail ballot materials to a person who the clerk or official knows did not submit an application for the ballot.

Perjury in Connection with Certain Election Procedures

C.S.S.B. 1 creates a state jail felony offense for a person who makes a false statement or swears to the truth of a false statement previously made while making the oath required of a person selected to provide assistance to a voter.

Unlawful Altering of Election Procedures

C.S.S.B. 1 prohibits a public official from creating, altering, modifying, waiving, or suspending any election standard, practice, or procedure mandated by law or rule in a manner not expressly authorized by the Election Code.

Enforcement

Prioritizing Certain Election Proceedings

C.S.S.B. 1 amends the Government Code to establish procedures regarding the prioritization of certain election proceedings. The bill requires the Texas Supreme Court or a court of appeals to

prioritize over any other proceeding pending or filed in the court a proceeding for injunctive relief or for a writ of mandamus under Election Code provisions governing criminal investigations and other enforcement proceedings pending or filed in the court on or after the 70th day before a general or special election. The bill requires a trial court to make the same prioritization, except for a criminal case in which the death penalty has been or may be assessed or when it would otherwise interfere with a constitutional right. The bill provides for hearings and oral arguments in prioritized elections proceedings to be held or given in person or through electronic means.

Assignment and Docketing of Prioritized Election Proceedings; Related Criminal Offenses

C.S.S.B. 1 requires a prioritized election proceeding filed in a court of appeals to be docketed by the clerk of the court and assigned to a panel of three justices determined using an automated assignment system. The bill creates a Class A misdemeanor for a person, including a public official as defined by the bill for purposes of this provision, who communicates with a court clerk with the intention of influencing or attempting to influence the composition of a three-justice panel.

C.S.S.B. 1 requires the clerk of a district court in which a prioritized election proceeding is filed and the clerk of a county court or statutory county court in which such a proceeding is filed to respectively docket the proceeding and, if more than one applicable court in the county has jurisdiction over the proceeding, randomly assign the proceeding to an applicable court using an automated assignment system.

C.S.S.B. 1 creates a Class A misdemeanor for a person, including a public official, who communicates with a county or district clerk with the intention of influencing or attempting to influence the court or judge assigned to such a proceeding. The bill enhances the penalty to a state jail felony if it is shown on the trial of the offense that the person committed the offense while acting in the person's official capacity as an election official. A person may seek from the Texas Supreme Court or a court of appeals a writ of mandamus to compel compliance if a district or county clerk does not comply with these provisions requiring the assignment of such a proceeding.

Deadlines in Prioritized Election Proceedings

C.S.S.B. 1 requires a judge of a county court or statutory county court to whom a prioritized election proceeding is assigned who wishes to be recused from the proceeding to do the following not later than 24 hours after the proceeding is filed:

- hear an application for any emergency temporary relief sought;
- grant or deny any emergency temporary relief sought; and
- set a scheduling order that provides the following:
 - a date for a hearing on any injunction sought not later than five days after the date on which the proceeding was filed; and
 - discovery and deposition deadlines before the expiration of any emergency relief order entered.

The bill requires the presiding judge of an administrative region to assign a new judge to the proceeding not later than 12 hours after the original judge is recused. The bill requires a final order in an injunction proceeding to be submitted in writing to the parties not later than 24 hours after the judge makes a final determination in the proceeding. A person may seek from the Texas Supreme Court, the court of criminal appeals, or a court of appeals a writ of mandamus to compel compliance if a district judge does not comply with these provisions setting deadlines in certain election proceedings. In addition, a proceeding relating to a permanent injunction being sought in connection to a challenge of an application for a place on the ballot may be heard after the primary election has been canvassed.

Ineligible Voters and Related Reforms

C.S.S.B. 1 amends the Code of Criminal Procedure to require a court, after a defendant is adjudged guilty of a felony offense, to make an affirmative finding that the person has been found guilty, enter the finding in the judgment of the case, and instruct the defendant regarding how the felony conviction will impact the defendant's right to vote in Texas. The bill requires an applicable judgment to reflect that affirmative finding and instruction.

C.S.S.B. 1 amends the Election Code to expand the conduct constituting the offense of illegal voting to include knowingly voting or attempting to vote in an election in Texas after voting in another state in an election in which a federal office appears on the ballot and the election day for both states is the same day. The bill provides the following:

- a person may not be convicted of illegal voting solely upon the fact that the person signed a provisional ballot affidavit unless corroborated by other evidence that the person knowingly committed the offense;
- this prohibition applies to an illegal voting offense committed before, on, or after the bill's effective date, except that a final conviction for the offense that exists on the bill's effective date remains unaffected; and
- if conduct constituting the offense of illegal voting, as expanded by the bill, also constitutes another offense under any other law, the actor may be prosecuted for either offense or both offenses.

