

BILL ANALYSIS

Senate Research Center

H.B. 331
By: Danburg (Madla)
State Affairs
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Engrossed

DIGEST

Currently, the Election Code provides regulations for elections in Texas. However, there are many problems and inconsistencies in the code. Among the current problems are voter fraud; election officials who have been convicted of an election offense; write-in candidates who are not authorized to appoint poll watchers; and poll watchers who have been convicted of an election offense. In addition, the Election Code does not allow for the use of a modem to transmit the results of an election from a polling place or regional tabulation center to a central counting station. This increases the difficulty of getting votes counted quickly without interference. This bill will provide new regulations regarding certain elections processes and procedures.

PURPOSE

As proposed, H.B. 331 provides new regulations regarding certain elections processes and procedures.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the secretary of state in SECTIONS 38 and 40 (Sections 114.010(a) and 127.1231(b), Election Code) and to the state executive committee in SECTIONS 50 and 54 (Sections 171.022(d) and 172.120(j), Election Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2.002, Election Code, by amending Subsections (a) and (g), and adding Subsection (h), to authorize a candidate to resolve the tie by filing with the authority described by Subsection (f) a written statement of withdrawal signed and acknowledged by the candidate. Provides that, on receipt of the statement of withdrawal, the remaining candidate is the winner, and a second election or casting of lots is not held. Makes conforming changes.

SECTION 2. Amends Section 2.028, Election Code, by amending Subsection (a) and adding Subsection (c), to authorize a tying candidate to resolve the tie by filing with the presiding officer of the final canvassing authority a written statement of withdrawal signed and acknowledged by the candidate. Provides that, on receipt of the statement of withdrawal, the remaining candidate is the winner, and a casting of lots is not held. Make a conforming change.

SECTION 3. Amends Section 2.051, Election Code, to provide in the case of an election in which any members of the political subdivision's governing body are elected from single-member districts, this subchapter applies to the election in a particular single-member district if certain conditions exist. Make a conforming change.

SECTION 4. Amends Section 13.072, Election Code, by amending Subsection (c) and adding Subsection (e), to require the registrar, if the registrar determines that an application is incomplete, to notify the applicant of that fact. Requires the registrar to proceed with the review of the application if the applicant submits the required information not later than the third day after the date notice is received under this subsection.

SECTION 5. Amends Section 13.143(e), Election Code, to provide that, if the 30th day before the date of an election is a Saturday, Sunday, or legal state or national holiday, an application is

considered to be timely if it is submitted to the registrar on or before the next regular business day.

SECTION 6. Amends Section 31.002(a), Election Code, to require the design and content of the forms the secretary of state prescribes to enhance the ability of a person to understand the applicable requirements and to physically furnish the required information in the space provided.

SECTION 7. Amends Section 31.100(d), Election Code, to prohibit a fee charged by the officer for general supervision of the election from exceeding 10 percent, rather than five percent, of the total amount of the contract, but may not be less than \$75.

SECTION 8. Amends Sections 32.002(c) and (d), Election Code, to set forth regulations regarding the appointment of a presiding county election judge and an alternate presiding county election judge. Deletes existing Subsection (d), regarding the county clerk and election judges.

SECTION 9. Amends Section 32.007, Election Code, by amending Subsections (a) and (b) and adding Subsection (f), to require a person who is appointed as a replacement for a judge originally appointed under Section 32.002 to be affiliated or aligned with the same political party as was the original judge, if possible. Makes conforming changes.

SECTION 10. Amends Section 32.051(a), Election Code, to make a conforming change.

SECTION 11. Amends Chapter 32C, Election Code, by adding Section 32.0511, as follows:

Sec. 32.0511. ELIGIBILITY REQUIREMENTS FOR COUNTY ELECTION JUDGES.
Sets forth the eligibility requirements for county election judges.

SECTION 12. Amends Chapter 32C, Election Code, by adding Section 32.0552, as follows:

Sec. 32.0552. INELIGIBILITY OF PERSON CONVICTED OF ELECTION OFFENSE.
Provides that a person is ineligible to serve as an election judge or clerk in an election if the person has been finally convicted of an offense in connection with conduct directly attributable to an election.

SECTION 13. Amends Section 32.091, Election Code, to authorize a judge or clerk to be compensated at a certain rate for services rendered under Section 62.014(c). Makes a conforming change.

SECTION 14. Amends Section 32.094(a), Election Code, to make conforming and nonsubstantive changes.

SECTION 15. Amends Section 33.002(a), Election Code, to authorize watchers to be appointed by each candidate whose name appears on the list of declared write-in candidates in certain elections.

