

## **BILL ANALYSIS**

C.S.H.B. 3107  
By: Clardy  
Elections  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Concerns have been raised regarding some statutory provisions governing elections in Texas. It has been noted that certain election practices and procedures are in need of clarification and modernization. C.S.H.B. 3107 seeks to address these issues, among others, by updating and clarifying the law pertaining to the applicable elections.

### **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.H.B. 3107 amends the Election Code to update and clarify the law regarding certain election practices and procedures.

#### **General Provisions**

C.S.H.B. 3107 authorizes a delivery, submission, or filing of a document with an authority having administrative responsibility with regard to elections to be made by email.

C.S.H.B. 3107 extends the deadline by which a second election must be held to resolve a tie and provides for the casting of lots or the withdrawal of a candidate to resolve a tie not otherwise resolved by a recount. The bill requires a written statement of withdrawal from a tying candidate to be signed and sworn to by the candidate and provides for the circumstances under which the automatic recount is not conducted and the casting of lots is not held based on when that statement is received.

C.S.H.B. 3107 establishes that provisions relating to a runoff election day supersede a law outside Election Code provisions relating to those elections.

C.S.H.B. 3107 creates an exception for a runoff election for a special election to fill a vacancy in the U.S. Congress or a vacancy in the state legislature that is ordered as an emergency election or an expedited election from the requirement that the runoff be held during a certain time frame after the final canvass of the main election is completed.

C.S.H.B. 3107 revises the applicability of certain provisions governing the election of unopposed candidates based on whether an at-large proposition appears on the ballot.

C.S.H.B. 3107 requires notice of an election ordered by the governor to be given by the prescribed method for publication in certain newspapers and expands applicability of that requirement to include notice of an election ordered by any county authority. The bill requires notice of a general or special election to state the website of the authority conducting the election.

C.S.H.B. 3107 requires an election ordered by the governor to be held on the first Saturday in May in an even-numbered year and applies the exemption from the uniform election date requirement to any runoff election resulting from a governor-ordered emergency election. The bill expands the elections to which the countywide polling place program applies.

### **Voter Registration**

C.S.H.B. 3107 removes an indication that an applicant is interested in working as an election judge from the information furnished on a voter registration application that is confidential and does not constitute public information for purposes of state public information law. The bill removes the following:

- the requirement for the registrar, if a voter registration application clearly indicates an applicant resides in another county that is not contiguous to the applicable county, to deliver to an applicant written notice of the registrar's forwarding of the application to the other county's registrar; and
- the requirement for the registrar to prepare a voter registration certificate in duplicate after approval of a registration application.

The bill specifies that the copy of a registration that must be submitted for an application submitted by telephonic facsimile machine to be effective is the original application containing the voter's original signature. The bill includes personal delivery as an alternate method for submitting that copy. The bill removes the month and day of the voter's birth from the required contents of a voter registration certificate.

C.S.H.B. 3107 requires the voter registrar to make appropriate corrections in the voter registration records, including, if necessary, deleting a voter's name from the suspense list after notification of a data entry error that caused the voter's name to not appear on the list of registered voters of which the registrar is made aware. The bill revises the requirement for a name to be deleted from the suspense list by requiring such deletion if the following conditions are met:

- the voter's name appears on the list of registered voters; and
- the voter provides a completed and compliant voter registration application or a correction of the voter's registration information.

The bill requires the suspense list to be provided in accordance with state public information law and repeals statutory provisions providing for the maintenance of active and inactive voter registration certificates.

C.S.H.B. 3107 replaces the requirement for a voter registrar to maintain a list of the notices mailed to voters requesting confirmation of the voter's residence with a requirement for the voter registrar to maintain with the voter's record an indication that such notice was sent to the voter. The bill removes the deadline by which a voter is required to return the confirmation notice to the registrar.

C.S.H.B. 3107, with respect to the requirement for a registrar promptly to deliver a confirmation notice to a voter if the voter's registration is challenged based on the residential address, adds an exception to that requirement for a challenge containing a residential address for the voter that is different from the voter's current residential address indicated on the registration records.

C.S.H.B. 3107 includes among the conditions under which the voter registrar is required to immediately cancel a voter's registration the receipt of notice of the secretary of state's determination, based on a strong match, that the voter has more than one registration record on

file. The bill replaces the requirement for the secretary of state to send notice of such a determination to the voter registrar of each county with a requirement for the secretary of state to send the notice to the registrar of the county with the oldest applicable registration record. The bill authorizes the registrar to cancel the voter's registration if the records are located in more than one county, provided that the voter's record in the county with the newest registration record is not on the suspense list.

C.S.H.B. 3107 requires an additional copy of a supplemental list of registered voters whose registrations will be effective on election day but whose names do not appear on the original list and an additional copy of a registration correction list to be furnished as needed to ensure all voters eligible to vote in an election appear correctly on the original list.

C.S.H.B. 3107 repeals the requirement for an original or supplemental list of registered voters to contain a voter's substitute post office box address for use by the voter in place of other addresses under certain conditions.