Repealed Provisions

C.S.S.B. 1 repeals the following provisions of the Election Code:

- Section 85.062(e); and
- Section 86.0105(b).

Transition Provisions

C.S.S.B. 1 does the following with respect to the changes to the law made by its provisions:

- except as otherwise provided by the bill, limits the application of its changes only to an offense committed on or after the bill's effective date. The bill provides that an offense committed before the bill's effective date is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. The bill provides that an offense was committed before the bill's effective date if any element of the offense occurred before that date;
- limits the application of its changes only to an election ordered on or after the bill's effective date. The bill provides that an election ordered before the bill's effective date is governed by the law in effect when the election was ordered, and the former law is continued in effect for that purpose;
- limits the application of its changes only to an application to vote an early voting ballot by mail submitted on or after the bill's effective date. The bill provides that an application to vote an early voting ballot by mail submitted before the bill's effective date is governed by the law in effect when the application was submitted, and the former law is continued in effect for that purpose; and
- limits the application of its changes only to an application for voter registration submitted on or after the bill's effective date.

EFFECTIVE DATE

91st day after the last day of the legislative session.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

Caption

The substitute changes the bill's caption to remove a reference to civil penalties.

General Provisions

The substitute includes the following provisions, which were not present in the engrossed:

- a short title;
- a provision establishing the bill's purpose;
- a provision setting out legislative findings;
- a provision establishing legislative intent and a requirement for election officials and other public officials to strictly construe the provisions of the Election Code to effect that intent; and
- a provision making general principles of criminal responsibility under the Penal Code applicable to offenses prescribed by the Election Code.

Voter Registration

While both the engrossed and substitute require contents of a voter registration application to be supplied by the person desiring to register to vote, the substitute requires all the contents to be supplied by the person whereas the engrossed required only the following contents to be supplied by the person:

- a statement that the applicant is a U.S. citizen;
- a statement that the applicant is a resident of the applicable county;
- a statement that the applicant has not been determined by a final judgment of a court exercising probate jurisdiction to be totally mentally incapacitated or to be partially mentally incapacitated without the right to vote;
- a statement that the applicant has not been finally convicted of a felony or that the applicant is a felon eligible for registration as a voter; and
- the following information:
 - the applicant's Texas driver's license number or the number of a personal identification card issued by the Department of Public Safety (DPS);
 - if the applicant has not been issued either number described, the last four digits of the applicant's social security number; or
 - a statement by the applicant that the applicant has not been issued any of the specified numbers.

Whereas the engrossed requires a county registrar to forward notice of a change in registration information by a voter that indicates the voter no longer resides in the county in which the voter is registered to the registrar in the county in which the voter resides along with the voter's application for registration, the substitute requires the registrar forward the voter's original application for registration.

The substitute does not include the following provisions regarding voter registration, which were present in the engrossed:

- with respect to cancellation of voter registration because of citizenship status, a requirement for the secretary of state to enter into an agreement with DPS under which information in the statewide computerized voter registration list is compared against information in the DPS database on a monthly basis to verify the accuracy of citizenship status information previously provided on voter registration applications;
- with respect to the preceding requirement, the following provisions:

- a provision restricting the comparison to a voter's information in the DPS database that was derived from documents presented by the voter to DPS after the person's current voter registration became effective; and
- a prohibition against the consideration of information derived from documents presented before the person's current voter registration became effective;
- a requirement for the secretary of state to prescribe rules for the administration of voter registration cancellation procedures because of citizenship status;
- a requirement for the secretary of state, not later than December 31 of each year, to provide a report to the legislature of the number of voter registrations canceled due to voter registration cancellation procedures during the calendar year;
- a requirement for the voter registrar, after receiving notification of persons who have indicated a lack of citizenship status in connection with a motor vehicle or DPS record, to deliver to the applicable voter a written notice requiring the voter to submit to the voter registrar proof of U.S. citizenship in the form of a certified copy of the voter's birth certificate, U.S. passport, certificate of naturalization, or any other form prescribed by the secretary of state;
- a requirement for the secretary of state to compare quarterly with the statewide computerized voter registration list the information received under provisions relating to the compilation of a list containing the name and address of each person who is excused or disqualified from jury service because the person is not a resident of the county;
- a requirement for the secretary of state to send to the following a notice of a determination that a voter on the compiled list of nonresidents has been excused or disqualified from jury service because the voter is not a resident of the county in which the voter is registered to vote:
 - the voter registrar of the counties considered appropriate by the secretary; and
 - the attorney general;
- a requirement for the secretary of state to send a notice of a determination that a voter on the statewide computerized voter registration list is deceased or has been excused or disqualified from jury service because the voter is not a citizen to the attorney general, in addition to the voter registrar of the counties considered appropriate by the secretary as required under current law;
- a requirement for the attorney general to quarterly review the information sent by the secretary of state after the applicable notifications to investigate whether a person has committed an offense of making a false statement on a voter registration application or under other law;
- a provision establishing that the secretary of state is not required to send notice of the applicable determination that a voter on the registration list has been excused or disqualified from jury service for a voter who is subject to an exemption from jury service if that exemption is the only reason the voter is excused from jury service;
- a provision that includes the attorney general among the monthly recipients of the list of persons excused or disqualified because of citizenship in the previous month that is provided for purposes of an investigation of whether the person committed an offense of making a false statement on a voter application or under other law; and
- a provision containing the following, with respect to a comparison of information regarding ineligibility:
 - a requirement for a court clerk on the third business day of each month to send a copy of the list of persons excused or disqualified in the previous month because the persons do not reside in the county to the secretary of state and the attorney general and to either the county or district attorney for an investigation of whether the person committed an offense of making a false statement on a voter application or under other law; and
 - a prohibition against the use of a list compiled under provisions regarding such a comparison for a purpose other than the comparison of information regarding ineligibility, in addition to the prohibitions described in current law against using the information for purposes other than compiling a list of nonresidents or maintaining a suspense list.