SECTION 16. Amends Section 33.004(a), Election Code, to authorize a group of registered voters to appoint watchers on behalf of a write-in candidate in an election in which a declaration of write-in candidacy is not required to be filed.

SECTION 17. Amends Sections 33.006(b) and (c), Election Code, to make conforming and nonsubstantive changes.

SECTION 18. Amends Chapter 33B, Election Code, by adding Section 33.035, as follows:

Sec. 33.035. INELIGIBILITY OF PERSON CONVICTED OF ELECTION OFFENSE.
Provides that a person is ineligible to serve as a watcher in an election if the person has been finally convicted of an offense in connection with conduct directly attributable to an election.

SECTION 19. Amends Section 34.001(c), Election Code, to provide that a request is not available for public inspection until the day after election day.

SECTION 20. Amends Section 41.001, Election Code, by adding Subsection (c), to prohibit an election, except for an election under Subsection (a) or Section 41.0011, from being held within 30 days before or after the date of the general election for state and county officers, general primary election, or runoff primary election.

SECTION 21. Amends Section 52.031(c), Election Code, to authorize a nickname by which the candidate has been commonly known for at least three years, rather than two years, preceding the election to be used in combination with a candidate's name. Prohibits a nickname that constitutes a slogan or otherwise indicates a political, economic, social, or religious view or affiliation from being used. Prohibits a nickname from being used unless the candidate executes and files with the application for a place on the ballot an affidavit indicating that the nickname complies with this subsection.

SECTION 22. Amends Section 52.061(a), Election Code, to require a ballot to be printed in black ink on white or light-colored paper, but the ballot may not be the same color as sample ballots.

SECTION 23. Amends the heading of Section 61.010, Election Code, as follows:

Sec. 61.010. New heading: WEARING NAME TAG OR BADGE IN POLLING PLACE.

SECTION 24. Amends Section 61.010(b), Election Code, to require certain persons to wear while on duty in the area described by Subsection (a) a name tag and official badge that indicates the person's title or position.

SECTION 25. Amends Section 62.014, Election Code, by adding Subsection (c), to authorize an election officer to make the changes to the list of registered voters required by this section at a location other than the polling place before it is opened for voting.

SECTION 26. Amends Section 63.009(a), Election Code, to require a voter who does not present a voter registration certificate when offering to vote, and whose name is not on the list of registered voters for the precinct in which the voter is offering to vote, to be accepted for voting if an election officer can determine from the voter registrar that the person is a registered voter of the county, and the voter presents proof of identification in a form prescribed by the secretary of state and executes the affidavits required by Sections 63.007 and 63.008; or if any requirement prescribed by Subdivision (1) is not met, the voter executes an affidavit in accordance with Section 63.010.

SECTION 27. Amends Section 63.010(d), Election Code, to require, rather than authorize, the presiding judge to request a voter to present proof of identification. Requires the documentation of proof to be in a form prescribed by the secretary of state.

SECTION 28. Amends Section 67.004(c), Election Code, to delete a provision requiring the canvassing authority to attach or include as part of the tabulation the report of early voting votes by early voting polling place location.

SECTION 29. Amends Sections 84.001(a) and (e), Election Code, to require a person who is eligible for early voting, to be entitled to vote an early voting ballot by mail, to make an application for an early voting ballot to be voted by mail as provided by this title. Makes a conforming change.

SECTION 30. Amends Section 85.031, Election Code, to require the voting clerk, for each person entitled to vote an early voting ballot, rather than if an applicant is entitled to vote an early voting ballot, by personal appearance, to follow the procedure for accepting a regular voter on election day, with the modifications necessary for the conduct of early voting. Deletes existing text regarding applicants for early voting. Makes conforming changes.

SECTION 31. Amends Section 85.062(b), Election Code, to authorize the polling place to be located in a movable structure in the general election for state and county officers, general primary election, or runoff primary election. Makes conforming changes.

SECTION 32. Amends Section 85.064(b), Election Code, to require the authority establishing

the temporary branch polling place to determine the hours during which the voting is to be conducted on those days. Requires the authority to order voting to be conducted for the same number of hours that voting is required to be conducted on those days at the main early voting polling place under Section 85.005 on receipt of a written request for those hours submitted by at least 15 registered voters of the county. Requires the request to be submitted in time to enable compliance with Section 85.067. Makes a conforming change.

SECTION 33. Amends Section 85.069, Election Code, as follows:

Sec. 85.069. New heading: ELECTION OFFICERS SERVING BRANCH POLLING PLACE. Requires the composition of the set of election officers serving a branch polling place to provide representation for each political party conducting a primary election in the county.

