

By: Hall

S.B. No. 1608

A BILL TO BE ENTITLED

AN ACT

relating to elections; creating a criminal offense.

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

SECTION 1. Sections 31.014(a) and (c), Election Code, are amended to read as follows:

(a) The secretary of state shall prescribe specific requirements and standards, consistent with this code, for the certification of an electronic device used to accept voters under Chapter 63 that require the device to:

(1) produce an electronic copy of the list of voters who were accepted to vote for delivery to the election judge after the polls close;

(2) display the voter's original signature in accordance with Section 63.002;

(3) accept a voter for voting even when the device is off-line;

(4) provide the full list of voters registered in the county with an indication of the jurisdictional or distinguishing number for each territorial unit in which each voter resides;

(5) time-stamp when each voter is accepted at a polling place, including the voter's unique identifier;

(6) if the county [~~participates in the countywide polling place program under Section 43.007 or~~] has more than one early voting polling place, transmit a time stamp when each voter is

1 accepted, including the voter's unique identifier, to all polling
2 place locations;

3 (7) time-stamp the receipt of a transmission under
4 Subdivision (6); and

5 (8) produce in an electronic format compatible with
6 the statewide voter registration list under Section 18.061 data for
7 retention and transfer that includes:

8 (A) the polling location in which the device was
9 used;

10 (B) the dated time stamp under Subdivision (5);
11 and

12 (C) the dated time stamp under Subdivision (7).

13 (c) The secretary of state shall adopt rules that require a
14 device described by this section used during the early voting
15 period [~~or under the countywide polling place program under Section~~
16 ~~43.007~~] to update data in real time. If a county uses a device that
17 does not comply with the rule in two consecutive general elections
18 for state and county officers, the secretary of state shall assess a
19 noncompliance fee. The noncompliance fee shall be set at an amount
20 determined by secretary of state rule.

21 SECTION 2. Section 32.002(c-1), Election Code, is amended
22 to read as follows:

23 (c-1) For purposes of this subsection, the county chair
24 shall provide a list of names of persons eligible for appointment as
25 election judges. [~~Judges of countywide polling places established~~
26 ~~under Section 43.007 must be appointed from the list of names of~~
27 ~~persons submitted by the county chair in compliance with Subsection~~

1 ~~(c) except that in appointing a person from the list the~~
2 ~~commissioners court shall apportion the number of judges in direct~~
3 ~~proportion to the percentage of precincts located in each county~~
4 ~~commissioners precinct won by each party in the last gubernatorial~~
5 ~~election, the commissioners court is not required to make the~~
6 ~~appointments based on specific polling locations or precincts, a~~
7 ~~presiding judge or alternate presiding judge is not required to~~
8 ~~serve in a polling place located in the precinct in which the judge~~
9 ~~resides, and more than one presiding judge or alternate presiding~~
10 ~~judge may be selected from the same precinct to serve in polling~~
11 ~~places not located in the precinct in which the judges reside. The~~
12 ~~county chairs may submit, and the commissioners court may~~
13 ~~preapprove, the appointment of more presiding judges or alternate~~
14 ~~presiding judges than necessary to fill available positions. The~~
15 ~~county clerk may select an individual whose appointment was~~
16 ~~preapproved by the commissioners court to fill a vacancy in a~~
17 ~~position that was held by an individual from the same political~~
18 ~~party. Other than a judge's party affiliation, nothing in this~~
19 ~~subsection precludes a county clerk from placing an election~~
20 ~~officer at a countywide polling place based on the need for services~~
21 ~~at that location.]~~

22 SECTION 3. Section [32.0511](#)(d), Election Code, is amended to
23 read as follows:

24 (d) Not more than two student election clerks may serve at a
25 polling place~~[, except that not more than four student election~~
26 ~~clerks may serve at any countywide polling place]~~.

27 SECTION 4. Section [43.001](#), Election Code, is amended to

1 read as follows:

2 Sec. 43.001. AT LEAST ONE POLLING PLACE IN EACH PRECINCT.
3 Each election precinct established for an election shall be served
4 by at least one [~~a single~~] polling place located within the boundary
5 of the precinct.