The substitute does not include the provision, which was included in the engrossed, that revises current law with respect to the required prompt referral of a complaint to the attorney general by the secretary of state after the secretary receives a complaint alleging criminal conduct in connection with an election and determines that there is reasonable cause to suspect that the alleged criminal conduct occurred. That excluded provision revises the referral requirement as follows:

- rather than requiring prompt referral after receiving a complaint, as current law provides, the excluded provision instead requires prompt referral after the secretary receives or discovers information indicating that criminal conduct in connection with an election has occurred;
- rather than requiring only the delivery by the secretary to the attorney general of all pertinent documents in the secretary's possession, as current law provides, the excluded provision also requires the delivery of all pertinent information in the secretary's possession; and
- the revised requirement in the excluded provision specifies that, in addition to documents applicably submitted under current law, information so submitted is also not considered public information until the following occur:
 - the secretary of state makes a determination that the information received does not warrant an investigation; or
 - if referred to the attorney general, the attorney general has completed the investigation or has made a determination that the information referred does not warrant an investigation.

Conduct and Security of Elections

The substitute includes the following provisions regarding the conduct and security of elections, including related conforming provisions, which were absent from the engrossed:

- a provision requiring, rather than authorizing as provided by current law, the governing body of a political subdivision, on receipt of certification that a candidate is unopposed for election to an office, to declare by order or ordinance the unopposed candidate elected to the office;
- a provision requiring, rather than authorizing as provided by current law, a certifying authority to declare an unopposed candidate elected to an office of the state or county government if, were the election held, only the votes cast for that candidate may be counted; and
- a provision expanding the eligibility criteria for participation in the countywide polling place program to include counties that, in addition to meeting the other eligibility criteria in current law, use ballot marking devices, hand-marked scannable paper ballots that are printed and scanned at the polling place, or any other voting system equipment the secretary of state determines is capable of processing votes for each type of ballot to be voted in the county.

While both the engrossed and substitute change the regular hours for early voting by personal appearance at the main early voting polling place for an election in which the county clerk is the early voting clerk, the engrossed prohibited such early voting from being conducted later than 9 p.m. whereas the substitute prohibits early voting from being conducted later than 10 p.m. The engrossed also prohibited early voting from being conducted earlier than 6 a.m. or later than 9 p.m. on the last Sunday of the early voting period, whereas the substitute prohibits early voting from being conducted earlier than 9 a.m. or later than 10 p.m. on the last Sunday of the early voting period.

While both the engrossed and substitute lower the minimum county population threshold that triggers the requirement for a county to conduct voting during the early voting period with extended hours in certain elections, the engrossed lowered the population threshold to 30,000 whereas the substitute lowers the population threshold to 55,000.

While both the engrossed and substitute prohibit a temporary branch polling place, with respect to early voting, from being located in a movable structure in the general election for state and county officers, general primary election, or runoff primary election, the engrossed included the following provisions, which are absent in the substitute:

- a prohibition against a polling place established in those elections being located in a tent or similar temporary movable structure or a parking garage, parking lot, or similar facility designed primarily for motor vehicles;
- an exception to that prohibition based on whether a building selected for such a polling place is later determined by the county commissioners court to be not reasonably accessible due to fire, flood, or other natural disaster rendering the building unsafe for public use; and
- provisions establishing that the determination is valid only for the next scheduled election and requiring the county commissioners court to send a record of that determination to the secretary of state.

