

SUBJECT: Election processes and procedures

COMMITTEE: Elections — committee substitute recommended

VOTE: 8 ayes — Danburg, J. Jones, Denny, Gallego, Galloway, Hodge, Isett, Madden
0 nays
1 absent — Place

WITNESSES: For — Mary Ann Collins, Republican Party of Texas; Steve McDonald, Texas Democratic Party; Tony J. Sirvello III, District and County Clerks Association of Texas

Against — J.R. Perez, Texas Association of Election Administrators

On — Dana DeBeauvoir, District and County Clerks Association; Ann McGeehan and Melinda Nickless, Secretary of State; Craig Pardue, Dallas County; Bruce Sherbert, Texas Association of Election Administrators

DIGEST: CSHB 331 would add to the Election Code provisions for joint primary elections and electronic voting and amend provisions on petition verification, appointment of election officials, and election scheduling. The bill also would make a number of conforming changes relating to various election processes and procedures.

CSHB 331 would take effect September 1, 1997.

Joint primary elections

CSHB 331 would delete the existing prohibition against more than one party from holding a primary election in the same building on the same day, and provide procedures for holding and financing joint primaries. The decision to conduct a joint primary would be made by majority vote of each county commissioners court and with approval of the county clerk and county chair of each political party participating in the primary election. The county clerk would supervise the joint primary elections, determine whether to

consolidate election precincts, and designate the location of the polling place in a consolidated precinct.

One set of election officers would conduct the primary elections at each polling place. The presiding or alternate judges of each party would serve as co-judges for the precinct. The Secretary of State would establish the number of clerks for each precinct, and the county clerk would appoint them. The early voting ballot board would include representation from each party, subject to rules prescribed by the Secretary of State.

The county clerk would determine the ballot format and voting system. Separate ballot containers would be used for each party's primary, except when voters deposited ballots electronically into an automatic tabulator. Separate lists of registered voters would be used and separate election returns prepared for each party's primary.

Each party would have to remit any surplus in the county primary election fund to the county clerk for financing the joint primary election.

Electronic voting

The Secretary of State could prescribe procedures for using a modem to transmit voting results from a precinct polling place or regional tabulating center to the central counting station. The system would have to provide for secure transmission of data. Transmission could not begin until the polls closed on election day.

Losing candidates could request that initial electronic voting results be retabulated. CSHB 331 would specify that a manual recount would be preferable to an electronic recount, and an electronic recount using a corrected program preferable to an electronic recount using the same program as the original count. Only one recount method would be used to satisfy multiple requests for a recount of electronic voting results.

Verifying petitions

To be considered valid, signatures on election-related petitions would have to include the signer's date of birth. The only information required to be in signers' own handwriting would be their signatures. The use of ditto marks or abbreviations would not invalidate an entry to the petition if the required information was reasonably ascertainable. The omission of zip codes or a state reference in the address also would not invalidate a signature, so long as the political subdivision indicated was not situated in more than one state.

When verifying signatures on a petition having more than 1,000 signatures, the verifying authority would be required to use a statistical sampling method with an accuracy rate of at least 95 percent. The secretary of state could verify the validity of petition signatures regardless of whether anyone challenged the petition.

Petitions accompanying applications for a place on the ballot would not be considered a part of the application for the purposes of determining compliance with the requirements applicable to each document. No candidate could file declarations of intent for two or more offices that by law are mutually exclusive and that were elected on the same day. If a candidate filed more than one such application, only the first application would be valid.

Election officials

Vacancies among election judges could be filled without majority participation of the county committee membership if there was only one candidate and if the person selected had been elected as a precinct chair in the most recent county primary election and was eligible to serve.

The presiding judge and alternate presiding judge would have to be affiliated with different political parties. The party whose candidate for governor received the highest number of votes in the most recent election would nominate the presiding judge, and the party whose candidate received the second highest number of votes would nominate the alternate presiding judge. The nominations would be subject to the approval of the commissioners court according to eligibility requirements.

Early voting ballot board and the election officers at a early voting branch place also would have to include representation from each political party conducting a primary election in the county.

Write-in candidates could appoint election watchers to observe election procedures. Persons serving as election judges, clerks, or watchers would have to be qualified voters of the precinct and not have been convicted of an offense involving voter fraud or an offense directly attributable to an election.

The general custodian of election records and the custodian's employees could serve as clerks at a central counting station. CSHB 331 would exempt employees of political subdivisions from the requirement that they be residents of the county in order to serve as clerks.

Scheduling elections

Except for regular annual election dates and in cases of emergency approved by the governor, no election could be held 30 days before or after the date of a general state or county, primary, or runoff primary election. CSHB 331 would repeal Section 84.006 of the Election Code, which provides procedures for conducting early voting on Saturday and Sunday.

Locations designated as auxiliary early voting places could establish their own voting hours. Upon the written request of at least 15 registered voters of the county, a location would have to establish the same hours as the main early voting place.