6 SECTION 5. Section 43.031, Election Code, is amended by
7 adding Subsection (b-1) to read as follows:

8 (b-1) A polling place may not be located in:
9 (1) a tent or other temporary or movable structure; or
10 (2) a parking garage, parking lot, or similar facility
11 primarily designed for motor vehicles.

12 SECTION 6. Section 51.005(a), Election Code, is amended to
13 read as follows:

14 (a) The authority responsible for procuring the election
15 supplies for an election shall provide for each election precinct a
16 number of ballots equal to [~~at least the percentage of voters who~~
17 ~~voted in that precinct in the most recent corresponding election~~
18 ~~plus 25 percent of that number, except that the number of ballots~~
19 ~~provided may not exceed~~] the total number of registered voters in
20 the precinct.

21 SECTION 7. Subchapter C, Chapter 52, Election Code, is
22 amended by adding Section 52.076 to read as follows:

23 Sec. 52.076. IDENTIFYING CODE OR MICROCHIP FOR MAIL-IN
24 BALLOTS. (a) Each early voting ballot voted by mail must include a
25 unique barcode or microchip used to ensure that the ballot is only
26 counted once.

27 (b) No record associating an individual voter with a barcode

1 or microchip assigned to a ballot under this section may be created.

2 (c) The secretary of state by rule shall provide for the
3 design and distribution of a unique barcode or microchip system in a
4 manner that, to the greatest extent possible, prevents the
5 unauthorized reproduction or misuse of mail ballots.

6 SECTION 8. Section 61.001, Election Code, is amended by
7 adding Subsection (e) to read as follows:

8 (e) As necessary at any time, the presiding judge or a
9 watcher may request that a trained peace officer enter the polling
10 place to enforce a law or prevent a violation under this code.

11 SECTION 9. Section 61.002, Election Code, is amended to
12 read as follows:

13 Sec. 61.002. OPENING POLLING PLACE FOR VOTING. (a) Before
14 opening the polls for voting, the presiding election judge shall
15 confirm that each voting machine has any public counter reset to
16 zero and shall print the tape that shows the counter was set to
17 zero.

18 (b) Each election judge present shall sign a tape printed
19 under Subsection (a). Any watcher present may sign a tape printed
20 under Subsection (a).

21 (c) At the official time for opening the polls for voting,
22 an election officer shall open the polling place entrance and admit
23 the voters.

24 SECTION 10. Subchapter A, Chapter 61, Election Code, is
25 amended by adding Section 61.0141 to read as follows:

26 Sec. 61.0141. EXCEPTION REPORT FOR REPAIRS OR MAINTENANCE.
27 A person performing requested repairs or maintenance of equipment

1 at a polling place during voting in accordance with this title may,
2 as necessary, enter the polling place with an electronic device
3 capable of being connected to the Internet. After performing the
4 requested repairs or maintenance, the person shall, not later than
5 the third business day after the date the person entered the polling
6 place, file an exception report with the secretary of state in a
7 form adopted by the secretary for that purpose.

8 SECTION 11. Chapter 62, Election Code, is amended by adding
9 Section 62.017 to read as follows:

10 Sec. 62.017. VIDEO RECORDING. Video cameras must be posted
11 at a polling place to enable recording of all activity, other than
12 voting, being conducted at a polling place.

13 SECTION 12. Section 63.003, Election Code, is amended by
14 adding Subsection (e) to read as follows:

15 (e) If the poll list is in the form of an electronic device,
16 a paper copy must be kept on site as backup.

17 SECTION 13. Section 63.004, Election Code, is amended by
18 adding Subsection (f) to read as follows:

19 (f) If the combination form is in the form of an electronic
20 device, a paper copy must be kept on site as backup.

21 SECTION 14. Section 64.012, Election Code, is amended by
22 adding Subsections (a-1) and (b-1) and amending Subsection (b) to
23 read as follows:

24 (a-1) An election officer commits an offense if the officer
25 permits a person to vote in an election when the officer knows the
26 person is not registered to vote.

27 (b) An offense under Subsection (a) [~~this section~~] is a

1 felony of the second degree unless the person is convicted of an
2 attempt. In that case, the offense is a state jail felony.