The substitute does not include the following provisions with respect to a polling place inside a public building, which were present in the engrossed:

- a prohibition against a polling place being located in a tent or similar temporary moveable structure or in a facility primarily designed for motor vehicles;
- a prohibition against an early voting permanent branch polling place being located in a tent or similar temporary movable structure or a parking garage, parking lot, or similar facility designed primarily for motor vehicles;
- exceptions to those prohibitions based on whether a building selected for such a polling place is later determined by the commissioners court to be not reasonably accessible due to fire, flood, or other natural disaster rendering the building unsafe for public use, whether a suitable substitute building is available, and whether the tent or similar temporary movable structure is adjacent to the selected building; and
- provisions establishing that the determination is valid only for the next scheduled election and requiring the county commissioners court to send a record of that determination to the secretary of state.

The substitute does not include the following provisions with respect to the opening and closing of a polling place, which were present in the engrossed:

- a requirement for a presiding election judge or alternate election judge, immediately before opening the polls for voting on the first day of early voting and on election day, to confirm that each voting machine has any public counter reset to zero and to print the tape that shows the counter was set to zero for each candidate or measure on the ballot;
- a requirement for either judge, immediately after closing the polls for voting on election day, to print the tape to show the number of votes cast for each candidate or ballot measure for each voting machine; and
- a requirement for each election judge or alternate election judge present to sign any printed tape.

The substitute does not include a specification that the register of spoiled ballots required to be maintained by an election officer at the polling place must include spoiled ballots from a direct recording electronic voting unit, whereas the engrossed did.

Whereas the engrossed required the secretary of state to adopt rules and create a checklist or similar guidelines to assist the presiding judge of a polling place in processing forms and conducting procedures at the opening and closing of the polling place, the substitute limits the applicability of these procedures to only the closing of a polling place.

The substitute does not include the following provisions, with respect to the delivery by an election clerk of records or supplies and certain chain of custody procedures, which were included in the engrossed:

- a requirement for a presiding judge of a polling place, if the presiding judge designates a clerk to deliver election supplies, to attest to the designation;
- a requirement that the clerk attest to the clerk's acceptance of the responsibility; and
- a requirement for the secretary of state to create and promulgate a form to facilitate compliance with those requirements of the presiding judge and clerk.

The substitute does not include the following provisions, with respect to the security of voted ballots, which were included in the engrossed:

- a provision requiring a licensed peace officer, rather than a guard as specified by current law, to be posted by the general custodian of election records at a central counting station for purposes of ensuring the security of ballot boxes containing voted ballots throughout the period of tabulation at the central counting station;
- a provision requiring the general custodian of election records in a county to implement a video surveillance system that retains a record of all areas containing voted ballots as follows:
 - from the time the voted ballots are delivered to the central counting station until the canvass of precinct election returns; and
 - from the time the voted ballots are delivered to the signature verification committee or early voting ballot board until the canvass of precinct election returns;
- a provision requiring such a video to be made available to the public by a livestream; and
- a provision classifying such video as an election record under the Election Code and setting the required retention period of the video.

Election Officers and Observers

The substitute does not include a provision included in the engrossed providing that a reference to an early voting ballot board includes a signature verification committee in statutory provisions of Chapter 33, Election Code, governing watchers.

The substitute does not include the following provisions regarding election officers and observers, which were present in the engrossed:

- requirements for the secretary of state to publish and maintain a training manual for watchers and to make the manual available on the secretary of state's website;
- a requirement for an appointing authority to provide each watcher appointed by the authority with a copy of the training manual;
- a provision that makes communications between a public official and a voting systems vendor public information, including a communication made confidential by other law, with certain exceptions for trade secrets, certain commercial or financial information, and certain proprietary information;
- a requirement for the manager of a central counting station located in a county with a population of 250,000 or more and the presiding judge of such a counting station to do the following:
 - develop a protocol under which any electronic device inside the central counting station that is necessary to count votes is equipped with software that tracks all input and activity on the electronic device; and
 - ensure that the input and activity tracked by the software is printed and delivered to the secretary of state not later than the fifth day after vote counting is complete;
- a prohibition against the purchase or use after January 1, 2024, by an authority operating a central counting station of a centrally counted optical ballot scan system that uses a data storage disc on which information, once written, is capable of being modified;
- a requirement for the presiding judge of a central counting station to provide and attest to a written reconciliation of votes and voters at the close of tabulation for election day and again after the central counting station meets for the last time to process late-arriving ballots by mail and provisional ballots; and

- a requirement for the secretary of state to create and promulgate rules and a form to facilitate compliance with the foregoing requirement, which must be posted on a website maintained by the county along with election returns and results.

