

BILL ANALYSIS

C.S.H.B. 3159
By: Leach
Elections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, voters with disabilities who require assistance voting are the only group of eligible absentee voters that must go to a polling location if they wish to vote with a private, independent, and secure ballot. Voters with disabilities should have an accessible alternative to the current absentee voting system in which they are able to vote more securely and efficiently, without the assistance of another person. C.S.H.B. 3159 seeks to address this issue by creating an accessible absentee ballot system.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to secretary of state in SECTIONS 1 and 4 of this bill.

ANALYSIS

C.S.H.B. 3159 amends the Election Code to authorize a person eligible for early voting by mail on the grounds of disability or confinement for childbirth to receive and cast a ballot using an accessible absentee mail system approved by the secretary of state. The bill requires the accessible absentee mail system to be an electronic system, including software, used for the sole purpose of enabling a voter, who has a disability and needs assistive technology for marking or reading the ballot, to mark the voter's ballot and print and submit the ballot in the manner required by the provisions of the conduct of voting by mail for a ballot marked by the voter. The bill requires the secretary of state to adopt rules and procedures for implementing the accessible absentee mail system.

C.S.H.B. 3159 requires the secretary of state to adopt standards for the approval of the system that at a minimum require the system to do as follows:

- preserve the secrecy of the ballot;
- authenticate the voter prior to delivery of a ballot using certain identifying information included on the early voting ballot application and any other information the secretary of state determines to be necessary for the positive identification of the person accessing the ballot as the voter;
- operate safely, efficiently, and accurately;
- be equipped with security measures necessary to prevent fraudulent or unauthorized manipulation;
- secure the screen and audio output of the device on which the ballot is displayed during voting so that political advertising or a campaign communication is not displayed or audibly available to the voter while the ballot is being marked;

- securely print the voter's marked ballot with a unique serial number and transmit the ballot to the early voting clerk without information identifying the voter;
- use a method of verification that a ballot was issued to an eligible voter;
- require the voter, prior to accessing the ballot, to swear or affirm that the voter is the person to whom the ballot is issued, and affirmatively indicate the person has a sickness or physical condition that prevents the voter from appearing at the polling place on election day;
- require the voter, after printing the voted ballot, to do the following:
 - place the voted ballot in the official ballot envelope and seal the ballot envelope;
 - place the ballot envelope in the official carrier envelope and seal that envelope; and
 - sign the certificate on the sealed carrier envelope;
- prevent any image or record of a voter's ballot choices, other than the original ballot printed, from being saved, printed, transmitted, or stored on the voter's device;
- be incapable of transmitting voted ballot images or records via the Internet; and
- be capable of providing records, including Internet protocol addresses of the devices displaying a voter's ballot, from which the operation of the accessible absentee ballot system may be audited.

The bill prohibits the system from being used in an election unless the system is approved by the secretary of state in accordance with these standards. The bill establishes that a voter's failure to use the official ballot envelope does not affect the validity of the ballot and the voter must complete the official carrier envelope.

C.S.H.B. 3159 authorizes the secretary of state by rule to prescribe additional standards for the absentee ballot system consistent with the required standards, which may apply to particular kinds of accessible absentee ballot systems, particular elements comprising such a system, or such systems generally. The bill requires the secretary of state by rule to prescribe and implement, to the extent applicable, processes for the approval, design modification, and reexamination of systems using the applicable process prescribed for voting systems and voting equipment.

C.S.H.B. 3159 requires the early voting clerk to provide to a voter using an accessible absentee ballot system the balloting materials required for voting by mail and instructions prescribed by the secretary of state for accessing the system.

C.S.H.B. 3159 requires the secretary of state by rule to modify the procedures required to provide a corrected ballot to a voter if an accessible absentee ballot system is used to deliver a ballot to a voter.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 3159 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.

Whereas the introduced authorized both a person eligible for early voting by mail on the grounds of disability or confinement for childbirth and a person eligible for early voting by mail as a federal postcard applicant on the grounds that the person is a member of the U.S. armed forces or the spouse or dependent of such a member to cast a ballot using an accessible absentee mail system, the substitute does not authorize a person eligible for early voting by mail as a federal postcard applicant on those grounds to cast a ballot using such a system.

The substitute includes the following provisions that were absent from the introduced relating to accessible absentee ballot system standards, including the following:

- a requirement for the secretary of state to adopt standards for the approval of the system;
- minimum requirements for the standards adopted by the secretary of state;
- a prohibition on use of the system in an election unless the secretary of state approves the system in accordance with the adopted standards;
- a provision establishing that a voter's failure to use the official ballot envelope for the printed voted ballot does not affect the validity of the ballot and requiring the voter to complete the official carrier envelope;
- an authorization for the secretary of state to prescribe additional standards for the system by rule; and
- a requirement for the secretary of state by rule to prescribe and implement specified processes for approval, modification, and reexamination of the system.

The substitute requires the system to be used for a voter who has a disability and needs assistive technology for marking or reading the ballot, whereas the introduced required the system to be used for the sole purpose of enabling any voter, including a voter who has a disability.

The substitute includes requirements for the early voting clerk to provide balloting materials and instructions prescribed by the secretary of state to a voter using the system, whereas the introduced did not include those requirements.

The substitute includes a requirement that did not appear in the introduced for the secretary of state to modify the procedures required to provide a corrected ballot to a voter if an accessible absentee ballot system is used to deliver a ballot to a voter.