

BILL ANALYSIS

C.S.S.B. 7
By: Hughes
Elections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Full, free, and fair elections are the very foundations of a stable constitutional democracy. Concerns are ongoing regarding the potential for election fraud to threaten the stability of democracy in Texas and to undermine public confidence in the legitimacy of elections across the state. Reforms and clarity are needed in a variety of state election laws to preserve the integrity of the electoral process and to strengthen the safeguards surrounding the electoral process in Texas.

C.S.S.B. 7 seeks to prevent fraud in the conduct of elections in Texas by enacting the Election Integrity Protection Act of 2021 in recognition of the legislature's authority under Section 4, Article VI, of the Texas Constitution, to make all laws necessary to detect and punish fraud and preserve the purity of the ballot box.

CRIMINAL JUSTICE IMPACT

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

RULEMAKING AUTHORITY

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

ANALYSIS

C.S.S.B. 7 amends the Election Code to revise the conduct of elections in Texas with regard to election officers and observers, voter assistance, and election fraud and other unlawful practices and to provide for the prioritization of certain election-related proceedings in the Texas Supreme Court, the courts of appeals, and the trial courts. The bill requires a public official to construe the provisions of the Election Code strictly 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.

C.S.S.B. 7 sets out certain legislative findings and defines "public official" for purposes of the Election Code to mean any person elected, selected, appointed, employed, or otherwise designated as an officer, employee, or agent of the state, a government agency, a political subdivision, or any other public body established by state law.

Decedents' Voter Registrations

C.S.S.B. 7, with respect to the filing deadlines for the following requisite abstracts filed with the applicable voter registrar and the secretary of state for purposes of canceling a voter registration, changes those deadlines to require the local registrar of deaths and the court clerk, as applicable, to file the respective abstracts as soon as possible but not later than the seventh day after the

abstract is prepared instead of filing the abstract not later than the 10th day of the month following the month in which the abstract is prepared:

- the abstract prepared by the local registrar of deaths for each death certificate issued; and
- the abstract prepared by the clerk of each court having probate jurisdiction for each small estate affidavit and for each application for probate of a will, administration of a decedent's estate, or determination of heirship.

Spoiled Ballot Register

C.S.S.B. 7 requires an election officer to maintain at the polling place a register of spoiled ballots from a direct recording electronic voting unit.

Watchers and Their Purpose, Entitlements, Observations, and Duties

C.S.S.B. 7 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 to observe 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. 7 clarifies that being entitled to observe an election activity or procedure means that the watcher is entitled to sit or stand near enough to see and hear the activity or procedure.

C.S.S.B. 7 authorizes a watcher serving at a polling place in an election to observe 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 voting system equipment.

C.S.S.B. 7 entitles a poll watcher to observe the in-person delivery of a marked ballot to be voted early by mail. The poll watcher must be able to determine how the ballots are being delivered and how election officials are making decisions about the delivery of ballots, if applicable. The bill prohibits the poll watcher from disrupting the process of delivering ballots.

Exceptions to the Exclusion of Bystanders From Certain Locations

C.S.S.B. 7 provides additional exceptions to the prohibition against bystanders, during certain periods, being in a polling place or in the meeting place of an early voting ballot board and also imposes a prohibition, with prescribed exceptions, against bystanders being in the central counting station during certain periods. Accordingly, the bill specifies and clarifies that, under the Election Code, the following persons may be lawfully present in those applicable locations during the respective periods:

- in a polling place from the time the presiding judge arrives there on election day to make the preliminary arrangements until the precinct returns have been certified and the election records have been assembled for distribution following the election:
 - an election judge or clerk;
 - a watcher;
 - the secretary of state;
 - a staff member of the Elections Division of the Office of the Secretary of State performing an official duty in accordance with the Election Code;
 - an election official, a sheriff, or a staff member of an election official or sheriff delivering election supplies;
 - a state inspector;
 - a person admitted to vote;
 - a child under 18 years of age who is accompanying a parent who has been admitted to vote;
 - a person providing assistance to a voter as an interpreter or on a voter's request for assistance in marking the ballot;
 - a person accompanying a voter who has a disability;