The substitute omits provisions from the engrossed regarding the composition of, and appointment of members to, a county's early voting ballot board that did the following:

- established the position of alternate presiding judge as one of the mandatory board members;
- required the names submitted by each applicable county political party chair of persons eligible to serve on the board to be in order of the chair's preference; and
- required the appointment of persons as board members to be made in order of preference indicated on each list, with the person appointed as the presiding judge being the highest-ranked person on the list provided by the political party whose nominee for governor received the most votes in the county in the most recent gubernatorial general election and the person appointed as the alternate presiding judge being the highest-ranked person on the list provided by the political party whose nominee for governor received the second most votes in the county in the most recent gubernatorial general election.

Accordingly, the substitute also omits provisions of the engrossed giving alternate presiding judges the authority to appoint clerks to serve at the county's central counting station.

The substitute omits provisions from the engrossed regarding the composition of, and appointment of members to, a signature verification committee that did the following:

- established the position of vice chair of the committee;
- required the names submitted by each applicable county political party chair of persons eligible to serve on the committee in be in order of the chair's preference;
- required the appointment of persons as committee members to be made in order of preference indicated on each list, with the person appointed as committee chair being the highest-ranked person on the list provided by the political party whose nominee for governor received the most votes in the county in the most recent gubernatorial general election and the person appointed as vice chair being the highest-ranked person on the list provided by the political party whose nominee for governor received the second most votes in the county; and
- required a person to be eligible under state law for service as a presiding election judge to be eligible to serve on the committee.

While both the engrossed and the substitute create a misdemeanor offense for an election officer who intentionally or knowingly refuses to accept a watcher for service when acceptance of the watcher is required by law, the engrossed made it a Class A misdemeanor but the substitute makes it a Class B misdemeanor.

While both the engrossed and the substitute authorize the appointing authority for a watcher who believes that the watcher was unlawfully prevented or obstructed from the performance of the watcher's duties to seek certain injunctive relief, certain writs of mandamus, and any other remedy available under law, the substitute does not include the following provisions, which were present in the engrossed:

- an authorization for the watcher to seek the same injunctive relief, writs of mandamus, and any other remedy available under law; and
- a provision establishing that the same injunctive relief, writs of mandamus, and any other remedy available under law are available to a state inspector appointed by the secretary of state for an election and to any other election inspector authorized by law.

However, the substitute includes an authorization, which was absent from the engrossed, for the secretary of state to seek the same injunctive relief, writs of mandamus, and any other remedy available under law if the secretary believes that a state inspector was unlawfully prevented or obstructed from the performance of the inspector's duties.

The substitute includes the following provisions regarding election officers and observers, which were absent from the engrossed:

- a provision prohibiting a presiding judge from having a watcher duly accepted for service removed from the polling place for violating a provision of the Election Code, the Penal Code, or any other provision of law relating to the conduct of elections, unless the violation was observed by an election judge or clerk after the watcher was previously warned that the watcher's conduct violated the law;
- an authorization for a presiding judge to call a law enforcement officer to request that a poll watcher be removed if the poll watcher commits a breach of the peace or a violation of law;
- a provision setting out the purpose of provisions governing appointed watchers and establishing as the intent of the legislature that watchers duly accepted for service under such provisions:
 - be allowed to observe and report on irregularities in the conduct of any election; and
 - may not interfere in the orderly conduct of an election; and
- a requirement for watchers, in order to effect the purpose of the applicable provisions, to observe without obstructing the conduct of an election and to call to the attention of an election officer any observed or suspected irregularity or violation of law in the conduct of the election.

Voting by Mail

While both the engrossed and substitute require an applicant's signature on an application for an early voting ballot by mail to be submitted in writing using ink on paper and while both also prohibit the use of a photocopied signature, the substitute includes a clarification absent from the engrossed that the signing of the application is subject to signing by a witness on the grounds of disability or illiteracy.

The substitute does not include the following provisions regarding voting by mail, which were present in the engrossed:

- a provision prohibiting the early voting clerk from making an attempt to solicit a person to complete an application for an early voting ballot by mail, whether directly or through a third party;
- a provision prohibiting an officer or employee of the state or of a political subdivision of the state from doing the following:
 - distributing an application form for an early voting ballot to a person who did not request an application, unless authorized by the Election Code; or
 - using public funds to facilitate the distribution by another person of an application form for an early voting ballot to a person who did not request an application;
- an authorization for a political party or a candidate for office to distribute an application form for an early voting ballot to a person who did not request an application;
- an authorization for an election judge to permit a person to whom an early voting ballot has been sent who cancels the person's application for a ballot to be voted by mail in accordance with applicable law but fails to return the ballot to be voted by mail to the early voting clerk, deputy early voting clerk, or presiding judge to vote only a provisional ballot; and
- a provision requiring the tool used for the electronic tracking of an application for a ballot to be voted by mail or the ballot itself to allow a voter to add or correct certain required personally identifying information.

