

## **BILL ANALYSIS**

C.S.H.B. 1091  
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Elections  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The bill author has informed the committee that delayed reporting of voting results leaves the electoral process vulnerable to election fraud and casts serious doubts about the accuracy of the election results when they are reported days after the election has ended. C.S.H.B. 1091 seeks to address this issue by revising state law relating to the timeliness of receiving ballots voted early by mail, vote counting, and the authenticity of election results.

### **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 the secretary of state in SECTION 12 of this bill.

### **ANALYSIS**

C.S.H.B. 1091 amends the Election Code to require a marked mail-in ballot to arrive at the address on the carrier envelope before the time the polls are required to close on election day by removing the option for the ballot to arrive at that address not later than 5 p.m. on the day after election day if the carrier envelope was placed for delivery by mail or common or contract carrier before election day and bears a cancellation mark of a common or contract carrier or a courier indicating a time not later than 7 p.m. at the location of the election on election day. Accordingly, the bill repeals the provision establishing the conditions under which a marked mail-in ballot that arrives after the prescribed deadline must be counted. The bill expands the provisions relating to the deadline for returning a marked mail-in ballot for which the secretary of state must prescribe procedures to implement to include statutory provisions regarding that deadline.

C.S.H.B. 1091 changes from the 11th day before election day to the 15th day before election day, subject to certain exceptions, the submission deadlines for an application for an early voting ballot by mail and for an application for an annual ballot to be voted by mail on the grounds of age or disability that does not specify the election for which the ballot is requested or that has been marked by the applicant as an application for more than one election.

C.S.H.B. 1091 revises provisions relating to the delivery of ballot materials for an election in which regular paper ballots are used for early voting by personal appearance or by mail as follows:

- limits the applicability of those provisions to balloting materials for ballots voted by personal appearance;

- requires the early voting clerk to post notice of each delivery of such balloting materials on the website of the entity conducting the election, in addition to posting notice at the main early voting polling place as required by current law, continuously for at least 24 hours immediately preceding the delivery and requires those notices to include the dates and times that the early voting ballot board will convene to review or count ballots, if that information is known at the time the early voting clerk posts the notices; and
- specifies writing, email, or telephone as the methods by which the early voting clerk must provide notice at least 24 hours before each delivery of balloting materials for ballots voted by personal appearance to the county chair of each political party having a nominee on the ballot.

C.S.H.B. 1091 revises provisions relating to the delivery of jacket envelopes containing mail-in ballots as follows:

- requires jacket envelopes that are hand delivered to the early voting clerk's office to be delivered to the presiding judge of the early voting ballot board as soon as practicable on election day;
- requires the early voting clerk to post notice of each delivery of jacket envelopes containing mail-in ballots on the website of the entity conducting the election, in addition to posting notice at the main early voting polling place as required by current law, continuously for at least 24 hours immediately preceding the delivery and requires those notices to include the dates and times that the early voting ballot board will convene to review or count ballots, if that information is known at the time the early voting clerk posts the notices; and
- specifies writing, email, or telephone as the methods by which the early voting clerk must provide notice at least 24 hours before each delivery of jacket envelopes containing mail-in ballots to the county chair of each political party having a nominee on the ballot.

C.S.H.B. 1091 repeals statutory provisions regarding the timely delivery of certain election materials to an early voting ballot board, including:

- a general rule that the materials must be delivered at the time or times specified by the presiding judge of the board during the time the polls are open on election day, or as soon after the polls close as practicable;
- procedures regarding the timely delivery of mail-in ballots that are counted by automatic tabulating equipment at a central counting station; and
- procedures regarding the timely delivery of jacket envelopes containing mail-in ballots in an election in which early voting votes by personal appearance are cast on voting machines.

C.S.H.B. 1091 establishes the process by which a late ballot voted by a resident federal postcard applicant must be counted by doing the following:

- requiring the early voting ballot board to count such ballots that arrive after the time the polls are required to close on election day but before the sixth day after the date of the election or the extended weekend or holiday deadline, if applicable;
- require the board to convene to count those votes at the time set by the presiding judge of the board as follows:
  - for an election held on the date of the general election for state and county officers, not later than the 13th day after the date of the election;
  - for any other election, on the ninth day after the date of the election; or
  - if the early voting clerk certifies that all ballots mailed from outside the United States have been received, on an earlier day;
- requires the board, on counting the ballots, to report the results to the local canvassing authority for the election; and
- requires the board, if the date prescribed for convening the board is a Saturday, Sunday, or legal state or national holiday, to convene on the next regular business day.

The bill requires a ballot voted by a resident federal postcard applicant who is domiciled in Texas but temporarily living outside the territorial limits of the United States and the District of Columbia to be counted if the ballot arrives at the address on the carrier envelope not later than the sixth day after the date of the election, except that if that date falls on a Saturday, Sunday, or legal state or national holiday, then the deadline is extended to the next regular business day. The bill applies that deadline to a resident federal postcard applicant returning ballots transmitted through email.