SECTION 34. Amends Section 86.007, Election Code, by amending Subsection (a) and adding Subsections (d)-(g), to require a federal ballot voted by mail under Chapter 114 that arrives after the time prescribed by Subsection (a) to be counted if certain conditions are met. Sets forth regulations regarding whether or not a delivery is timely. Requires the secretary of state to prescribe procedures as necessary to implement Subsection (d). Makes a conforming change.

SECTION 35. Amends Section 87.002, Election Code, by adding Subsection (c), to require the early voting ballot board (board) for certain elections to include at least one representative from each political party that conducts a primary election in that county. Requires the representative to be appointed from a list submitted by the county chair of the political party.

SECTION 36. Amends Section 87.0241(b), Election Code, to prohibit the board from counting early voting ballots until the end of the period for early voting by personal appearance in a county with a population of 100,000 or more.

SECTION 37. Amends Section 87.1231, Election Code, as follows:

Sec. 87.1231. New heading: EARLY VOTING VOTES REPORTED BY PRECINCT. Prohibits the early voting clerk from reporting vote totals under Subsection (a) for an election precinct in which fewer than five votes are cast during the early voting period.

SECTION 38. Amends Chapter 114, Election Code, as follows:

CHAPTER 11. New heading: VOTING BY FEDERAL POSTCARD APPLICANT

Sec. 114.001. DEFINITIONS. Defines "congressional office" and "federal postcard application." Makes conforming changes.

Sec. 114.002. ELIGIBILITY. Provides that a person is eligible for voting a federal ballot by mail as provided by this chapter if the person meets certain requirements. Makes conforming changes.

Sec. 114.003. OFFICES ON WHICH VOTER ENTITLED TO VOTE. Provides that a person is not entitled to vote on a congressional office unless the person provides in the application an address of a domicile in this state. Requires a notation that the person voted on the federal postcard application to be included on the early voting poll list and the early voting roster for each person voting under this chapter. Makes a nonsubstantive change.

Sec. 114.004. APPLICATION. Requires an application for a federal ballot to be submitted to the secretary of state, rather than the early voting clerk serving the election precinct of the applicant's most recent domicile in this state. Sets forth deadlines for submitting a federal postcard application. Sets forth procedures regarding an application for a ballot. Makes a conforming change.

Sec. 114.005. APPLYING FOR MORE THAN ONE ELECTION IN SAME

APPLICATION. Sets forth regulations regarding applying for more than one election in the same application. Deletes a provision applying Chapter 101 to a federal ballot application.

Sec. 114.006. DETERMINING OFFICES TO BE VOTED ON. Makes a conforming change.

Sec. 114.007. METHOD OF PROVIDING BALLOT; REQUIRED ADDRESS; RETURN OF BALLOT. Requires the balloting materials provided under this chapter to be airmailed to the voter free of United States postage, as provided by the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et seq.). Deletes a provision requiring the secretary of state to provide early voting clerks with instructions on compliance with this subsection. Requires the address to which the balloting materials are sent to a voter to be an address outside the county of the voter's residence, rather than outside the United States. Authorizes a ballot voted under this chapter to be returned to the secretary of state by mail or military courier. Sets forth procedures regarding the sending and receiving of a ballot by telephonic facsimile machine or other electronic means.

Sec. 114.008. OFFICIAL CARRIER ENVELOPE. Makes no change.

Sec. 114.009. FEDERAL POSTCARD VOTER REGISTRATION. Provides that the submission of a federal postcard application that complies with the applicable requirements by an unregistered applicant constitutes registration by the applicant only for the purpose of voting in the federal election for which a ballot is requested and does not constitute registration under Title 2.

Sec. 114.010. COUNTING OF BALLOTS. Requires the secretary of state to prescribe procedures for the tabulation of ballots returned under this chapter. Sets forth requirements for the procedures.

SECTION 39. Amends Section 127.006(b), Election Code, to provide that the general custodian of election records, an employee of the custodian, or any other employee of a political subdivision is not ineligible to serve as a clerk under this section because the person is a qualified voter of a county other than the county in which the central counting station is located or because of the custodian's status as a candidate or officeholder.

SECTION 40. Amends Section 127.1231, Election Code, to authorize the secretary of state to prescribe procedures for the use of a system to allow results to be transmitted by a modem to the central counting station from units of automatic tabulating equipment located at a precinct polling place or at a regional tabulating center serving several precincts. Requires the system to provide for a secure transmission of data. Prohibits results from being transmitted under this subsection until the polls close on election day. Makes a conforming change.