3 (b-1) An offense under Subsection (a-1) is a Class A
4 misdemeanor.

5 SECTION 15. Sections 65.002(a) and (c), Election Code, are
6 amended to read as follows:

7 (a) The [~~Subject to Subsection (b), the~~] presiding judge may
8 not direct the counting of ballots to occur until [~~at any time~~]
9 after the polls close [~~have been open for one hour~~].

10 (c) After the polls close or the last voter has voted,
11 whichever is later, the counting of ballots shall be conducted
12 continuously until all the ballots are counted. The counting may
13 not be interrupted except in the case of extreme circumstances, in
14 which case election officials must notify the public of the
15 suspension and the exact time counting will resume.

16 SECTION 16. Section 65.014, Election Code, is amended by
17 amending Subsection (c) and adding Subsections (c-1) and (f) to
18 read as follows:

19 (c) The returns shall be prepared as an original and three
20 copies, and on completing the returns, the presiding judge shall
21 sign each one to certify its accuracy. Any watcher present at the
22 polling place must be allowed to inspect and sign each copy of the
23 returns.

24 (c-1) The presiding judge shall publicly post at the polling
25 place one of the copies printed under Subsection (c) before the
26 presiding judge leaves the premises.

27 (f) The presiding judge shall sign an affidavit stating that

1 the returns, to the best of the judge's knowledge, represent the
2 actual results of the election.

3 SECTION 17. Subchapter A, Chapter 65, Election Code, is
4 amended by adding Sections 65.016 and 65.017 to read as follows:

5 Sec. 65.016. VOTE COUNTING EQUIPMENT. No equipment to
6 count votes shall be used that is capable of being connected to the
7 Internet or any other computer network.

8 Sec. 65.017. EXCEPTION REPORT FOR REPAIRS OR MAINTENANCE.
9 A person performing requested repairs or maintenance of equipment
10 at a polling place in accordance with this title may, as necessary,
11 enter the polling place with an electronic device capable of being
12 connected to the Internet while vote counting is being conducted.
13 After performing the requested repairs or maintenance, the person
14 shall, not later than the third business day after the date the
15 person entered the polling place, file an exception report with the
16 secretary of state in a form adopted by the secretary for that
17 purpose.

18 SECTION 18. Subchapter B, Chapter 66, Election Code, is
19 amended by adding Section 66.027 to read as follows:

20 Sec. 66.027. SECRETARY OF STATE TO PROVIDE SECURE
21 LOCKBOXES. The secretary of state shall provide a secure lockbox
22 suitable for containing each type of election record described
23 under this subchapter.

24 SECTION 19. Section 66.052, Election Code, is amended to
25 read as follows:

26 Sec. 66.052. DELIVERY BY ELECTION CLERK; CHAIN OF CUSTODY.

27 (a) A delivery of election records or supplies that is to be

1 performed by the presiding judge may be performed by an election
2 clerk designated by the presiding judge.

3 (b) The presiding judge or an election clerk designated by
4 the presiding judge under this section must keep records of each
5 person that has custody of a precinct election record until the
6 records are delivered.

7 SECTION 20. Section 67.007, Election Code, is amended by
8 amending Subsection (c) and adding Subsection (c-1) to read as
9 follows:

10 (c) The county clerk shall certify the county returns. The
11 early voting ballot board must independently verify the county
12 returns before the county clerk can certify the returns under this
13 subsection.

14 (c-1) The secretary of state may not release election
15 results for a district or statewide office until each county clerk
16 has completed the clerk's duties under Subsection (c).

17 SECTION 21. Subchapter A, Chapter 84, Election Code, is
18 amended by adding Section 84.0111 to read as follows:

19 Sec. 84.0111. PROHIBITION ON DISTRIBUTION OF OFFICIAL
20 APPLICATION FORM. Unless otherwise authorized by this code, an
21 officer or employee of this state or of a political subdivision of
22 this state may not distribute an official application form for an
23 early voting ballot to a person unless the person requested the form
24 for the person's own use.

