

BILL ANALYSIS

C.S.S.B. 1599
By: Hughes
Elections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Election officials and poll workers throughout Texas have raised concerns regarding the procedures for mail-in voting. C.S.S.B. 1599 seeks to address these concerns by providing for the standardization of these procedures, including with respect to a voter's ability to correct certain defects and actions taken by early voting clerks, early voting ballot boards, and signature verification committees.

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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 1599 amends the Election Code to revise provisions relating to mail-in ballots, including with respect to the application for a mail-in ballot, the opportunity to correct a defect in an application or ballot, and the acceptance of a ballot.

Mail-in Ballots Returned at Polling Place

C.S.S.B. 1599 requires an election officer to maintain a register of mail-in ballots that are returned at a polling place by a person desiring to cancel the person's application for a ballot to be voted by mail. With respect to that register, the bill does the following:

- requires an election officer to enter on the register the name of each voter who returns a mail-in ballot and the ballot's number;
- requires the secretary of state to adopt a form to be used for this purpose; and
- requires an election officer, after making the appropriate entry on the register, to deposit a returned mail-in ballot in ballot box no. 4.

Accordingly, the bill includes any ballot to be voted by mail that is returned at the polling place among the requisite contents of ballot box no. 4.

Opportunity to Correct Defects in a Mail-in Ballot Application

C.S.S.B. 1599 sets out the following regarding the correction of a mail-in ballot application for which the applicant failed to comply with certain content and signing requirements in a manner that would lead, if not corrected, to the rejection of the applicant's application:

- requires the early voting clerk to do the following not later than the second day after the early voting clerk discovers the defect:

- determine if it would be possible for the applicant to correct the defect and return an application form by mail before the deadline for returning a mail-in ballot application or an application for an annual ballot by mail; and
- if the clerk determines it would be possible to correct the defect and return an application form before the applicable deadline, either return the application to the applicant or deliver an official application form to the applicant;
- removes the requirement for an early voting clerk, if on reviewing a mail-in ballot application that was received on or before the 18th day before election day the early voting clerk determines that the application does not fully comply with the applicable requirements, to mail or otherwise deliver an official application form to the applicant;
- includes instructions for submitting a corrected application among the contents of the written notice the clerk must include with the returned or delivered application form;
- authorizes the early voting clerk, if the clerk determines that it would not be possible for the applicant to correct the defect and return an application form by mail before the applicable deadline, to notify the applicant by telephone or email of the defect, including the information required to be included in written notice of the defect, and to inform the applicant that the applicant may come to the clerk's office before the applicable deadline and correct the defect in person;
- removes a requirement for the clerk to mail or otherwise deliver a notice to the voter of a noncompliant application that is received after the 12th day before election day and before the end of the period for early voting by personal appearance, including a statement that the application was late, if applicable; and
- requires the clerk, in addition to returning an application or delivering an application form to the applicant for correction or notifying the applicant of a defect that can be corrected in person, to notify the applicant of a defect and provide the requisite information using the online mail-in ballot application and mail-in ballot tracking tool and, if possible, to permit the applicant to correct a defect using the online tool.

Accordingly, the bill expands the purpose of the online mail-in ballot and mail-in ballot tracking tool to include enabling an applicant to receive notice of, and if possible, correct a defect in the person's application.

Delivery to the Early Voting Ballot Board

C.S.S.B. 1599 revises the deadlines by which the jacket envelopes containing mail-in ballots must be delivered to the early voting ballot board as follows:

- removes the authorization for the jacket envelopes, in an election conducted by an authority of a county with a population of 100,000 or more, or conducted jointly or through a contract with such a county, to be delivered to the board between the end of the ninth day before the last day of the period for early voting by personal appearance and the closing of the polls on election day, or as soon after closing as practicable, at the time or times specified by the presiding judge of the board;
- replaces that authorization with a requirement to deliver the jacket envelopes to the board not later than the ninth day before the election;
- authorizes any jacket envelopes of mail-in ballots returned after delivery of the ballots to be delivered to the presiding judge of the board between the end of the ninth day before election day and the closing of the polls on election day, or as soon after closing as practicable, at the time or times specified by the presiding judge; and
- specifies that the deliveries for which the early voting clerk must notify the county chair of each applicable political party of the time each delivery is to be made are each delivery made before the time for opening the polls on election day.