While both the engrossed and substitute expand the required contents of an application for an early voting ballot by mail and the carrier envelope of the ballot:

- the substitute does not include the number of an election identification certificate among the contents nor does it provide for the use of the number of an expired election

identification certificate, whereas the engrossed provided for the use of the numbers of both an election identification certificate and an expired certificate; and

- the substitute requires the early voting clerk to reject the application if the expanded application contents required by the substitute do not match the information on the applicant's application for voter registration, whereas the engrossed required the early voting clerk to reject the application if the expanded application contents required by the engrossed do not identify the same voter identified on the applicant's application for voter registration.

With regard to the provisions that are contained in both the engrossed and the substitute regarding the opportunity to correct an applicable defect with an early voting ballot voted by mail:

- the engrossed included among the defects that may be corrected certain personally identifying information newly required by the engrossed that is missing from or provided incorrectly on the ballot;
- the engrossed made it optional for a signature verification committee or early voting ballot board to provide the opportunity to correct a defect by returning the ballot to the voter by mail or by notifying the voter of the defect before deciding whether to accept or reject the ballot, whereas the substitute requires both entities to provide the opportunity to correct the defect and take those actions;
- with respect to that requirement, the substitute sets a deadline not included in the engrossed to require those actions to be taken not later than the second business day after discovering the described defect before making the decision;
- whereas the engrossed authorized the committee or board to inform the voter that the voter may come in person to the early voting clerk's office to correct the defect or request to have the voter's application to vote by mail canceled, the substitute instead requires the voter be notified that the voter may request the cancellation under existing statutory provisions or come to the early voting clerk's office in person to correct the defect;
- the substitute includes a six-day time frame after election day, which is absent from the engrossed, during which the voter may correct the defect in person; and
- the substitute includes provisions, which were absent from the engrossed, prohibiting the committee or board from finally rejecting an early voting ballot voted by mail before the seventh day after election day for the following statutory provisions for accepting such a ballot:
 - the carrier envelope certificate is properly executed;
 - neither the voter's signature on the ballot application nor the signature on the carrier envelope certificate is determined to have been executed by a person other than the voter, unless signed by a witness; or
 - for a voter to whom a statement of residence form was required to be sent, the statement of residence is returned in the carrier envelope and indicates that the voter satisfies prescribed residence requirements.

The engrossed provided that a ballot may be accepted only if, among other requirements for acceptance, the applicable information provided by the voter identifies the same voter identified on the voter's application for voter registration, in which case the signature on the ballot application and on the carrier envelope must be rebuttably presumed to be the signatures of the voter. However, the substitute provides that a ballot may be accepted only if, among other requirements for acceptance, the applicable information matches the information on the voter's application for voter registration and also provides for the rebuttable presumption.

Both the engrossed and the substitute make the same revisions to current law whereby the early voting ballot board, in determining whether to accept a ballot, may compare any known signature of the voter on file with the county clerk or voter registrar. However, the substitute also includes in that revision to current law a requirement, which is absent from the engrossed, for an early voting ballot board, in order to determine whether the signatures on a ballot application and the carrier envelope certificate are those of the voter, to request from DPS any

signature of the voter's on file with DPS and to compare the signatures of the voter on the ballot application and the carrier envelope certificate with any signature provided.

Assistance of Voters

The substitute does not include the following provisions, which were present in the engrossed, regarding the assistance of voters who are unable to enter a polling place without personal assistance or likelihood of injuring the voter's health:

- a provision excluding the voting procedures for assisting a voter unable to enter a polling place from the regular voting procedures that an election officer may modify to the extent necessary to conduct voting under provisions relating to a voter unable to enter a polling place;
- a provision entitling a poll watcher to observe any activity conducted in the assistance of a voter unable to enter a polling place, except while the voter is preparing the voter's ballot or is being assisted by a person of the voter's choice;
- a requirement for a person who simultaneously assists three or more voters voting as a voter unable to enter a polling place by providing the voters with transportation to the polling place to complete and sign a form provided by an election officer that contains the person's name and address and whether the person is providing certain types of assistance;
- a requirement that the secretary of state prescribe the aforementioned form;
- a provision excepting a person providing the transportation from the requirement to complete and sign the form if the person is related to each voter within the second degree by affinity or the third degree by consanguinity; and
- provisions setting out the following requirements with respect to the form:
 - a completed form must be delivered to the secretary of state as soon as practicable;
 - the secretary must retain a form so delivered for the period for preserving the precinct election records; and
 - the secretary must make the form available to the attorney general for inspection upon request.

While both the engrossed and substitute revise the required oath for a person selected to provide assistance to a voter, the substitute includes the following specification and requirement in the oath that were absent from the engrossed:

- with respect to the requirement in both the engrossed and substitute that the person taking the oath swear or affirm that the voter being assisted represented to the person that the voter is eligible to receive assistance, a specification that such eligibility is because of a physical disability that renders the voter unable to write or see or an inability to read the language in which the ballot is written; and
- a requirement for the person taking the oath to swear or affirm that the person will confine the person's applicable assistance to reading the ballot to the voter, directing the voter to read the ballot, marking the voter's ballot, or directing the voter to mark the ballot.