- a special peace officer appointed by the presiding judge;
- the county chair of a political party conducting a primary election, as authorized by state law;
- a voting system technician, as authorized by state law;
- the applicable county election officer, as necessary to perform tasks related to the administration of the election; and
- a person whose presence has been authorized by the presiding judge and alternate presiding judge in accordance with the Election Code;
- in the meeting place of an early voting ballot board during the time of the board's operations:
 - a presiding judge or member of the board;
 - a watcher;
 - a voting system technician, as authorized by state law;
 - the applicable county election officer, as necessary to perform tasks related to the administration of the election; and
 - a person whose presence has been authorized by the presiding judge in accordance with the Election Code; and
- in a central counting station while ballots are being counted:
 - a counting station manager, tabulation supervisor, assistant to the tabulation supervisor, presiding judge, or clerk;
 - a watcher;
 - a voting system technician, as authorized by state law;
 - the applicable county election officer, as necessary to perform tasks related to the administration of the election; and
 - a person whose presence has been authorized by the presiding judge of the central counting station in accordance with the Election Code.

Removal of Watcher From Polling Place

C.S.S.B. 7 prohibits a presiding judge from requiring an appointed watcher to leave a polling place and from having an appointed watcher removed from a polling place. However, a presiding judge may remove a watcher from a polling place only if the watcher engages in activity that would constitute an offense related to the conduct of the election, including the following conduct, as specified by the bill, that constitutes certain Election Code offenses unamended by the bill, the offense of election fraud as amended by the bill, and the offenses added to the Election Code by the bill:

- with respect to the Election Code offenses unamended by the bill, conduct involving:
 - retaliating against a voter;
 - unlawfully removing or attempting to remove voted ballots from a ballot box;
 - unlawfully prohibiting an employee from voting;
 - unlawfully buying, offering to buy, selling, or offering to sell balloting materials; or
 - engaging in organized election fraud activity by committing or conspiring to commit one or more Election Code offenses under certain specified titles of the code with the intent to establish, maintain, or participate in a vote harvesting organization;
- with respect to the offense of election fraud as amended by the bill, engaging in conduct whereby the person knowingly or intentionally makes any effort to do the following:
 - influence the independent exercise of the vote of another in the presence of the ballot or during the voting process, including by altering the ballot of another or by otherwise causing a ballot to not reflect the intent of the voter;
 - cause a voter to become registered, a ballot to be obtained, or a vote to be cast under false pretenses;
 - count invalid votes or alter a report to include invalid votes;
 - fail to count valid votes or alter a report to exclude valid votes; or
 - cause any intentionally misleading statement, representation, or information to be provided to an election official or on an application for ballot by mail, carrier envelope, or any other official election-related form or document; and
- with respect to the Election Code offenses as added by the bill, conduct involving:

- paid vote harvesting;
- the unlawful solicitation and distribution of an application to vote by mail;
- the unlawful distribution of early voting ballots and balloting materials by an election official;
- perjury in connection with certain election procedures; and
- the unlawful altering of election procedures by a public official.

Offenses Regarding Watchers

C.S.S.B. 7 modifies the conduct constituting the offense for unlawfully obstructing a watcher as follows:

- to include knowingly preventing a watcher from observing a procedure the watcher is entitled to observe; and
- to expressly 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.

C.S.S.B. 7 creates a Class B misdemeanor offense for an election officer who intentionally or knowingly refuses to accept for service a watcher when all requirements for acceptance are met.

Assistance to a Voter

C.S.S.B. 7 includes in the oath required of a person selected to provide assistance to a voter a statement swearing or affirming that the person did not pressure, encourage, coerce, or intimidate the voter into choosing the person to provide assistance. The bill includes a specification in the oath language that the person is swearing or affirming the oath under penalty of perjury.

C.S.S.B. 7 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 manner in which the person is assisting the voter;
- the reason the assistance is necessary; and
- the relationship of the assistant to the voter.

The bill requires the secretary of state to prescribe the form and sets out additional requirements for the form as follows:

- 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.

With regard to the offense of unlawfully assisting a voter voting a ballot by mail, C.S.S.B. 7 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 manner of any assistance provided to the voter by the person;
- 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.

