

By: Vasut

H.B. No. 3970

Substitute the following for H.B. No. 3970:

By: Jetton

C.S.H.B. No. 3970

A BILL TO BE ENTITLED

AN ACT

relating to the acceptance and counting of early voting ballots
voted by mail.

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

SECTION 1. Sections 87.041(a), (b), (c), (d), (e), and (g),
Election Code, are amended to read as follows:

(a) Except as provided by Subsection (d), the ~~[The]~~ early
voting ballot board shall inspect and open each jacket envelope and
carrier envelope for an early voting ballot voted by mail and
determine whether to accept the voter's ballot for counting.

(b) A ballot may be accepted for counting only if:

(1) the carrier envelope certificate is properly
executed;

(2) ~~[neither]~~ the voter's signature on the ballot
application and ~~[nor]~~ the signature on the carrier envelope
certificate are ~~[is]~~ determined to have been executed by the voter
and not by a person other than the voter, unless signed by a
witness;

(3) the voter's ballot application states a legal
ground for early voting by mail;

(4) the voter is registered to vote, if registration
is required by law;

(5) the ground for early voting is absence from the
county of residence and the address to which the ballot was mailed

1 to the voter, as indicated by the application, was outside the
2 voter's county of residence [~~, if the ground for early voting is~~
3 ~~absence from the county of residence~~];

4 (6) for a voter to whom a statement of residence form
5 was required to be sent under Section 86.002(a), the statement of
6 residence is returned in the carrier envelope and indicates that
7 the voter satisfies the residence requirements prescribed by
8 Section 63.0011; and

9 (7) the address to which the ballot was mailed to the
10 voter is an address that is otherwise required by Sections 84.002
11 and 86.003.

12 (c) If a ballot is accepted for counting, the board shall
13 enter the voter's name on the poll list unless the form of the list
14 makes it impracticable to do so. The names of the voters casting
15 ballots by mail shall be listed separately on the poll list from
16 those casting ballots by personal appearance.

17 (d) A ballot shall be rejected if any requirement prescribed
18 by Subsection (b) is not satisfied. In that case, the board:

19 (1) may not open the carrier envelope; and
20 (2) shall indicate the rejection by entering
21 "rejected" on the carrier envelope and on the corresponding jacket
22 envelope.

23 (e) In making the determination under Subsection (b)(2),
24 the board may also compare the signatures with any [~~two or more~~]
25 signatures of the voter made within the preceding six years and on
26 file with the county clerk or voter registrar to determine whether
27 the signatures are those of the voter.

1 (g) A person commits an offense if the person intentionally
2 accepts a ballot for counting [~~voting~~] or causes a ballot to be
3 accepted for counting [~~voting~~] that the person knows does not meet
4 the requirements of Subsection (b). An offense under this
5 subsection is a Class A misdemeanor.

6 SECTION 2. Section 87.042, Election Code, is amended by
7 amending Subsections (a), (c), and (d) and adding Subsection (e) to
8 read as follows:

9 (a) Once a ballot has been accepted for counting, the [~~The~~]
10 early voting ballot board shall open each carrier envelope
11 containing the [~~an~~] accepted ballot without defacing the
12 certificate on the carrier envelope and remove the ballot envelope
13 from the carrier envelope. If the ballot is to be counted at a
14 central counting station, the early voting ballot board and the
15 signature verification committee may not open the official ballot
16 envelope of an accepted ballot.

17 (c) The official ballot envelope must be placed in a
18 separate container if:

19 (1) the ballots are to be counted at a central counting
20 station; or

21 (2) the procedure for counting the early voting votes
22 cast by personal appearance is different from that for counting the
23 votes cast by mail.

24 (d) An accepted ballot that was not returned in the official
25 ballot envelope shall be treated as an accepted ballot that was
26 returned in the official ballot envelope.

27 (e) A poll watcher is entitled to observe the acceptance of

1 early voting ballots voted by mail, including the work of the early
2 voting ballot board and any signature verification committee. The
3 poll watcher must be able to determine how the ballots are opened
4 and distributed and how the early voting ballot board and any
5 signature verification committee are making decisions about the
6 acceptance of ballots, if applicable. The poll watchers must
7 comply with all provisions of this code when carrying out their
8 duties.

9 SECTION 3. Section 87.044, Election Code, is amended by
10 adding Subsection (c) to read as follows:

11 (c) The provisions of Subsections (a) and (b) may be waived
12 if the application, the federal postcard application, if
13 applicable, and the cover sheet are maintained and retrievable in
14 an electronic format for at least 22 months from the date of the
15 last election to which those documents were applicable.

16 SECTION 4. The heading to Section 87.102, Election Code, is
17 amended to read as follows:

18 Sec. 87.102. SCANNING AND DUPLICATING PAPER BALLOTS FOR
19 AUTOMATIC COUNTING.

20 SECTION 5. Section 87.102, Election Code, is amended by
21 amending Subsection (a) and adding Subsection (c) to read as
22 follows:

23 (a) The authority adopting an electronic voting system in
24 which ballots are counted at a central counting station may direct
25 by resolution, order, or other official action that the early
26 voting regular paper ballots cast in an election be scanned and put
27 into a format that allows the ballots to be counted by the

1 ~~[duplicated as electronic system ballots for]~~ automatic counting
2 equipment at the central counting station. The presiding judge and
3 alternate presiding judge must be present and shall observe the
4 process of scanning.

5 (c) A ballot that is damaged or unreadable by the scanning
6 equipment used under this section may be duplicated as described by
7 this subsection. In the general election for state and county
8 officers, teams of two people, one designated by the chair of the
9 party whose candidate for governor received the highest number of
10 votes in the county in the most recent gubernatorial general
11 election, and one designated by the chair of the party whose
12 candidate received the second highest number of votes in that
13 election, shall copy the ballot onto a new ballot from the same
14 precinct and ballot style and shall write on the new ballot the
15 serial numbers of both the original and duplicate ballots in an ink
16 that cannot be read by the scanning equipment. The presiding and
17 alternate judges of the central counting station may inspect both
18 the original and the duplicate ballot to verify the accuracy of the
19 duplication. Each member of the duplication team shall sign their
20 names and print their names in a legible manner in a log of
21 duplications.

22 SECTION 6. Section [87.103](#), Election Code, is amended by
23 amending Subsection (b) and adding Subsections (c) and (d) to read
24 as follows:

25 (b) The early voting returns prepared at the central
26 counting station must include any early voting results obtained by
27 the early voting ballot board under Subchapter ~~[Subchapters]~~ D ~~[and~~

1 E].

2 (c) If the automatic counting equipment discovers an
3 overvote in a scanned ballot, the presiding and alternate judges of
4 the central counting station, with the assistance of their clerks,
5 shall examine the ballot and jointly determine the intention of the
6 voter. If they are unable to make a determination of the voter's
7 intention, the vote in the race in which the overvote appears may
8 not be counted and the votes in the other races on the ballot shall
9 be counted.

10 (d) A poll watcher is entitled to observe the work of the
11 central counting station, including the counting of ballots. The
12 poll watcher must be able to determine how the ballots are counted
13 and how the presiding and alternate judges of the central counting
14 station are making decisions about the acceptance of ballots, if
15 applicable. The poll watchers must comply with all provisions of
16 this code when carrying out their duties.

17 SECTION 7. This Act takes effect September 1, 2021.