

BILL ANALYSIS

Senate Research Center

S.B. 2433
By: Bettencourt
State Affairs
3/28/2023
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

As proposed, S.B. 2433 amends current law relating to election practices and procedures in a county with a population over 3.5 million.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 31.037, Election Code, as follows:

Sec. 31.037. **SUSPENSION OR TERMINATION OF EMPLOYMENT.** Authorizes the employment of the county elections administrator to be suspended, with or without pay, or terminated at any time for good and sufficient cause on the three-fifths vote, rather than four-fifths vote, of the county election commission and approval of that action by a majority vote of the commissioners court.

SECTION 2. Amends Section 31.043, Election Code, as follows:

Sec. 31.043. **DUTIES OF ADMINISTRATOR GENERALLY.** (a) Creates this subsection from existing text.

(b) Provides that the county elections administrator is not a voting member of the county election commission or the county election board.

SECTION 3. Amends Subchapter B, Chapter 31, Election Code, by adding Sections 31.0431, 31.0432, 31.0433, 31.0434, and 31.0435, as follows:

Sec. 31.0431. **REPORT TO COUNTY ELECTION COMMISSION: VOTE BY MAIL.** Requires the county elections administrator, not later than the 30th day after the final canvass of an election is completed, to provide a report to the county election commission that includes the following information pertaining to voting by mail:

(1) the number of applications for a ballot to be voted by mail submitted and the number of applications rejected;

(2) the number of official ballots to be voted by mail:

(A) provided to an applicant;

(B) returned by an applicant;

(C) returned undelivered by the United States Postal Service;

(D) delivered to the early voting ballot board or signature verification committee;

(E) for which the voters were accepted by the early voting ballot board, including accepted voters whose jacket envelopes were empty, contained the wrong ballot, or contained multiple ballots; and

(F) for which the voters were rejected by the early voting ballot board;

(3) the number of limited ballots to be voted by mail submitted by an applicant; and

(4) the number of ballots voted by mail:

(A) delivered to the central counting station;

(B) duplicated at the central counting station; and

(C) tabulated by the central counting station.

Sec. 31.0432. REPORT TO COUNTY ELECTION COMMISSION: EARLY VOTING BY PERSONAL APPEARANCE. Requires the county elections administrator, not later than the 30th day after the final canvass of an election is completed, to provide a report to the county election commission that includes the following information pertaining to each day of early voting by personal appearance:

(1) the number of persons accepted to vote using a limited ballot and the number of limited ballots cast;

(2) the number of:

(A) voters accepted to vote at each polling place, including accepted voters who did not cast a vote;

(B) votes cast at each polling place and in each election precinct;

(C) voters accepted to vote a provisional ballot;

(D) provisional ballot affidavits accepted at each polling place;

(E) requests for cancellation of an application for a ballot to be voted by mail received by each polling place;

(F) spoiled ballots at each polling place;

(G) marked ballots deposited in a location other than a ballot box;

(H) polling places where 25 percent or more of the election officers were not available to work at the polling place for more than one hour at a time;

(I) polling places where a seal on a ballot box or voting equipment did not match the documentation or was broken; and

(J) polling places that were not able to reconcile every voter against the record of votes cast, including the number of polling places where the discrepancy exceeded two votes cast;

(3) the allocation of voting equipment and election officials for each polling place; and

(4) the number of ballots cast during early voting by personal appearance that were duplicated by the central counting station.