C.S.H.B. 3107 limits the election officials to whom the statewide computerized voter registration list must be available through immediate electronic access to any county election official in the state and authorizes the secretary of state to contract with counties to provide them with electronic data services to facilitate the maintenance of the statewide computerized voter registration list.

C.S.H.B. 3107 changes from the voter registrar to the general custodian of election records the person required to electronically submit to the secretary of state after the date of the primary, runoff primary, or general election or any special election ordered by the governor, the record of each voter participating in the election.

### **Election Officers and Observers**

C.S.H.B. 3107 prohibits a contract under which the governing body of a political subdivision performs election services for a county election officer from changing the political subdivision's requirement to maintain office hours during the election period. The bill removes the prohibition against an election services contract changing the authority that serves as the custodian of voted ballots or other election records.

C.S.H.B. 3107 repeals the requirement for the county election officer to file a copy of the secretary of state's approval of an election services contract with each copy of a contract with the county executive committee of a political party if the approval is in a separate document.

C.S.H.B. 3107 requires a county election officer of each county to hold a meeting with the county chair of each political party to discuss, for each primary election or general election for state and county officers, as appropriate, the following:

- holding a joint primary;
- entering into an election services contract; and
- polling place locations.

C.S.H.B. 3107 requires the public training program that the county clerk is required to provide for election judges and clerks appointed to serve in elections ordered by the governor or a county authority to include specific procedures related to the early voting ballot board and the central counting station, as applicable. The bill extends the application of certain provisions relating to the hours of service at an early voting ballot board meeting to apply also to a signature verification committee meeting.

### **Election Supplies**

C.S.H.B. 3107 revises provisions relating to the form of a ballot regarding the shape of the space

to be filled in and instructions for doing so and requires secretary of state approval for any variation from those instructions. The bill requires an authority conducting a drawing to determine the order of the candidate's names on a ballot to provide the required written notice of the drawing to each candidate at the time the candidate files an application with the appropriate authority or by telephone or email if a telephone number or email address is provided, respectively, on the candidate's application.

### **Conduct of Elections**

C.S.H.B. 3107 sets out procedures for confirming the registration status of a voter not on the precinct list and accepting a voter whose identity has been verified. In addition, the bill does the following:

- extends the period for a county voter registrar to review a provisional voter's eligibility for an election held on the date of the general election for state and county officers; and
- establishes that provisional voting records are not available for public inspection until the first business day after the date the early voting ballot board completes the verification and counting of provisional ballots and delivers the provisional ballots and other provisional voting records to the general custodian of election records.

### **Early Voting Generally**

C.S.H.B. 3107 makes a qualified voter eligible for early voting by mail if, at the time the voter's early voting ballot application is submitted, the voter is a person who is civilly committed as a sexually violent predator and is ordered as a condition of civil commitment to reside in a facility operated by or under contract with the Texas Civil Commitment Office. The bill provides for certain information to be included with an application for an early voting ballot to be voted by mail on the ground of involuntary civil commitment.

C.S.H.B. 3107 includes the following among the information required to be stated on an election order and the election notice:

- the street address at which the early voting clerk may receive delivery by common or contract carrier, if different from the clerk's official mailing address;
- the early voting clerk's phone number and email address;
- the early voting clerk's website, if the clerk has a website; and
- a designation of the location of the main early voting polling place.

C.S.H.B. 3107 requires public notice of the time for voting in a primary election or the general election for state and county officers to be posted by the secretary of state on the secretary's website.

C.S.H.B. 3107 makes the early voting clerk of a county with a population of 100,000 or more but less than 120,000 responsible for establishing one or more early voting polling places other than the main early voting polling place in certain precincts for certain elections.

C.S.H.B. 3107 requires a county clerk, in an election of a political subdivision located in a county in which the county clerk is not the early voting clerk, to provide the applicable early voting clerk copies of the applications for an annual ballot to be voted by mail submitted by voters in the portion of the political subdivision located in the county.

C.S.H.B. 3107 requires an early voting clerk to include with the balloting materials a notice of the clerk's physical address for purposes of return by personal delivery and the list of declared write-in candidates for the election, if applicable.

C.S.H.B. 3107 authorizes a corrected federal postcard applicant ballot voted early by mail to be counted if it is timely returned.

C.S.H.B. 3107 clarifies that provisions relating to the delivery of the jacket envelopes containing the early voting ballots voted by mail and the counting of those ballots for an election conducted by the authority of a county with a population of 100,000 or more or conducted jointly with such a county apply also to an election conducted with such a county through a contract for election services.

C.S.H.B. 3107 removes the requirement for early voting regular paper ballots cast in an election that are to be duplicated to be delivered to the central counting station in a prescribed manner and repeals statutory provisions prescribing that manner.

### **Special Forms of Early Voting**

C.S.H.B. 3107 makes a person eligible for early voting by mail if the person is a member of the Texas National Guard or the National Guard of another state or a member of a reserve component of the U.S. armed forces serving on active duty under an order of the president of the United States or activated on state orders, or the spouse or dependent of a member who is otherwise qualified to vote in Texas.