With regard to the conduct that, in part, constitutes the offense of unlawfully assisting a voter voting a ballot by mail for failing to enter required information on the official carrier envelope of an early voting ballot by mail, C.S.S.B. 7:

- narrows the exemption from the application of the offense to apply only to a person who assists a voter and is related to the voter within the second degree by affinity or the third degree by consanguinity and to no longer apply to a person who was physically living in the same dwelling as the voter at the time of the offense; and
- enhances the penalty for the offense from a state jail felony to a third degree felony if it is shown on the trial of the offense that the person committed an offense for providing unlawful assistance, under Election Code provisions generally applicable to procedures for assisting voters, to the same voter in connection with the same ballot.

C.S.S.B. 7 requires an official carrier envelope for an early voting ballot to contain spaces on the reverse side of the envelope for indicating the following:

- the manner of any assistance provided by a person assisting the voter; and
- the relationship of that person to the voter.

Unlawful Compensation for Assisting Voters

C.S.S.B. 7 changes the offense for unlawful compensation for assisting voters and the punishment for that offense as follows:

- by 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;
- by 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 either activity;
- by repealing the misdemeanor punishment for the offense and removing the penalty enhancement for two or more previous convictions of the offense;
- by making the penalty for the revised offense a state jail felony without regard to the number of previous convictions; and
- by including political favors and beneficial or favorable discretionary official acts among the forms of payment considered compensation for purposes of the revised offense.

C.S.S.B. 7 eliminates the misdemeanor punishment for the offense for the unlawful compensation for a carrier envelope action by repealing the provision establishing that punishment and by making the offense instead a state jail felony punishment for a defendant previously convicted two or more times of the offense.

Election Fraud and Other Unlawful Practices

Verifying False Information in an Affidavit

C.S.S.B. 7 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 that was entered on the form by the judge.

Paid Vote Harvesting

C.S.S.B. 7 creates the third degree felony offense of paid 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 a person in exchange for vote harvesting services; or
- knowingly collects or possesses a ballot voted by mail or official carrier envelope from a voter in connection with vote harvesting services.

C.S.S.B. 7 exempts from the application of the offense political speech or other acts merely promoting a candidate or measure that do not involve direct interaction with the following:

- an application for ballot by mail, in the presence of the voter; or
- a voter's official ballot, ballot voted by mail, or carrier envelope.

C.S.S.B. 7 defines "benefit" and "vote harvesting services" for purposes of the offense and specifies the following:

- for purposes of the offense, compensation or other benefit in exchange for vote harvesting services is inferred if a person who performed the vote harvesting services for a candidate or campaign solicits, receives, or is offered compensation from the candidate or campaign, directly or through a third party, for services other than the vote harvesting services provided; and
- if conduct constituting the offense also constitutes another offense, the actor may be prosecuted for either offense or both offenses.

Unlawful Solicitation and Distribution of Application to Vote by Mail

C.S.S.B. 7 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 otherwise 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.

Unlawful Distribution of Early Voting Ballots and Balloting Materials

C.S.S.B. 7 creates a state jail felony 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 did not submit an application for the ballot.

Perjury in Connection With Certain Election Procedures

C.S.S.B. 7 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. 7 prohibits a public official from altering, waiving, or suspending an election standard, practice, or procedure mandated by law or rule unless the alteration, waiver, or suspension is expressly authorized by the Election Code.

Illegal Voting and Election Fraud

C.S.S.B. 7 expands the conduct constituting 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. 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.

C.S.S.B. 7 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 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:
 - count invalid votes or alter a report to include invalid votes; or
 - fail to count valid votes or alter a report to exclude valid votes; and
- increases the penalty for election fraud from a Class A misdemeanor to a state jail felony.

Enforcement and Certain Court Proceedings

Prioritizing Certain Election Proceedings

C.S.S.B. 7 amends the Government Code to require the Texas Supreme Court, a court of appeals, and a trial court to prioritize over any other proceeding pending or filed in the applicable court a proceeding for injunctive relief that is, as follows:

- pending or filed in the applicable court on or after the 60th day before a general or special election; and
- pending or filed under Election Code provisions governing criminal investigations and other enforcement proceedings based on the alleged conduct, as previously described, that constitutes certain Election Code offenses unamended by the bill, the offense of election fraud as amended by the bill, and the applicable offenses added to the Election Code by the bill.