C.S.H.B. 1091 prohibits an early voting ballot board or officer of a central counting station from accumulating the results of early voting ballots until the following times:

- 12 p.m. on election day, if the entity conducting the election will count the ballots by hand;
- 3 p.m. on election day, if the entity conducting the election will not count the ballots by hand and has a population of 150,000 or more; or
- 6 p.m. on election day, if the entity conducting the election will not count the ballots by hand and has a population of less than 150,000.

The bill prohibits an early voting ballot board or officer of a central counting station from producing a printout or other tangible record of the early voting ballot count or accumulation of results until the closing of polls on election day. These prohibitions expressly do not prevent the board or officer from performing preliminary procedures other than accumulating the results of early voting ballots or generating a report of the early voting ballot count or accumulation before the applicable times.

C.S.H.B. 1091 authorizes the central counting station to operate at any time ballots may be processed or counted and sets out the following notice requirements regarding the dates and times of operation:

- not later than 72 hours before the date that the station manager plans to begin processing or counting early voting ballots, the station manager must notify the presiding judge of the early voting ballot board of the time and place that the judge may deliver early voting ballots; and
- not later than 72 hours before the initial date and time that the station begins operations in an election, the station manager must post notice of the dates and times that the station will operate in the election in the place used for posting notice of the governing body's meetings and on the website of the entity conducting the election, with the notice identifying for each date and time listed whether the station will be counting early voting ballots voted by mail or by personal appearance.

The bill establishes that, in a general election for state and county officers, the notices must be provided to each county chair of a political party that has a nominee on the ballot. The bill requires the secretary of state to prescribe rules as necessary to implement these bill provisions regarding the operation of a central counting station and those requisite notices.

C.S.H.B. 1091 repeals the following provisions of the Election Code:

- Sections 86.007(d), (e), and (f);
- Section 87.022;
- Section 87.023; and
- Section 87.024.

### **EFFECTIVE DATE**

September 1, 2025.

### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 1091 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.

Both the introduced and the substitute revise the requisite conditions under which a carrier envelope containing a marked mail-in ballot is considered to have satisfied provisions relating to the deadline for returning a marked ballot by removing the option for a marked mail-in ballot to arrive at the address on the carrier envelope not later than 5 p.m. on the day after election day if the carrier envelope was placed for delivery by mail or common or contract carrier before election day and bears a cancellation mark of a common or contract carrier or a courier indicating a time not later than 7 p.m. at the location of the election on election day. However, the substitute omits the provisions from the introduced that did the following:

- required the envelope instead to arrive not later than 5 p.m. on the day before election day;
- required the envelope to be placed for delivery by mail or common or contract carrier or a courier on or before the fourth day before election day; and
- required the envelope to bear a cancellation mark of the carrier or courier that indicates placement for delivery on or before the fourth day before election day.

The substitute repeals the provision establishing the conditions under which a marked mail-in ballot that arrives after the prescribed deadline must be counted, whereas the introduced did not repeal this provision. The substitute includes provisions absent from the introduced doing the following:

- expanding the provisions relating to the deadline for returning a marked mail-in ballot for which the secretary of state must prescribe procedures to implement to include statutory provisions regarding that deadline;
- establishes the process by which a late ballot voted by a resident federal postcard applicant must be counted;
- requiring a ballot voted by a resident federal postcard applicant who is domiciled in Texas but temporarily living outside the territorial limits of the United States and the District of Columbia to be counted if the ballot arrives at the address on the carrier envelope not later than the sixth day after the date of the election, except that if that date falls on a Saturday, Sunday, or legal state or national holiday, then the deadline is extended to the next regular business day;
- applying that deadline to a resident federal postcard applicant returning ballots transmitted through email;
- requiring the early voting ballot board to convene to count those federal postcard ballots at the time set by the presiding judge of the board and on the specified day; and
- with respect to the email transmission of balloting materials to a person voting as a federal postcard applicant, changing the deadline for the return of such a ballot to the same deadline provided by provisions relating to the return of a voted ballot.

The introduced required jacket envelopes of mail-in ballots that are hand delivered to the early voting clerk's office and received by the clerk at or before 3 p.m. on election day to be delivered to the presiding judge of the early voting ballot board as soon as practicable on election day. The substitute omits the specification that the envelope must be received at or before 3 p.m. on election day. Accordingly, the substitute also omits the following provisions from the introduced:

- the requirement for such envelopes received by the early voting clerk after 3 p.m. on election day to be delivered to the presiding judge of the early voting ballot board at the time mail-in ballots arriving after the applicable deadline are delivered to the presiding judge; and
- the requirement for the board to count those hand-delivered ballots at the time that the board convenes to count the late mail-in ballots.