

By: Vasut

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 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  
to the voter, as indicated by the application, was outside the

1 voter's county of residence [~~, if the ground for early voting is~~  
2 ~~absence from the county of residence~~];

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

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

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

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

18 (1) may not open the carrier envelope; and

19 (2) shall indicate the rejection by entering  
20 "rejected" on the carrier envelope and on the corresponding jacket  
21 envelope.

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

27 (g) A person commits an offense if the person intentionally

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

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

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

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

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

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

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

25 (e) A poll watcher is entitled to observe the acceptance of  
26 early voting ballots voted by mail, including the work of the early  
27 voting ballot board and any signature verification committee. The

1 poll watcher must be able to determine how the ballots are opened  
2 and distributed and how the early voting ballot board and any  
3 signature verification committee are making decisions about the  
4 acceptance of ballots, if applicable. The poll watcher may not  
5 disrupt the process of accepting ballots.

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

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

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

15 Sec. 87.102. SCANNING AND DUPLICATING PAPER BALLOTS FOR  
16 AUTOMATIC COUNTING.

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

20 (a) The authority adopting an electronic voting system in  
21 which ballots are counted at a central counting station may direct  
22 by resolution, order, or other official action that the early  
23 voting regular paper ballots cast in an election be scanned and put  
24 into a format that allows the ballots to be counted by the  
25 [~~duplicated as electronic system ballots for~~] automatic counting  
26 equipment at the central counting station. Representatives  
27 appointed by the party chairs shall observe the process of

1 scanning.

2 (c) A ballot that is damaged or unreadable by the scanning  
3 equipment used under this section may be duplicated as described by  
4 this subsection. A team of a least two people, one from a list  
5 provided by each party chair, shall copy the ballot onto a new  
6 ballot from the same precinct and ballot style and shall write on  
7 the new ballot the serial numbers of both the original and duplicate  
8 ballots in an ink that cannot be read by the scanning equipment.  
9 The presiding and alternate judges of the central counting station  
10 may inspect both the original and the duplicate ballot to verify the  
11 accuracy of the duplication. Each member of the duplication team  
12 shall sign their names and print their names in a legible manner in  
13 a log of duplications.

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

17 (b) The early voting returns prepared at the central  
18 counting station must include any early voting results obtained by  
19 the early voting ballot board under Subchapter ~~[Subchapters]~~ D ~~[and~~  
20 ~~E]~~.

21 (c) If the automatic counting equipment discovers an  
22 overvote in a scanned ballot, the presiding and alternate judges of  
23 the central counting station, with the assistance of their clerks,  
24 shall examine the ballot and jointly determine the intention of the  
25 voter. If they are unable to make a determination of the voter's  
26 intention, the vote in the race in which the overvote appears may  
27 not be counted and the votes in the other races on the ballot shall

1 be counted.

2 (d) A poll watcher is entitled to observe the work of the  
3 central counting station, including the counting of ballots. The  
4 poll watcher must be able to determine how the ballots are counted  
5 and how the presiding and alternate judges of the central counting  
6 station are making decisions about the acceptance of ballots, if  
7 applicable. The poll watcher may not disrupt the process of  
8 counting ballots.

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