C.S.S.B. 7 provides the following with respect to such prioritization by the respective courts:

- the supreme court or the court of appeals, whichever has jurisdiction over the proceeding, on the request of any party to the proceeding, must grant the party the opportunity to present an oral argument and must begin hearing the argument as soon as practicable but not later than 24 hours after the time the last brief for the proceeding is due to be filed with the applicable court;
- a trial court on written request of any party to a case randomly assigned under the bill's provisions with respect to the priority assignment of certain election proceedings must hold a hearing on the proceeding that must begin as soon as practicable but not later than 24 hours after the court receives the hearing request;
- oral argument for the supreme court or the court of appeals proceeding may be given in person or through electronic means; and
- the trial court hearing may be held in person or through electronic means.

Assignment and Docketing of Prioritized Election Proceedings; Related Criminal Offenses

C.S.S.B. 7 sets out provisions, including related criminal offenses, regarding the following:

- the random assignment and subsequent docketing by an applicable trial court clerk of prioritized election proceedings; and
- appellate panels sitting for docketed and assigned prioritized election proceedings.

C.S.S.B. 7, with respect to the trial court provisions and the creation of the related criminal offense, provides the following:

- the clerk of a district court in which such a proceeding is filed and the clerk of a county court or statutory county court in which such a proceeding is filed must, 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; and

- a person, including a public official as defined by reference to the Election Code definition of that term provided by the bill, commits a state jail felony offense if the person communicates with a county or district clerk with the intention of influencing or attempting to influence the court or judge assigned to a proceeding under these bill provisions.

C.S.S.B. 7, with respect to the appellate court provisions and the creation of the related criminal offense, provides the following:

- an appellate court election proceeding entitled to priority under the bill's provisions must be docketed by the clerk of the court and assigned to a panel of three justices determined using an automated assignment system; and
- a person, including a public official as defined by reference to the Election Code definition of that term provided by the bill, commits a state jail felony offense if the person communicates with a court clerk with the intention of influencing or attempting to influence the composition of the three-justice panel assigned a specific proceeding under these bill provisions.

Repealed Provisions

C.S.S.B. 7 repeals the following provisions of the Election Code:

- Section 86.0052(b); and
- Section 86.0105(b).

Severability

C.S.S.B. 7 provides for the severability of its provisions and application to any person or circumstance.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 7 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.

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

- a requirement for a court, after a defendant 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 how the felony conviction will impact the defendant's right to vote in Texas;
- a requirement for a voter registration application to require the applicant to affirmatively indicate all information provided on the application;
- a provision revising the procedures for providing notice of unlawful voting to a prosecutor by requiring a voter registrar who determines that a person who is not eligible to vote may have registered to vote or voted in an election to notify the attorney general, the secretary of state, and the county or district attorney having jurisdiction in the territory covered by the election;
- a provision adding a registered voter who is otherwise determined to be ineligible to vote because of citizenship status as an additional recipient of the notice that a voter registrar is currently required to deliver only to each registered voter who is excused or

disqualified from jury service because of citizenship status and that requires the voter to submit to the registrar proof of U.S. citizenship; and

- a provision that:
 - requires 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;
 - requires the secretary of state to correct a violation on behalf of the voter registrar if the registrar fails to correct a violation within 30 days of receiving applicable notice; and
 - imposes a civil penalty on a voter registrar of \$100 for each violation corrected by the secretary of state.

With regard to the unlawful solicitation and distribution of an application to vote by mail, the substitute does not include provisions in the engrossed prohibiting an early voting clerk from making any attempt to solicit a person to complete an application for an early voting ballot, whether directly or through a third party. The substitute does not include provisions in the engrossed prohibiting an officer or employee of the state or of a political subdivision of the state from distributing, unless otherwise authorized by the Election Code, an application form for an early voting ballot to a person who did not request the application. The substitute does not include a related prohibition in the engrossed against the use of public funds by an officer or employee of the state or of a political subdivision of the state with respect to the distribution of an early voting ballot that was not requested. However, the substitute includes a provision absent from the engrossed creating a state jail felony offense of unlawful solicitation and distribution of an application to vote by mail by a public official and provides certain exceptions to the application of that offense. The substitute also includes a provision absent from the engrossed creating a state jail felony offense of unlawful distribution of early voting ballots and balloting materials for an early voting clerk or other election official.