Sec. 31.0433. REPORT TO COUNTY ELECTION COMMISSION: ELECTION DAY. Requires the county elections administrator, not later than the 30th day after the final canvass of an election is completed, to provide a report to the county election commission that includes the following information pertaining to election day:

(1) the number of:

- (A) voters accepted to vote at each polling place, including accepted voters who did not cast a vote;
- (B) votes cast at each polling place and in each election precinct;
- (C) voters accepted to vote a provisional ballot;
- (D) provisional ballot affidavits accepted at each polling place;
- (E) requests for cancellation of an application for a ballot to be voted by mail received by each polling place;
- (F) spoiled ballots at each polling place; and
- (G) marked ballots deposited in a location other than a ballot box;

(2) the allocation of voting equipment and election officials for each polling place;

(3) the number of polling places on election day that:

- (A) opened at least 10 minutes late due to the malfunction of voting system equipment or a lack of election supplies;
- (B) closed for more than 30 minutes during voting hours;
- (C) had 25 percent or more of the voting machines not functioning for at least 30 minutes during voting hours;
- (D) had 50 percent or more of the scanning equipment not functioning for at least 30 minutes during voting hours;
- (E) did not have a sufficient supply of ballots, including from a shortage, having the wrong size paper for the voting system, or any other malfunction limiting a person's ability to vote as authorized under this code;
- (F) did not print the tape showing each voting machine counter was set to zero prior to opening the polls for voting;
- (G) failed to properly prepare the precinct returns under Section 65.014 (Preparing the Precinct Returns);
- (H) had 25 percent or more of the election officers not available to work at the polling place for more than one hour at a time;
- (I) had a seal on a ballot box or voting equipment that did not match the documentation or was broken; and
- (J) were not able to reconcile every voter against the record of votes cast, including the number of polling places where the discrepancy exceeded two votes cast;

(4) the number of ballots cast on election day that were duplicated by the central counting station; and

(5) the number of times a presiding judge delivered the election returns but did not receive a chain of custody document.

Sec. 31.0434. REPORT TO COUNTY ELECTION COMMISSION: ADDITIONAL ELECTION INFORMATION. Requires the county elections administrator, not later than the 30th day after the final canvass of an election is completed, to provide a report to the county election commission that includes the following information pertaining to an election conducted in the county:

(1) the number of suspense voters in the county;

(2) the number of statements of residence completed at each polling place;

(3) a reconciliation of:

(A) every election precinct in the county on the number of registered voters and the number of votes cast;

(B) every data storage device assigned to a polling place or to ballots to be voted by mail and its inclusion on audit documentation; and

(C) the number of votes on each results tape and the total number of votes cast; and

(4) an inventory of election records with container labels, including a list of the contents in each container.

Sec. 31.0435. COUNTY ELECTION COMMISSION REVIEW OF REPORTS. (a) Requires the county election commission to review reports provided by the county elections administrator under Section 31.0431.

(b) Requires the county election commission, not later than the 30th day after receiving the reports, to provide recommendations to the county elections administrator based on the provided reports.

(c) Requires the county election commission, during the next countywide election, to monitor the county elections administrator to determine whether the administrator is following the recommendations provided by the commission under Subsection (b).

SECTION 4. Amends Section 43.031, Election Code, by adding Subsection (f), as follows:

(f) Prohibits a district from designating a public building as a polling place for an election for the board of trustees or for a school district bond election until after the fifth anniversary of the date of the election in which the district failed to comply with Section 43.031 (Polling Place in Public Building) if the entity that owns or controls the public building selected for a polling place under this section is a school district and fails to make the building available in accordance with Subsection (c) (relating to requiring that the building selected for a polling place be a public building if practicable).

SECTION 5. Amends Section 65.053, Election Code, as follows:

Sec. 65.053. DELIVERY OF PROVISIONAL BALLOTS. (a) Creates this subsection from existing text.

(b) Requires the presiding judge of an election precinct to daily prepare a notice of the number of provisional ballots delivered to the general custodian of elections records under Subsection (a) and deliver the notice to, as applicable:

(1) the central counting station;

(2) the counting station designated under Section 127.001(b) (relating to requiring the authority to designate one or more counting stations established by another authority); or

(3) the early voting ballot board.

SECTION 6. Amends Section 65.014(e), Election Code, to provide that an offense under Subsection (d) (relating to circumstances in which a presiding judge commits an offense) is a Class A, rather than Class B, misdemeanor.