Acceptance of Ballot

C.S.S.B. 1599 replaces the authorization for the early voting ballot board to determine whether to accept mail-in ballots at any time after the ballots are delivered to the board with a requirement for the board to make its determination after the ballots are delivered to the board. The bill

expands applicability of the requirement for the secretary of state to prescribe procedures necessary for implementing the processing of such ballots before the polls open on election day by removing the condition that the procedures are prescribed in regard to elections conducted by an authority of a county with a population of 100,000 or more, or conducted jointly or through a contract with such a county.

C.S.S.B. 1599 requires the early voting ballot board, in making a determination of whether to accept a voter's ballot, to compare signatures to establish that neither the voter's signature on the ballot application nor the signature on the carrier envelope certificate is determined to have been executed by a person other than the voter, unless signed by a witness, regardless of whether a presumption exists that the signatures are those of the voter.

Opportunity to Correct Defects in a Mail-in Ballot

C.S.S.B. 1599 removes the requirement for a signature verification committee and early voting ballot board, not later than the second business day after discovering a defect in a mail-in ballot and before deciding whether to accept or reject a timely delivered ballot to do the following:

- determine if it would be possible for the voter to correct the defect and return the carrier envelope before the time the polls are required to close on election day; and
- return the carrier envelope of the ballot to the voter by mail, if the committee or board determines that it would be possible for the voter to correct the defect and return the carrier envelope before the time the polls are required to close on election day.

The bill requires the secretary of state instead to develop a corrective action form that may be completed and submitted to a signature verification committee or early voting ballot board to correct a defect, and also does the following:

- requires the committee or board, not later than the second day after discovering a defect and before deciding whether to accept or reject a timely delivered ballot, to send the voter a notice of the defect and a corrective action form by mail or by common or contract carrier; and
- requires the committee or board to include with such notice the following:
 - a brief explanation of each defect in the noncomplying ballot; and
 - a notice that the voter may cancel the voter's application to vote by mail or correct the defect in the voter's ballot by submitting the corrective action form by mail or by common or contract carrier or by coming to the early voting clerk's office not later than the sixth day after election day.

C.S.S.B. 1599 authorizes the committee or board, upon determining that it would not be possible for a voter to timely correct the defect, to inform the voter that the voter may submit a corrective action form by mail or common contract carrier as an alternative to either requesting to have the voter's application to vote by mail canceled or come to the early voting clerk's office in person to correct the defect.

C.S.S.B. 1599 requires the committee or board, in addition to sending the voter a notice of the defect or notifying the voter of the defect by telephone or email, to notify the voter of a defect and provide the requisite information using the online mail-in ballot and mail-in ballot tracking tool and, if possible, permit the voter to correct a defect using the online tool. Accordingly, the bill expands the purpose of the online tool to include enabling a voter to receive notice of and, if possible, correct a defect in the person's ballot.

Online Mail-in Ballot Application and Mail-in Ballot Tracking Tool

C.S.S.B. 1599 replaces the requirement for the online tool to require a voter to provide the voter's registration address before permitting the voter to access applicable information using the tool with a requirement for the online tool to require the voter to provide the voter's date of birth before permitting such access.

Applicability

C.S.S.B. 1599 applies only to an application for a ballot to be voted by mail submitted on or after the bill's effective date and to an election held on or after that date.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1599 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute changes the date by which the early voting clerk must make a determination of whether it would be possible to correct a defect in a mail-in ballot application and return the application or deliver an application form to the applicant from the sixth business day after the clerk discovers the defect, as in the engrossed, to the second day after such a discovery.

Both the engrossed and substitute require the signature verification committee and early voting ballot board, after discovering a defect in a mail-in ballot and before deciding whether to accept or reject a timely delivered ballot, to send the voter a notice of the defect and a corrective action form by mail or contract carrier. However, whereas the engrossed required the notice to be sent not later than the second business day after the discovery of the defect, the substitute requires the notice to be sent not later than the second day after the discovery of the defect. Furthermore, the engrossed required the committee and board to include with such notice a separate notice that the voter may correct the defect in the voter's ballot by coming to the early voting clerk's office not later than the second day after election day. The substitute requires the separate notice instead to state that the voter may correct the defect in the voter's ballot by coming to the early voting clerk's office not later than the sixth day after election day. Finally, the substitute omits a provision from the engrossed that changed the date by which a voter may come to the office to correct a defect after receiving notification of the defect by telephone or email from the sixth day after election day to the second day after election day.