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

- a requirement for an application for a ballot to be voted by mail on the grounds of disability to require the applicant to affirmatively indicate the applicant's agreement with a statement specified by the bill regarding the applicant's sickness or physical condition indicating disability;
- a provision revising the statement on an officially prescribed application form for an early voting ballot to specify that giving false information on the application is a state jail felony;
- a requirement for a person to vote a provisional ballot if the person canceled their application for an early voting ballot, has been sent an early voting ballot, and fails to return the ballot to the applicable official;
- a prohibition against the following ballots from being counted:
 - a marked ballot voted by mail that was delivered in person but not received by a person at the time of delivery; and
 - a ballot delivered in a carrier envelope collected and stored at another location for subsequent delivery to an early voting clerk;
- a requirement for certain ballots voted by mail that were not timely returned to be retained in a locked container during the preservation period;
- provisions regarding the electronic tracking of an application for an early voting ballot by mail and resulting ballot through an online tool developed by the secretary of state, including a provision conditioning the implementation of this provision on a legislative appropriation made specifically for that purpose;
- provisions changing from two or more signatures of the voter made within the preceding six years on file with county clerk or voter registrar to any known signature on file with such officials the signatures that may be compared by a signature verification committee or early voting ballot board;
- a requirement for ballots voted early by mail to be tabulated separately from the ballots voted early by personal appearance and to be separately reported on the returns; and

- a requirement for 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.

With respect to watchers:

- whereas the engrossed created a Class A misdemeanor offense for an election officer who knowingly refuses to accept a watcher for service whose acceptance is required by the Election Code, the substitute instead creates a Class B misdemeanor offense for an election officer who intentionally or knowingly refuses to accept a watcher for service whose acceptance is required under provisions governing the acceptance of a watcher;
- whereas both versions contain similar provisions modifying the elements of the offense of unlawfully obstructing a watcher to include taking action to distance or obstruct the view of a watcher, the substitute includes a specification absent from the engrossed that the prohibited conduct applies also to a procedure the watcher is entitled to observe;
- the substitute does not include the following provisions regarding watchers, which were all present in the engrossed:
 - the requirement for an election officer to require a watcher to take a specified oath before accepting the watcher; and
 - a prohibition against a watcher being denied free movement within the location at which the watcher is serving; and
- the substitute does not include provisions relating to an authorization in the engrossed for a watcher to electronically deliver to the secretary of state a photo, video, or audio recording that the watcher reasonably believes contains evidence of unlawful activity, including:
 - a requirement that the means of transmission of such a recording be approved by the secretary of state;
 - a requirement that such a recording be made available to the attorney general on request;
 - a prohibition against a watcher sharing such a recording or allowing such a recording to be shared; and
 - a requirement for the secretary of state to adopt related rules.

The substitute does not include the following provisions contained in the election security article of the engrossed:

- provisions removing language relating to the prohibited possession by a watcher of a device capable of recording images or sound, unless the device is disabled or deactivated;
- a provision relating to the authorized use of a device solely to record image or sound by a watcher;
- a provision, applicable to a county with a population of one million or more, revising the calculation of polling places needed under the countywide polling place program and a provision regarding the allocation of election officials and voting equipment, materials, and supplies under the countywide polling place program;
- provisions authorizing an alternative location of a polling place inside the same building as a branch office of a permanent polling place but prohibiting a polling place from being located in a tent or other temporary moveable structure or in a parking garage, parking lot, or similar facility primarily designed for motor vehicles;
- a requirement for the commissioners court of a county to employ the same methodology used to determine the location of countywide polling places to determine the location of temporary branch polling places;
- a prohibition against a voter from casting a vote inside a motor vehicle unless the voter is unable to enter the polling place;
- additional requirements and restrictions relating to a voter who is physically unable to enter a polling place, including who may accompany such a voter, the documentation required of a person assisting three or more such voters with transportation, and the delivery of that documentation to, and the retention of the documentation by, the secretary of state;