SECTION 7. Amends Section 66.052, Election Code, as follows:

Sec. 66.052. DELIVERY BY ELECTION CLERK. (a) Creates this subsection from existing text. Authorizes a delivery of election records or supplies that is to be performed by the presiding judge to be performed by an election clerk designated by the presiding judge, subject to Subsection (b).

(b) Authorizes a presiding judge to designate only an election clerk under Subsection (a) who has served at the same polling place as the presiding judge for at least four hours before the designation.

SECTION 8. Amends Section 66.055, Election Code, as follows:

Sec. 66.055. New heading: FAILURE TO DELIVER ELECTION RECORDS. (a) Provides that if the precinct election records are not delivered by the deadline prescribed by Section 66.053(c) (relating to requiring that the precinct election records are delivered by a certain time):

(1) the secretary of state (SOS) is authorized to supervise the activities necessary to complete the count, prepare the precinct returns, and distribute the records; or

(2) creates this subdivision from existing text and makes a nonsubstantive change.

(b) Requires the district judge, if the precinct election records are impounded under Subsection (a)(2), to supervise the activities necessary to complete the count, prepare the precinct returns, and distribute the records.

SECTION 9. Makes application of Section 65.014(e), Election Code, as amended by this Act, prospective.

SECTION 10. Amends Section 65.053, Election Code, as follows:

Sec. 65.053. DELIVERY OF PROVISIONAL BALLOTS. (a) Creates this subsection from existing text.

(b) Requires the presiding judge of an election precinct to daily prepare a notice of the number of provisional ballots delivered to the general custodian of elections records under Subsection (a) and deliver the notice to, as applicable:

(1) the central counting station;

(2) the counting station designated under Section 127.001(b); or

(3) the early voting ballot board.

SECTION 11. Amends Section 86.011(b), Election Code, to require the clerk, if the return is timely, to enter the time and date of receipt on the carrier envelope and enclose the carrier envelope and the voter's early voting ballot application in a jacket envelope.

SECTION 12. Amends Section 127.126, Election Code, by amending Subsection (a) and adding Subsections (a-1) and (g), as follows:

(a) Requires the manager of a central counting station to designate teams of two election officers to prepare the duplicate ballots. Requires each officer to be aligned or affiliated with a different political party unless there are not two or more election officers serving the central counting station who are aligned with different parties.

(a-1) Requires the election officers designated under Subsection (a) to prepare a duplicate ballot by having one officer announce the name of the candidate and the other officer mark the ballot with the name of that candidate. Requires that each duplicate ballot be independently reviewed by a second team of two election officers, each of whom is aligned or affiliated with a different political party as described by Subsection (a).

(g) Requires the manager of a central counting station to post the time that ballots will be duplicated to ensure that poll watchers are able to observe the activity under Section 127.126 (Duplicating Ballots).

SECTION 13. Amends Section 127.351(c), Election Code, to prohibit a county selected to be audited from being required to pay the cost of performing an audit under Section 127.351 (Randomized County Audits), except as provided by Section 127.352.

SECTION 14. Amends Subchapter J, Chapter 127, Election Code, by adding Section 127.352, as follows:

Sec. 127.352. COOPERATION BY COUNTY. (a) Authorizes SOS to request that a county selected under Section 127.351 provide to SOS as necessary to complete an audit under Subchapter J (Randomized Audits):

(1) records or other documents in the possession of the county; and

(2) the assistance of county employees.

(b) Requires a county selected under Section 127.351 to comply with a request made under Subsection (a) not later than the 14th day after the request is made.

(c) Authorize SOS to assess an administrative penalty of not more than \$500 per day for each day following the 14th day after a request under Subsection (a) is made that the county fails or refuses to comply with the request.

SECTION 15. Provides that the changes in law made by this Act apply only to an audit initiated under Subchapter J, Chapter 127, Election Code, as amended by this Act, on or after the effective date of this Act. Provides that an audit initiated before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.