25 SECTION 22. Sections 84.032(b) and (c), Election Code, are
26 amended to read as follows:

27 (b) A request must:

1 (1) be in writing and signed by the applicant;

2 (2) specify the election for which the application was
3 made; ~~and~~

4 (3) return the ballot to be voted by mail as provided
5 by this section; and

6 (4) except as provided by Subsection (c) or [7] (d),
7 ~~[or (e),]~~ be received by the early voting clerk[+]

8 [(A)] not later than the third day before election
9 day[+ and

10 [(B) if an early voting ballot sent to the
11 applicant is returned to the clerk as a marked ballot, before the
12 marked ballot's arrival at the address on the carrier envelope].

13 (c) An applicant may submit a request after the close of
14 early voting by personal appearance by appearing in person and[+]

15 [(1)] returning the ballot to be voted by mail to the
16 early voting clerk[+ or

17 [(2) executing an affidavit that the applicant:

18 [(A) has not received the ballot to be voted by
19 mail; or

20 [(B) never requested a ballot to be voted by
21 mail].

22 SECTION 23. Section 84.038, Election Code, is amended to
23 read as follows:

24 Sec. 84.038. CANCELLATION EFFECTIVE FOR SINGLE ELECTION.

25 The cancellation of an application for a ballot to be voted by mail
26 under Section 84.032(c) or [7] (d)[~~or (e)~~] is effective for a
27 single ballot only and does not cancel the application with respect

1 to a subsequent election, including a subsequent election to which
2 the same application applies under Section 84.001(e) or 86.0015(b).

3 SECTION 24. Sections 85.001(a) and (e), Election Code, are
4 amended to read as follows:

5 (a) The period for early voting by personal appearance
6 begins on the 17th day before election day and continues through the
7 [~~fourth~~] day before election day, except as otherwise provided by
8 this section.

9 (e) For an election held on the uniform election date in May
10 and any resulting runoff election, the period for early voting by
11 personal appearance begins on the 12th day before election day and
12 continues through the [~~fourth~~] day before election day.

13 SECTION 25. Sections 85.005(a) and (b), Election Code, are
14 amended to read as follows:

15 (a) Except as provided by Subsection (c), in an election in
16 which a county clerk or city secretary is the early voting clerk
17 under Section 83.002 or 83.005, early voting by personal appearance
18 at the main early voting polling place shall be conducted on the
19 weekdays of the early voting period and during the hours that the
20 county clerk's or city secretary's main business office is
21 regularly open for business, except that voting may not be
22 conducted earlier than 7 a.m. or later than 7 p.m.[-]

23 (b) In an election to which Subsection (a) does not apply,
24 early voting by personal appearance at the main early voting
25 polling place shall be conducted at least eight hours each weekday
26 of the early voting period that is not a legal state holiday unless
27 the territory covered by the election has fewer than 1,000

1 registered voters. In that case, the voting shall be conducted at
2 least three hours each day. The authority ordering the election, or
3 the county clerk if that person is the early voting clerk, shall
4 determine which hours the voting is to be conducted except that
5 voting may not be conducted earlier than 7 a.m. or later than 7
6 p.m.[-]

7 SECTION 26. Section 85.006(c), Election Code, is amended to
8 read as follows:

9 (c) The authority ordering voting on a Saturday or Sunday
10 shall determine the hours during which voting is to be conducted
11 except that voting may not be conducted earlier than 7 a.m. or later
12 than 7 p.m.[-]

13 SECTION 27. Section 85.010(c), Election Code, is amended to
14 read as follows:

15 (c) A shared polling place established under Subsection (b)
16 that is designated as a main early voting polling place by any
17 political subdivision:

18 (1) must be open for voting for all political
19 subdivisions the polling place serves for at least the days and
20 hours required of a main early voting polling place under Section
21 85.002 for the political subdivision making the designation; and

22 (2) may not be open for voting earlier than 7 a.m. or
23 later than 7 p.m.[-]

24 SECTION 28. Section 85.033, Election Code, is amended to
25 read as follows:

26 Sec. 85.033. SECURITY OF VOTING MACHINE. (a) At the close
27 of early voting each day, the early voting clerk shall secure each

1 voting machine used for early voting in the manner prescribed by the
2 secretary of state so that its unauthorized operation is prevented.
3 The clerk shall unsecure the machine before the beginning of early
4 voting the following day.

