

## **BILL ANALYSIS**

C.S.H.B. 3281  
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Elections  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It has been suggested that the delayed reporting of voting results leaves the electoral process vulnerable to election fraud and casts serious doubts regarding the accuracy of the election results reporting days after the election has ended. C.S.H.B. 3281 seeks to address this issue by revising certain election laws to ensure that ballots voted by mail are counted expeditiously and accurately in order to uphold the legitimacy of elections in Texas.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change 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 7 of this bill.

### **ANALYSIS**

C.S.H.B. 3281 amends the Election Code to revise provisions relating to election procedures for early voting by mail by doing the following:

- changing from the 11th day before election day to the 15th day before election day, subject to certain exceptions, the submission deadlines for an application for an early voting ballot by mail and for an application for an annual ballot to be voted by mail on the grounds of age or disability that does not specify the election for which the ballot is requested or that has been marked by the applicant as an application for more than one election; and
- revising the requisite conditions under which a carrier envelope containing a marked early voting ballot voted by mail is considered to have satisfied provisions relating to the deadline for returning a marked ballot by requiring the envelope to do the following:
  - arrive at the address on the carrier envelope not later than 5 p.m. on the day before election day;
  - be placed for delivery by mail or common or contract carrier or a courier on or before the fourth day before election day;
  - bear a corresponding cancellation mark that indicates placement for delivery on or before that date; and
  - for a marked ballot voted by mail that arrives after 5 p.m. on the day before election day, be placed for delivery from an address outside the United States before the time the polls are required to close on election day, among other requirements.

The bill, in provisions relating to ballots voted by personal appearance, requires the following:

- the early voting clerk must post the notice of each delivery of balloting materials for ballots voted by personal appearance and ballots voted by mail on the website of the

entity conducting the election for a specified period and setting out additional notice requirements; and

- the early voting clerk must provide notice of each such delivery in writing, by email, or by telephone to the county chair of each political party having a nominee on the ballot.

The bill repeals statutory provisions relating to the timely delivery of certain election materials and early voting ballots to an early voting ballot board.

C.S.H.B. 3281 revises the procedures regarding the acceptance of jacket envelopes containing early voting ballots voted by mail by doing the following:

- requiring all such jacket envelopes to be delivered to the early voting ballot board between the end of the 20th day before the last day of the period for early voting by personal appearance and the closing of the polls on election day at the time or times specified by the presiding judge of the board;
- providing for the delivery received by the early voting clerk at or before 3 p.m. on election day to the presiding judge of the early voting ballot board of jacket envelopes that are hand delivered in person; and
- requiring envelopes that are hand delivered and received by the clerk after 3 p.m. on election day also be delivered to the presiding judge of the early voting ballot board to be counted at the time that the ballot board convenes to count ballots voted by mail that arrive after 5 p.m. on the day before election day.

C.S.H.B. 3281 prohibits an early voting ballot board or officer of a central counting station from accumulating the results of early voting ballots until the following times:

- 12 p.m. on election day, if the entity conducting the election will count the ballots by hand;
- 3 p.m. on election day, if the entity conducting the election will not count the ballots by hand and has a population of 150,000 or more; or
- 6 p.m. on election day, if the entity conducting the election will not count the ballots by hand and has a population of less than 150,000.

The bill prohibits an early voting ballot board or officer of a central counting station from producing a printout or other tangible record of the early voting ballot count or accumulation of results until the closing of polls on election day. These prohibitions do not prevent the board or officer from performing preliminary procedures other than accumulating the results of early voting ballots or generating a report of the early voting ballot count or accumulation before the applicable times.

C.S.H.B. 3281 authorizes the central counting station to operate at any time ballots may be processed or counted and sets out notice requirements regarding the dates and times of operation. The bill requires the secretary of state to prescribe rules as necessary to implement the operation of a central counting station and those requisite notices.

C.S.H.B. 3281 repeals the following provisions of the Election Code:

- Section 87.022;
- Section 87.023; and
- Section 87.024.

### **EFFECTIVE DATE**

September 1, 2021.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3281 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The original changed the deadline by which a carrier envelope containing a marked early voting ballot voted by mail must arrive at the address on the carrier envelope to not later than 5 p.m. on the fourth day before election day, whereas the substitute changes that deadline to not later than 5 p.m. on the day before election day.

The original removed the requirement for the carrier envelope to bear any cancellation mark, whereas the substitute requires the carrier envelope to be placed for delivery by mail or common or contract carrier or a courier on or before the fourth day before election day and to bear a corresponding cancellation mark.

The original restricted the conditions under which a marked ballot voted by mail that arrives after the applicable deadline may be counted, whereas the substitute requires such a marked ballot to be counted if the carrier envelope was placed for delivery before the time the polls are required to close on election day.

The original revised the procedures for the delivery of jacket envelopes containing early voting ballots voted by requiring these envelopes to be delivered to the early voting ballot board not earlier than the 20th day before election day and not later than 6 p.m. on the fourth day before election day. The substitute instead authorizes the envelopes to be delivered by the 20th day before the last day of the period for early voting by personal appearance and the closing of the polls on election day at the time or times specified by the presiding judge of the board.

The substitute includes the following provisions that are absent from the original:

- requirements for the delivery and counting of hand delivered jacket envelopes depending on when the envelopes are received by the early voting clerk;
- requirements for the early voting clerk to post notice of each delivery of balloting materials for ballots voted by personal appearance and ballots voted by mail on the website of the entity conducting the election for a specified period and in writing, by email, or by telephone to the county chair of each political party having a nominee on the ballot;
- provisions that designate times until which an early voting ballot board or officer of a central counting station is prohibited from accumulating the results of early voting ballots;
- an authorization for the central counting station to operate at any time ballots may be processed or counted and applicable notice requirements;
- a requirement for the secretary of state to prescribe rules to implement the authorized operation of the central counting station and requisite notices; and
- the repeal of provisions relating to the timely delivery of certain materials to the early voting ballot board.

The substitute does not include the following provisions present in the original:

- a prohibition against the counting of early voting electronic system ballots until 3 p.m. on election day;
- a requirement for early voting ballots voted by mail that are required to arrive at the address on the carrier envelope by the applicable deadline to be counted not later than 7 p.m. on election day and released at 7 p.m. on election day; and
- the repeal of provisions relating to the timely delivery of a marked ballot voted by mail and to the requirement for the secretary of state to prescribe certain procedures for the processing of ballots before polls open.