The substitute does not include the requirement present in the engrossed for the person taking the oath to swear or affirm that the person did not encourage the voter into choosing the person to provide assistance.

While both the engrossed and the substitute revise the offense of unlawfully assisting a voter casting a ballot by mail, the substitute also includes in that revision an exemption from the application of both elements of the offense, as revised by the engrossed and the substitute, if the voter is a person with a disability being assisted by a previously known attendant or caregiver.

The substitute, in provisions absent from the engrossed, changes the conduct constituting the offense of unlawful compensation for assisting voters, repeals the misdemeanor punishment for the offense, changes the punishment for that revised offense to make it a state jail felony without

regard to the number of previous convictions, and exempts from the application of the offense a person assisting a voter who is an attendant or caregiver previously known to the voter.

The substitute omits provisions of the engrossed requiring the conduct of a study by the secretary of state regarding the implementation of educational programs, including the production and publication on the secretary's website of instructional videos, to help voters with disabilities understand how to use voting systems used in Texas.

Fraud and Other Unlawful Practices

The substitute includes the following provisions regarding fraud and other unlawful practices, all of which were absent from the engrossed:

- a provision revising and expanding certain conduct constituting the offense of election fraud and enhancing the penalty for the offense from a Class A misdemeanor to a state jail felony if the person committed the offense while acting in the person's official capacity as an election officer; and
- provisions creating the following offenses and their related penalties:
 - unlawful solicitation and distribution of application to vote by mail, which is a state jail felony;
 - unlawful distribution of early voting ballots and balloting materials, which is a Class A misdemeanor; and
 - perjury in connection with certain election procedures, which is a state jail felony.

Both the engrossed and the substitute create the third degree felony offense of vote harvesting with the same constituent conduct and set out the same provisions regarding prosecution of the offense and certain records necessary for an applicable investigation. However, the engrossed and the substitute differ with respect to vote harvesting provisions as follows:

- the substitute does not include the following, which were present in the engrossed:
 - the civil liability for vote harvesting; and
 - a provision establishing the circumstances under which compensation in exchange for vote harvesting services is inferred for purposes of the offense;
- with respect to differences in the exemptions from application of the offense:
 - the engrossed exempted interactions that do not directly involve an official ballot, ballot by mail, or an application for ballot by mail; and
 - the substitute exempts interactions that do not occur in the presence of the ballot or during the voting process; and
- with respect to the differences in the definitions of "benefit" and "vote harvesting services," which are in both the engrossed and the substitute and are applicable to the offense:
 - the engrossed defined "benefit" as anything reasonably regarded as a gain or advantage, including a promise or offer of employment, a political favor, or an official act of discretion, whether to a person or another party whose welfare is of interest to the person;
 - the substitute defines "benefit" by reference to the Penal Code as anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested;
 - the engrossed defined "vote harvesting services" as in-person interaction with one or more voters, in the physical presence of an official ballot, a ballot voted by mail, or an application for ballot by mail, intended to deliver votes for a specific candidate or measure; and
 - the substitute defines "vote harvesting services" as in-person interaction with one or more voters, in the presence of the ballot or during the voting process, intended to deliver votes for a specific candidate or measure.

Enforcement

The substitute does not include the following enforcement provisions, which were present in the engrossed and which relate to the secretary of state's duty under current law to monitor each voter registrar for substantial compliance with requirements regarding the statewide voter registration list:

- the provision requiring the secretary of state to monitor each voter registrar for substantial compliance with provisions, as revised by the engrossed, regarding the cancellation of a voter registration because of citizenship status;
- the provision requiring a voter registrar to correct a violation within 30 days of receiving applicable notice;
- the provision requiring the secretary of state to correct the violation on behalf of the registrar and to notify the attorney general that the registrar failed to correct the violation if a registrar fails to correct such a violation;
- a provision making a county served by a registrar who fails to correct such a violation liable to the state for a civil penalty of \$1,000 for each violation corrected by the secretary of state;
- a provision authorizing the attorney general to bring an action to recover such a civil penalty; and
- a requirement for each such civil penalty collected by the attorney general to be deposited in the state treasury to the credit of the general revenue fund.

The substitute does not include the following provisions, which were present in the engrossed, and which establish restrictions on the eligibility to serve as an election official and provide a related civil penalty:

- a provision prohibiting a person from serving as an election official, as defined by the engrossed, if the person has been finally convicted of an Election Code offense; and
- a provision establishing that such an election official may be liable to the state for a civil penalty, which may include termination of the official's employment and loss of the official's employment benefits, if the official is employed by or is an officer of the state or a political subdivision of the state and violates an Election Code provision.