- a prohibition against the use of vote counting equipment capable of being connected to the Internet or any other computer network beginning January 1, 2024;
- a provision establishing procedures for the recorded chain of custody of precinct election records;
- a requirement for the preservation of voted ballots until any election contest is resolved;
- a prohibition against an electronic device used to store records from being altered in any manner as to delete or overwrite the records during the preservation period;
- a provision removing 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;
- a provision revising the regular days and hours for early voting by personal appearance for an election in which a county clerk is the early voting clerk, including lowering the county population threshold from 100,000 to 30,000 for application of certain of those provisions;
- provisions entitling a voter to vote after the polls close if the voter is inside or waiting to enter the polling place at closing time, including provisions relating to procedures for voters who are waiting to enter the polling place at closing time, required distribution of numbered identification cards to waiting voters for entry, and precautions to prevent voting after closing by persons not entitled to do so;
- a prohibition against the removal of a voting machine used for early voting from the polling place before the polls close on election day, unless the machine is defective or in need of repair;
- a provision establishing the public availability of communications between a public official and a voting systems vendor;
- a prohibition against voting system ballots from being arranged in a manner that allows a political party's candidates to be selected in one motion or gesture;
- a requirement for a voting machine or ballot marking device to allow a voter the option to cast or complete the voter's ballot without voting on all races or measures if the voter affirmatively chooses to do so;
- a provision establishing a protocol under which any electronic device inside a central counting station that is necessary to count votes is equipped with software that tracks all input and activity on the electronic device;
- a provision establishing additional security measures for ballot boxes containing voted ballots throughout the tabulation at the central counting station as follows:
 - the required posting of a licensed peace officer;
 - the implementation of a video surveillance system and the availability for livestream viewing of the resulting video, required for a county with a population of 100,000 or more and discretionary for a county with a population of less than 100,000, including; and
 - retention requirements for the video;
- a prohibition against an authority operating a central counting station from purchasing or using after January 1, 2024, 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 voting systems consisting of direct recording electronic voting machines to use and produce a paper audit trail, including circumstances under which the electronic vote and the paper record constitute the official record of the vote cast, use by an election authority of federal or state funding to retrofit voting systems purchased during a specified period, eligibility for reimbursement for retrofitting undertaken by an election authority, the reset of any public counter on an applicable voting machine, the printing of tape to show the number of votes cast, and signing of the tape by each election judge present;
- notification requirements for certain pre-election testing of voting systems;
- a requirement for such testing to ensure that the source code of certain equipment has not been altered;

- a provision establishing the automatic recount of an election in which the number of votes cast in an election precinct exceeds the number of registered voters in the precinct; and
- a provision capping the donations that may be accepted by a commissioners court for use in administering elections without the written consent of the secretary of state at \$1,000 and making the secretary of state's written consent contingent on consulting with, and the unanimous agreement of, the governor, lieutenant governor, and speaker of the house of representatives.

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

- a provision restricting the eligibility to serve as an election official on the basis of a conviction for unlawfully obstructing a watcher and a provision making an election official liable to the state for a civil penalty for a violation of any provision of the Election Code which may include termination and loss of employment benefits;
- a provision entitling a watcher, or the appointing authority for a watcher, to injunctive relief to enforce statutory provisions governing watchers, including issuance of temporary orders;
- a requirement for an 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 any form of voter fraud was committed;
- an authorization for the venue of an election contest to take place in any county where a contestee resided at the time of the election; and
- provisions establishing procedures governing an election contest in which the contestant alleges in the petition that an opposing candidate, an agent of the opposing candidate, or a person acting on behalf of the opposing candidate with the candidate's knowledge committed election fraud consisting of certain violations of the Election Code, including:
 - a requirement for a contestant in such a contest to prove the allegation by a preponderance of the evidence;
 - a provision imposing a civil penalty on a finding relating to one or more reported violations of those specified Election Code provisions; and
 - a provision authorizing the award of attorney's fees to the prevailing party.

The substitute does not include the repeal of provisions by the engrossed that:

- provide for the establishment of a temporary branch polling place that is located in a movable structure; and
- authorize the secretary of state at any time to waive or reinstate for a particular subdivision the requirements for a partial count of electronic voting system ballots by the general custodian of election records.

