

BILL ANALYSIS

C.S.H.B. 2860
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Elections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

"Database latency" is a term to describe the delay between an input and an output that occurs when a database's record does not match current reality. Ballot harvesters in states across the nation have found a mechanism for using database latency to exploit the mail-in ballot system and send thousands of active and inactive voters' ballots to a single address, then remove the evidence before it is found. For example, when mail-in ballots are delivered, a ballot harvester might send 31,000 ballots to a single location. The harvester then changes the address in the system for all ballots back to the original address leaving no record of the change that would prove fraud occurred. Under current law, Texas has no mechanism to detect or prevent ballot harvesters from exploiting database latency during elections. The National Change of Address database, or similar systems used by activists and officials, may take months to display any change accurately. If changes cannot be logged and recorded immediately, it leaves enough time to exploit the system repeatedly, virtually undetected. C.S.H.B. 2860 seeks to address this issue by creating an instantaneous voter registration audit process that minimizes database latency and prevents ballot harvesters from exploiting flaws in the system to commit fraud.

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.H.B. 2860 amends the Election Code to set out the following provisions with respect to the list of registered voters in a precinct prepared before the beginning of early voting for the first election held in a county in each voting year:

- a requirement for the voter registrar to make a copy of any prepared list available on the county's publicly accessible website in a searchable, sortable, and downloadable database format;
- a requirement for the voter registrar to retain the voter registration application of any person whose name is removed the list; and
- provisions that create Class A misdemeanor offenses for a registrar who knowingly fails to comply with those requirements.

The bill authorizes voter registration information recorded on an optional computer storage medium to be substituted for a retained registration application and establishes that all such information and records held by the registrar that are not confidential are open records for the purposes of state public information law. The bill authorizes the registrar to use funds dedicated under financing voter registration for the purpose of defraying costs associated with complying with the retention requirement and with developing and maintaining the database prescribed.

C.S.H.B. 2860 replaces the authorization for the signature verification committee to compare signatures with any known signature of the voter on file with the county clerk or voter registrar in addition to comparing the signature on the carrier envelope certificate with that on the voter's ballot voted by mail to determine whether the signatures are those of the voter with a requirement for the committee to do so. The bill requires the committee to also compare the voter's identifying information provided by the voter on the voter's mail-in ballot application with that information entered by the voter on the carrier envelope and any known copies of the information on file with the county clerk or voter registrar. The bill requires a determination that the provided information is not that of the voter to be made by a majority vote of the committee's membership and requires the associated ballot materials to be placed in separate containers from those whose provided information is that of the voter for delivery to the early voting ballot board. The bill clarifies that the early voting ballot board is required to follow the same procedure for accepting the early voting ballots voted by mail as in an election without a signature verification committee if a committee is appointed.

C.S.H.B. 2860 creates a Class A misdemeanor offense for a chair of a signature verification committee or a chair's designee who knowingly fails to perform a required comparison of signatures or provided voter information or the required sorting and delivery of ballot materials of voters whose signatures or provided information is determined to not be that of the voter. The bill authorizes the secretary of state to withhold all or part of any funds distributed by the secretary of state for financing voter registration from a county that violates those requirements.

C.S.H.B. 2860 includes among the requirements for accepting a ballot voted by mail that the voter's identifying information provided on the voter's ballot application is determined to be the same as the voter's identifying information provided on the carrier envelope and any such information on file with the country clerk or voter registrar. The bill creates a Class A misdemeanor offense for a presiding judge of the early voting ballot board or a judge's designee who knowingly fails to perform a requirement for accepting ballots voted by mail. The bill authorizes the secretary of state to withhold all or part of any funds distributed by the secretary of state for financing voter registration from a county that violates those requirements.

C.S.H.B. 2860 creates a Class A misdemeanor offense for an early voting clerk who maintains only electronic records of applications for a ballot to be voted by mail, jacket envelopes, carrier envelopes, or ballots and who knowingly fails to record the front and back of each application, envelope, or ballot recorded, and provide the records to the early voting ballot board, the signature verification committee, or both.

C.S.H.B. 2860 applies only to an election ordered on or after the bill's effective date.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 2860 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute changes the category of offense from a state jail felony, as in the introduced, to a Class A misdemeanor for the following offenses created by the bill:

- the offense for a registrar who knowingly fails to comply with the requirements regarding the list of registered voters in a precinct prepared before the beginning of early voting for the first election held in a county in each voting year;
- the offense for a chair of a signature verification committee or a chair's designee who knowingly fails to perform a required comparison of signatures or provided voter

information or the required sorting and delivery of ballot materials of voters whose signatures or provided information is determined to not be that of the voter;

- the offense for a presiding judge of the early voting ballot board or a judge's designee who knowingly fails to perform a requirement for accepting ballots voted by mail; and
- an offense for an early voting clerk who maintains only electronic records of specified balloting materials and who knowingly fails to record the front and back of each balloting material and provide the records to the applicable election authority.