The secretary of state would have to report no later than January 15, 1999, to the lieutenant governor and speaker of the House on the costs of elections held by the state's political subdivisions on dates other than the uniform election dates.

Other provisions

CSHB 331 would prohibit the use of movable polling places for early voting in nonpartisan elections. The bill would allow the use of movable polling

places in the general election for state and county officers, general primary election, or runoff primary election.

Candidates wishing to list their nickname on the ballot would have to have been known by that name for three, rather than the current two, years. Slogans could not be used on the ballot as nicknames.

CSHB 331 would require election judges to ask voters whose eligibility to vote was being challenged for identification in a form prescribed by the secretary of state. A person unable to provide identification could vote by filing an affidavit swearing eligibility to vote.

If two candidates received the same number of votes in an election requiring a plurality vote, one of the candidates could file a statement of withdrawal. The remaining candidate would be the winner.

Voter requests for state inspectors to monitor elections would not be available for public inspection until the day after election day.

**SUPPORTERS
SAY:**

CSHB 331 would substantially improve election procedures in Texas, allowing for a more fair and efficient process by ensuring greater accuracy in voter rolls, diminished opportunity for election fraud, and less costly elections.

Confusing and outdated election procedures have led to a variety of problems in Texas elections. In addition, the system lacks adequate checks to prevent abuses and fraud: election judges are not required to ask voters with questionable eligibility for proof of identification; individuals who have been convicted of an election offense are still allowed to serve as election officials and poll watchers; write-in candidates cannot appoint poll watchers to serve as an additional check on the propriety of the system. These and other gaps in the law raise questions about the equity and validity of Texas elections. Such uncertainty is unacceptable in a democracy; we must ensure that our elections are fair and that all citizens can have confidence in the integrity of the process. CSHB 331 would address each of these problems, enhancing the confidence of Texans in their elections and, therefore, in the officials these elections place in office.

The use of mobile voting units for early voting in nonpartisan elections should be eliminated. The movement of such units throughout a given voting area can be arbitrary and incomplete at best and fraudulent at worst. Unscrupulous individuals can direct mobile voting units to areas where their candidates or issues are most likely to gain votes. This can skew election results, interfering profoundly with the democratic process.

Current law allows commissioners courts to appoint alternate judges without any guidelines. Typically, the alternate judge that is selected is of the same party affiliation as the presiding judge. Polling places need balanced political representation in their presiding and alternate election judges, and CSHB 331 would provide such balance. The bill would ensure that no one party dominated the election process and prevent individuals from the minority party from being interfered with or intimidated.

Apportioning election judgeships according to the votes cast in the most recent gubernatorial election would be fair to all political parties. The positions would not be reserved only for Democrats and Republicans; rather, any party receiving an adequate number of votes would be represented.

A number of proposals made by CSHB 331 would provide increased efficiency, relieving localities of some of the high costs of elections. Establishing joint primaries among political parties would be an important first step in containing cost. Joint primaries would decrease the number of polling locations, reducing overhead and staff costs considerably. Allowing the use of modems to transmit election results would increase the speed and efficiency of determining an election's outcome.

CSHB 331 would also provide for less costly measures for resolving electoral ties. In some cases, an undeclared write-in candidate for precinct or county chairman who may not wish to accept the position receives the same number of votes as another candidate who does want to serve. The expense of a run-off election in such a cases is hard to justify and should be eliminated. CSHB 331 would also allow individuals in a tie race to withdraw from the election.

OPPONENTS
SAY:

The procedures CSHB 331 would establish for appointing precinct judges would favor the two major parties to the exclusion of minor parties or independents. The input of such individuals is essential to a healthy and fair election process; this bill would prevent them from participating. The commissioners court should not be allowed exclusive jurisdiction over appointment of election judges; an outside party should monitor the appointments, especially in counties lacking a strong two party system.

The prohibition against using mobile voting units in early voting for certain elections would decrease the voting access of certain voters. Mobile voting units have been an important part of the movement to extend voting access to all individuals, and removing that option would reverse that trend.

OTHER
OPPONENTS
SAY:

Mobile voting units should not be used for early voting in any elections. While CSHB 331 would properly prohibit their use in nonpartisan elections, the reasons for doing so apply across the board. The potential for fraud that exists in these nonpartisan elections is the same if not greater in scale in partisan elections.

CSHB 331 is overly restrictive in stipulating that the presiding judge be of the party gaining the most gubernatorial votes and the alternate judge be of the party garnering the second highest number of votes. In smaller areas, individuals who are both qualified and eligible to serve may be difficult to find. Requiring presiding and alternate judges to be of different parties would achieve the goal of balance while allowing localities more flexibility in finding election judges.

NOTES:

The committee substitute added provisions requiring additional identification for challenge voters; making birth dates a necessary item for validating petition signatures; and providing that the commissioners court select election judges from a list of names submitted to them.

Many provisions in CSHB 331 were included in HB 2241 by Danburg, which passed the House during the 74th regular session but died after being tagged in the Senate State Affairs Committee.