The substitute omits the provision of the engrossed establishing that an action, including an action for a writ of mandamus, alleging that an election officer violated a provision of the Election Code while acting in their official capacity may only be brought against the officer in their official capacity.

The substitute does not include the following provisions, which were present in the engrossed, with respect to election contests:

- an authorization for the venue of an election contest for a statewide office to take place, rather than only in Travis County, in any county where a contestee resided at the time of the election, as determined by statutory provisions governing the public integrity unit established and supported by the Texas Rangers division of DPS;
- provisions changing the filing deadlines for a petition in certain election contests and clarifying that a contestant must timely deliver a copy of the applicable petition to the secretary of state electronically or otherwise;
- provisions regarding lawsuits alleging improper election activities, including provisions relating to the venue for filing the petition for the action and the filing deadline, liability to the plaintiff for damages, and the award of attorney's fees to the prevailing party;
- an authorization for the court of criminal appeals to issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the provision, sequestration, transfer, or impoundment of evidence in or records relating to a criminal investigation conducted under the Election Code or conducted in connection with the conduct of an election or political party convention; and
- a requirement for such a writ to include an order requiring the provision, sequestration, transfer, or impoundment of the evidence or record.

Whereas the engrossed required the supreme court, the court of criminal appeals, or a court of appeals to prioritize over any other proceeding pending or filed in the court a proceeding for injunctive relief or for a writ of mandamus under Election Code provisions governing criminal investigations and other enforcement proceedings pending or filed in the court on or after the 120th day before a general or special election, the substitute requires only the supreme court or a court of appeals to prioritize those proceedings in such a manner, but only those filed in the court on or after the 70th day before a general or special election.

The substitute includes the following provisions regarding the docketing and prioritization of and deadlines in certain election proceedings, which were absent from the engrossed:

- a definition of "public official";
- a requirement for a prioritized election proceeding filed in a court of appeals to be docketed by the clerk of the court and assigned to a panel of three justices determined using an automated assignment system;
- a provision creating a Class A misdemeanor offense for a person, including a public official, who communicates with a court clerk with the intention of influencing or attempting to influence the composition of a three-justice panel;
- a requirement for the clerk of a district court in which a prioritized election proceeding is filed and the clerk of a county court or statutory county court in which such a proceeding is filed to respectively docket the proceeding and, if more than one applicable court in the county has jurisdiction over the proceeding, randomly assign the proceeding to an applicable court using an automated assignment system;
- a provision creating a Class A misdemeanor for a person, including a public official, who communicates with a county or district clerk with the intention of influencing or attempting to influence the court or judge assigned to such a proceeding;
- a penalty enhancement for the foregoing offense;
- an authorization for a person to seek from the supreme court or a court of appeals a writ of mandamus to compel compliance if a district or county clerk does not comply with the required docketing of the prioritized election proceedings; and
- provisions regarding deadlines in prioritized election proceedings.

The substitute includes an authorization, which was absent from the engrossed, for a hearing in a prioritized election proceeding to be held in person or through electronic means, as determined by the court.

Ineligible Voters and Related Reforms

The engrossed required a court, after a defendant who is 18 years of age or older is adjudged guilty of a felony offense, to make an affirmative finding that the person has been found guilty, enter the finding in the judgment of the case, and instruct the defendant regarding how the felony conviction will impact the defendant's right to vote in Texas. The substitute does not condition these actions on the age of the defendant but instead requires these actions of the court after any defendant is adjudged guilty of a felony offense.

The substitute includes a provision, which was absent from the engrossed, expanding the conduct constituting the offense of illegal voting to include knowingly voting or attempting to vote in an election in Texas after voting in another state in an election in which a federal office appears on the ballot and the election day for both states is the same day and providing the following:

- a provision prohibiting a person from being convicted of illegal voting, as expanded by the substitute, solely upon the fact that the person signed a provisional ballot affidavit unless corroborated by other evidence that the person knowingly committed the offense;
- that prohibition applies to an illegal voting offense committed before, on, or after the bill's effective date, except that a final conviction for the offense that exists on the bill's effective date remains unaffected; and

- if conduct constituting the offense of illegal voting, as expanded by the substitute, also constitutes another offense under any other law, the actor may be prosecuted for either offense or both offenses.

Repealer and Transition Provisions

The substitute does not include the following provisions, which were present in the engrossed:

- a repeal of the authorization for the secretary of state to waive or reinstate at any time for a particular political subdivision requirements regarding the partial count of electronic voting system ballots by the general custodian of elections; and
- a transition provision, which was present in the engrossed, limiting the application of its changes only to an election contest for which the associated election occurred after the bill's effective date.