C.S.H.B. 3107 requires the secretary of state to coordinate with county election officials in implementing an electronic free-access system for persons eligible for early voting by mail under provisions relating to voting by resident federal postcard applicant or to voting federal ballot by overseas citizen.

C.S.H.B. 3107 revises provisions relating to the method for submitting a federal postcard application for a ballot for early voting by mail and the conditions under which such an application is considered to be submitted in the following calendar year.

C.S.H.B. 3107 repeals a provision limiting the applicability of provisions relating to the submission by personal delivery of an application for a ballot to be voted by mail. The bill also:

- clarifies that an application with a single federal postcard for a ballot for more than one election applies to a runoff election that occurs in the next calendar year; and
- conforms the deadlines for the submission of a request for the email transmission of early voting balloting materials by a resident federal postcard applicant and for a presidential ballot to be voted by mail with the deadline for electronic transmission of an application for a ballot to be voted by mail.

### **Candidates**

C.S.H.B. 3107 changes the deadline by which a challenge for compliance with the applicable requirements as to form, content, and procedure on an application for a place on the ballot must be made from the day before any ballot to be voted early by mail is mailed to an address in the applicable authority's jurisdiction for the election for which the application is made to the 50th day before the date of that election. The bill makes statutory provisions relating to an administrative declaration of the ineligibility of a candidate for public office inapplicable to such a challenge.

C.S.H.B. 3107 establishes that the residence address and voter registration address of a signer of a petition filed in connection with a candidate's application for a place on the ballot are not required to be the same if the signer would otherwise be able to vote for that office.

C.S.H.B. 3107 requires an authority with whom an application for a place on the ballot must be filed to designate an email address in the notice of the filing period deadlines for purposes of filing the application and for filing by email certain applications for a place on the ballot for an office of a home-rule city and of a political subdivision other than a county or a city.

## **Presidential Elections and Elections to Fill Vacant Office**

C.S.H.B. 3107 establishes that, for cities conducting recall elections, a vacancy in the officer's office occurs on the date of the final canvass of a successful recall election.

C.S.H.B. 3107 extends by 14 days the period within which an emergency election to fill a vacancy in the state legislature must be held.

## **Recounts**

C.S.H.B. 3107 provides for the use of email for purposes of the general requirements for a document requesting a recount and for the designation of an agent to receive notice of the time and place of the recount on behalf of a person making the request. The bill does the following:

- requires a petition for an initial recount to be submitted by 5 p.m. of the second day after the date the canvass of the original election is completed;
- changes the date on which the recount supervisor must order the recount to be held;
- sets the deadline for submission of a recount petition at 2 p.m. of the first day after the date of the local canvass;
- sets the amount of the deposit for costs of a recount at \$60 for each of the entity's election day polling places in which regular paper ballots were used and at \$100 for each of the entity's election day polling places in which an electronic voting system was used; and
- provides for the order of a recount by the applicable authority under provisions relating to initiating an automatic recount.

## **Miscellaneous Election Provisions**

C.S.H.B. 3107 requires a person, to be eligible to serve as a bilingual election clerk, to be a qualified voter of Texas and satisfy any additional eligibility requirements prescribed by written order of the commissioners court or meet the eligibility requirements of a student election clerk.

C.S.H.B. 3107 expressly does not require the residence address of a signer of a petition filed under a law outside the Election Code to be the same as the address listed on the signer's voter registration if the signer is eligible to vote in the election precinct of a former residence or eligible to vote a limited ballot after changing country of residence.

C.S.H.B. 3107 establishes that the signature of a voter whose name appears on the list of registered voters with the notation "S" or a similar notation is considered valid if the voter is otherwise eligible to vote in the territory and provides a residence address located in the territory.

C.S.H.B. 3107 repeals the prohibition against an election precinct established for an election ordered by a city authority from dividing a county election precinct except as necessary to follow the city's boundary and repeals certain provisions relating to a state write-in ballot with respect to voting by a member of the U.S. armed forces or the spouse or a dependent of a member.

## **Repealed Provisions**

C.S.H.B. 3107 repeals the following provisions of the Election Code:

- Sections 15.082(c) and (d);
- Subchapter F, Chapter 15;
- Section 18.0051;
- Section 18.008(c);
- Section 31.099(b);
- Section 42.061(c);
- Section 84.008(b);
- Section 87.101; and
- Section 105.002.

## **EFFECTIVE DATE**

September 1, 2021.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3107 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The original included a provision expanding the applicability of the requirement for notice of an election ordered by the governor to be given by the prescribed method for publication in certain newspapers to include the notice of an election ordered by any county. The substitute clarifies that the applicability of the requirement is expanded to include a county authority.

The substitute changes the information that a voter must provide for the voter's name to be deleted from the suspense list from an update of the voter's residence information, as stated in the original, to a correction of that information.

The original and substitute both change from the voter registrar to the general custodian of election records the person who is required to electronically submit to the secretary of state after certain elections the record of each voter participating in the election. However, the original changed the deadline of that required submission, whereas the substitute maintains the statutory deadline for the submission.

The substitute does not include an authorization present in the original for a voter to deliver a marked ballot in person to the main early voting polling place while the polls are open during the early voting period.