While the engrossed and substitute both similarly expand the conduct constituting election fraud, the substitute includes as conduct for that offense altering the ballot of another voter or otherwise causing a ballot to not reflect the intent of the voter. The substitute includes a provision absent from the engrossed increasing the penalty for an election fraud offense from a Class A misdemeanor to a state jail felony.

While both the engrossed and substitute create a third degree felony offense for paid vote harvesting, which consists of knowingly providing or offering to provide vote harvesting services in exchange for compensation or other benefit, or knowingly providing or offering to provide compensation or other benefit in exchange for vote harvesting services, the engrossed includes among that conduct a party whose welfare is of interest to the actor. The substitute includes an exemption from applicability of the offense for political speech and a definition for "benefit" in relation to the offense, both of which were absent from the engrossed.

The substitute does not include the civil liability provisions for vote harvesting present in the engrossed making a person who is shown by a preponderance of the evidence to have committed

a paid vote harvesting offense liable to any candidate harmed by the vote harvesting services for certain damages and penalties as follows:

- establishing the circumstances that demonstrate a person is harmed by vote harvesting services;
- the damages a person who prevails in an applicable action is entitled to recover, including a \$25,000 penalty and reasonable attorney's fees, court costs, witness fees, and deposition fees;
- the punitive damages a person who prevails in an applicable action is entitled to recover on a showing that the number of voters contacted by the vote harvesting services exceeds the number of votes by which the litigant lost the election; and
- joint liability of defendants.

The substitute does not include the following provisions related to those civil liability provisions from the engrossed:

- a provision establishing that cause of action under the bill is cumulative to any other remedy provided by common law or statute;
- a provision establishing that the expedited actions process created by Rule 169, Texas Rules of Civil Procedure, does not apply to such an action;
- a provision establishing that Chapter 27, Civil Practice and Remedies Code, does not apply to such a cause of action; and
- a provision authorizing such a cause of action to be brought in the county where any part of the vote harvesting services occurred.

The substitute includes provisions absent from the engrossed that change deadlines for certain abstracts filed with the applicable voter registrar and the secretary of state for purposes of canceling a voter registration.

The substitute includes the following provisions regarding watchers and their purpose, entitlements, observations, and duties, which were absent from the engrossed:

- a provision establishing that the purpose of provisions governing appointed watchers is to preserve the integrity of the ballot box in accordance with the Texas Constitution;
- an authorization for a watcher serving at a polling place in an election to observe the sealing and transfer of certain storage media now existing or later developed used by voting system equipment; and
- a provision entitling a poll watcher to observe the in-person delivery of a marked ballot to be voted early by mail.

The substitute includes provisions absent from the engrossed specifying the people authorized to be lawfully present in a polling place or in the meeting place of an early voting ballot board during certain periods and entitling a poll watcher to observe the delivery of marked ballots, without disruption to that process, and to be able to determine how those ballots are being delivered and how election officials are making decisions about that delivery.

The substitute includes provisions absent from the engrossed specifying the people authorized to be lawfully present in a central counting station while ballots are being counted.

The substitute includes a prohibition against a presiding judge requiring an appointed watcher to leave a polling place and having an appointed watcher removed from a polling place. The substitute also provides that a presiding judge may remove a watcher from a polling place only if the watcher engages in activity that would constitute an offense related to the conduct of the election. Neither the prohibition nor the latter provision were present in the engrossed.

The substitute includes the following provisions regarding assistance provided to a voter, which were all absent from the engrossed:

- a provision revising the oath required of a person selected to provide assistance to a voter and including a specification in the oath language that the person is swearing or affirming the oath under penalty of perjury; and

- a requirement for an official carrier envelope for an early voting ballot to contain spaces on the reverse side of the envelope for indicating the manner of any assistance provided by a person assisting the voter and the relationship of that person to the voter.

With regard to the offense of unlawfully assisting a voter voting a ballot to be voted by mail, the substitute includes the following provisions, which were all absent from the engrossed:

- a requirement for a person who lawfully assists a voter in preparing the ballot to enter additional information on the envelope regarding the assistance provided;
- a provision narrowing the exemption from the violation of that requirement to apply only to a person who assists a voter and is related to the voter and to no longer apply to a person who was physically living in the same dwelling as the voter at the time of the offense; and
- a penalty enhancement for the offense from a state jail felony to a third degree felony if it is shown on the trial of the offense that the person committed an offense for providing unlawful assistance to the same voter in connection with the same ballot.