5 (b) A voting machine used for early voting may not be
6 removed from the polling place until the polls close on election
7 day.

8 SECTION 29. Section 85.064, Election Code, is amended by
9 adding Subsection (c) to read as follows:

10 (c) Early voting by personal appearance at a temporary
11 branch polling place may not be conducted earlier than 7 a.m. or
12 later than 7 p.m.

13 SECTION 30. Section 86.001, Election Code, is amended by
14 adding Subsection (f) to read as follows:

15 (f) Before the clerk mails or provides a ballot to an
16 applicant, the clerk shall identify the unique barcode included on
17 the carrier envelope and make a record indicating that a carrier
18 envelope with the unique barcode was issued.

19 SECTION 31. Section 86.007(a), Election Code, is amended to
20 read as follows:

21 (a) Except as provided by Subsection (d), a marked ballot
22 voted by mail must arrive at the address on the carrier envelope:

23 (1) before the time the polls are required to close on
24 election day; or

25 (2) not later than 5 p.m. on the day after election
26 day, if the carrier envelope was placed for delivery by mail or
27 common or contract carrier before election day and bears a

1 cancellation mark of a common or contract carrier or a courier
2 indicating a date [~~time~~] not later than the fourth day before [~~7~~
3 ~~p.m. at the location of the election on~~] election day.

4 SECTION 32. Section 86.011, Election Code, is amended by
5 adding Subsection (a-1) and amending Subsections (b) and (c) to
6 read as follows:

7 (a-1) The early voting clerk shall scan the unique barcode
8 on the official carrier envelope, make a record of the barcode, and
9 determine whether the unique barcode matches the barcode of an
10 official carrier envelope recorded under Section 86.001(f). The
11 clerk shall reject a carrier envelope with a barcode that:

12 (1) does not match the barcode of an official carrier
13 envelope recorded under Section 86.001(f); or

14 (2) matches a barcode of an official carrier envelope
15 that has already been received by the early voting clerk.

16 (b) If the return is timely and the carrier envelope is not
17 rejected under Subsection (a-1), the clerk shall enclose the
18 carrier envelope and the voter's early voting ballot application in
19 a jacket envelope. The clerk shall also include in the jacket
20 envelope:

21 (1) a copy of the voter's federal postcard application
22 if the ballot is voted under Chapter 101; and

23 (2) the signature cover sheet, if the ballot is voted
24 under Chapter 105.

25 (c) If the return is not timely or the carrier envelope is
26 rejected under Subsection (a-1), the clerk shall enter the time of
27 receipt on the carrier envelope and retain it for the period for

1 preserving the precinct election records. The clerk shall destroy
2 the unopened envelope and its contents after the preservation
3 period.

4 SECTION 33. Section 86.013, Election Code, is amended by
5 adding Subsection (h) to read as follows:

6 (h) Each official carrier envelope must include a unique
7 barcode that may be identified and recorded by the early voting
8 clerk under Sections 86.001(f) and 86.011(a-1).

9 SECTION 34. Section 87.0241(b), Election Code, is amended
10 to read as follows:

11 (b) The board may not count early voting ballots until⁺
12 [~~(1)~~] the polls close [~~open~~] on election day⁺~~, or~~
13 [~~(2) in an election conducted by an authority of a~~
14 ~~county with a population of 100,000 or more or conducted jointly~~
15 ~~with such a county, the end of the period for early voting by~~
16 ~~personal appearance~~].

17 SECTION 35. Section 87.062, Election Code, is amended by
18 adding Subsection (a-1) to read as follows:

19 (a-1) Before counting a ballot voted by mail, the early
20 voting ballot board shall identify the unique barcode or microchip
21 included on the ballot under Section 52.076, make a record
22 indicating that the board has counted a ballot with that barcode or
23 microchip, and compare the barcode or microchip to records of other
24 counted ballots. If the barcode or microchip on the ballot is the
25 same as a barcode or microchip recorded for a ballot that has
26 already been counted, the board may not count the ballot. Ballots
27 not counted under this section shall be placed in an envelope and

1 treated in the same manner as rejected ballots under Section
2 87.043.