The substitute includes provisions, absent from the engrossed, revising the offense for unlawful compensation for assisting voters and the punishment for that offense, including by repealing the misdemeanor punishment for the offense. The substitute eliminates the misdemeanor punishment for the offense for the unlawful compensation for a carrier envelope action by repealing the provision establishing that punishment and by making the offense a state jail felony punishment regardless of whether a defendant was previously convicted two or more times of the offense. The engrossed includes neither the repeal nor the penalty revision.

The substitute includes provisions, which are all absent from the engrossed, that create the following offenses:

- a judge knowingly providing a voter with a form for an affidavit that contains false information entered on the form by the judge;
- perjury in connection with certain election procedures; and
- unlawful altering of election procedures.

The substitute includes a provision, which is absent from the engrossed, that:

- expands the conduct constituting 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
- provides that 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.

The substitute includes provisions regarding the offense of election fraud, which were absent from the engrossed that:

- expand the conduct constituting election fraud to include knowingly or intentionally making any effort to influence the independent exercise of the vote of another in the presence of the ballot or during the voting process by altering the ballot of another or by otherwise causing a ballot to not reflect the intent of the voter; and
- increase the penalty for the offense, as amended by the substitute, from a Class A misdemeanor to a state jail felony.

The substitute includes the following provisions regarding the prioritization of certain election proceedings, which were all absent from the engrossed:

- a requirement for the Texas Supreme Court, a court of appeals, and a trial court to prioritize over any other proceeding pending or filed in the applicable court a proceeding for injunctive relief that is pending or filed in the applicable court on or after the 60th day before a general or special election and that is pending or filed under Election Code provisions governing criminal investigations and other enforcement proceedings based on certain conduct;

- a requirement for the supreme court or the court of appeals, whichever has jurisdiction over the proceeding, on the request of any party to the proceeding, to grant the party the opportunity to present an oral argument, the hearing of which must as soon as practicable but not later than 24 hours after the time the last brief for the proceeding is due to be filed with the applicable court;
- a requirement for a trial court on written request of any party to a case randomly assigned under the substitute's provisions with respect to the priority assignment of certain election proceedings to hold a hearing on the proceeding that must begin as soon as practicable but not later than 24 hours after the court receives the hearing request;
- an authorization for oral argument for the supreme court or the court of appeals proceeding to be given in person or through electronic means; and
- an authorization for the trial court hearing to be held in person or through electronic means.

The substitute includes the following provisions, which were all absent from the engrossed, regarding the assignment and docketing of prioritized election procedures and related criminal offenses:

- provisions establishing the docketing and subsequent random assignment by an applicable trial court clerk of prioritized election proceedings and a related criminal offense;
- provisions establishing appellate panels sitting for docketed and assigned prioritized election proceedings;
- a requirement for the clerk of a district court in which such a 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 state jail felony offense 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 a proceeding under these bill provisions;
- a requirement for an appellate court election proceeding entitled to priority under the bill's provisions to be docketed by the clerk of the court and assigned to a panel of three justices determined using an automated assignment system; and
- a provision creating a state jail felony 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 the three-justice panel assigned a specific proceeding under these bill provisions.

The substitute includes the following provisions which were absent from the engrossed:

- a provision establishing the bill's short title as the Election Integrity Protection Act of 2021;
- a provision setting out the bill's purpose with respect to the exercise by the legislature of its constitutional authority under the Texas Constitution to make all laws necessary to detect and punish fraud and preserve the purity of the ballot box;
- a provision setting out legislative findings relating to the importance of full, free, and fair elections, the threat posed by fraud in elections to a constitutional democracy, the need for related reforms, the applicable constitutional authority of the legislature, and the intent of the bill with respect to the right of free suffrage guaranteed to the people of Texas;
- a provision amended statute to establish the legislature's intent with regard to the uniform and consistent application of the Election Code in Texas and a provision requiring a public official to construe the provisions of the Election Code strictly to effect that specific intent; and
- a provision defining "public official" for purposes of the Election Code.

The substitute includes a severability clause absent from the engrossed.