3 SECTION 36. Section 87.103, Election Code, is amended to
4 read as follows:

5 Sec. 87.103. COUNTING BALLOTS AND PREPARING RETURNS. (a)
6 The early voting electronic system ballots counted at a central
7 counting station, the ballots cast at precinct polling places, and
8 the ballots voted by mail shall be tabulated separately [~~from the~~
9 ~~ballots cast at precinct polling places~~] and shall be separately
10 reported on the returns.

11 (a-1) Before counting a ballot voted by mail, the unique
12 barcode or microchip included on each ballot under Section 52.076
13 must be identified, recorded, and compared to the barcode or
14 microchip records of other counted ballots. If the barcode or
15 microchip on the ballot is the same as a barcode or microchip
16 recorded for a ballot that has already been counted, the ballot may
17 not be counted. Ballots not counted under this section shall be
18 placed in an envelope and treated in the same manner as rejected
19 ballots under Section 87.043.

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

24 SECTION 37. Subchapter A, Chapter 127, Election Code, is
25 amended by adding Sections 127.008 and 127.009 to read as follows:

26 Sec. 127.008. VOTE COUNTING EQUIPMENT IN CENTRAL COUNTING
27 STATION. No equipment to count votes shall be used that is capable

1 of being connected to the Internet or any other computer network.

2 Sec. 127.009. EXCEPTION REPORT FOR REPAIRS OR MAINTENANCE.

3 A person performing requested repairs or maintenance of equipment
4 at a central counting station in accordance with this title may, as
5 necessary, enter the central counting station with an electronic
6 device capable of being connected to the Internet. After
7 performing the requested repairs or maintenance, the person shall,
8 not later than the third business day after the date the person
9 entered the counting station, file an exception report with the
10 secretary of state in a form adopted by the secretary for that
11 purpose.

12 SECTION 38. Section 127.201(a), Election Code, is amended
13 to read as follows:

14 (a) To ensure the accuracy of the tabulation of electronic
15 voting system results, the general custodian of election records
16 shall conduct a manual count of all the races in at least one
17 percent of the election precincts or in the three largest
18 precincts, whichever represents a [is] greater number of voters, in
19 which the electronic voting system was used. The custodian shall
20 publicly select the final three precincts at random and shall begin
21 the count not later than 72 hours after the polls close. The count
22 shall be completed not later than the 21st day after election day.
23 Subsection (b) supersedes this subsection to the extent of a
24 conflict.

25 SECTION 39. Subchapter A, Chapter 129, Election Code, is
26 amended by adding Section 129.003 to read as follows:

27 Sec. 129.003. SECURE VOTING SYSTEM REQUIRED. (a) In this

1 section, "secure voting system" means a voting system that:

2 (1) uses voting machines that are not capable of
3 connecting to the Internet or otherwise wirelessly connecting to
4 another electronic device; and

5 (2) either:

6 (A) uses a paper record; or

7 (B) produces a paper receipt by which a voter can
8 verify that the voter's ballot will be counted accurately.

9 (b) A voting system that consists of direct recording
10 electronic voting machines may not be used in an election unless the
11 system is a secure voting system.

12 (c) Except for a recount under Title 13, the electronic vote
13 is the official record of the ballot. For a recount of ballots cast
14 on a system involving direct recording electronic voting machines,
15 the paper record or receipt copy is the official record of the vote
16 cast.

17 SECTION 40. The following provisions of the Election Code
18 are repealed:

19 (1) Section 43.004(c);

20 (2) Section 43.007;

21 (3) Section 65.002(b);

22 (4) Section 84.032(e); and

23 (5) Section 127.201(f).

24 SECTION 41. This Act takes effect immediately if it
25 receives a vote of two-thirds of all the members elected to each
26 house, as provided by Section 39, Article III, Texas Constitution.

27 If this Act does not receive the vote necessary for immediate

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1 effect, this Act takes effect September 1, 2021.