SECTION 41. Amends Section 127.201, Election Code, to require the count to be completed not later than the 21st day after election day. Provides that Subsection (b) supersedes this subsection to the extent of conflict. Requires the secretary of state to designate not more than three offices and not more than three propositions to be counted in the selected precincts. Requires the general custodian of election records, on selection or notification, as applicable, of the precincts to be counted, to post in the custodian's office a notice of the date, hour, and place of the count. Requires a representative to deliver a certificate of appointment to the general custodian at the time the representative reports for service. Requires the certificate to be in writing and include certain information. Makes conforming changes.

SECTION 42. Amends Sections 141.032(c) and (d), Election Code, to provide that the petition is not considered part of the application for purposes of determining compliance with the requirements applicable to each document, and a deficiency in the requirements for one document may not be remedied by the contents of the other document. Provides that a determination under this section that an application complies with the applicable requirements does not preclude a subsequent determination that the application does not comply, subject to Section 141.034.

SECTION 43. Amends Section 141.063, Election Code, to provide that a signature on a petition is valid if the petition includes the signer's date of birth, among other requirements. Provides that the signature is the only information that is required to appear on the petition in the signer's own handwriting. Provides that the use of ditto marks or abbreviations does not invalidate a signature if the required information is reasonably ascertainable. Provides that the omission of the state from the signer's residence address does not invalidate a signature unless the political subdivision from which the signature is obtained is situated in more than one state. Provides that the omission of the zip code from the address does not invalidate a signature.

SECTION 44. Amends Section 141.069, Election Code, to authorize the authority to use as the basis for the verification any reasonable statistical sampling method that ensures an accuracy rate of at least 95 percent, if signatures on a petition that is required to contain more than 1,000 signatures are to be verified by the authority with whom the candidate's application is required to be filed. Deletes existing text regarding verification of signatures.

SECTION 45. Amends Chapter 142, Election Code, by adding Section 142.0021, as follows:

Sec. 142.0021. **FILING DECLARATIONS OF INTENT FOR MORE THAN ONE OFFICE PROHIBITED.** Prohibits a candidate from filing declarations of intent for two or more offices that are not permitted by law to be held by the same person and are to be voted on at one or more elections held on the same day. Provides that, if a person files more than one declaration of intent in violation of this section, each declaration filed subsequent to the first one filed is invalid.

SECTION 46. Amends Chapter 49C, Water Code, by adding Section 49.072, as follows:

Sec. 49.072. **DIRECTOR'S CANDIDACY FOR OTHER OFFICE: INELIGIBILITY.** Provides that a person serving as director of a district who becomes a candidate for another office is no longer qualified to serve as director. Defines "candidate."

SECTION 47. Amends Section 142.010(c), Election Code, to make conforming changes.

SECTION 48. Amends Section 161.006, Election Code, as follows:

Sec. 161.006. New heading: **HOLDING PRECINCT CONVENTION OF MORE THAN ONE PARTY IN SAME BUILDING.** Deletes a provision prohibiting a political party from holding a primary election in the same building in which another party is holding a primary election on the same day. Makes conforming changes.

SECTION 49. Amends Section 162.008(a), Election Code, to provide that this section applies only to a person desiring to affiliate with a political party during that part of a voting year in which the general election for state and county officers is held that follows 7 p.m. on general primary election day, for a party holding a primary election.

SECTION 50. Amends Section 171.022, Election Code, by amending Subsection (b) and adding Subsection (d), to authorize the state executive committee, by rule, to provide for the election of the county chair or precinct chairs of a particular county by plurality vote. Makes a conforming change.

SECTION 51. Amends Chapter 171B, Election Code, by adding Section 171.0221, as follows:

Sec. 171.0221. **ACCEPTANCE OF OFFICE BY WRITE-IN CANDIDATE.** Sets forth procedures for acceptance of office by a write-in candidate.

SECTION 52. Amends Section 171.024, Election Code, by amending Subsections (b)-(d), and adding Subsection (e), to authorize a vacancy in the office of precinct chair to be filled without participation of the majority of the committee membership if only one person is a candidate to file the vacancy and the person meets certain requirements. Makes conforming and nonsubstantive changes.

SECTION 53. Amends Section 172.1111, Election Code, to require the notice to remain posted continuously through election day. Makes nonsubstantive changes.

SECTION 54. Amends Section 172.120, Election Code, by adding Subsections (i) and (j), to require the state executive committee to conduct a new state canvass for a race under this section under certain conditions. Requires the canvass required by Subsection (i) to be conducted within a certain time period. Provides that the new state canvass replaces the original state canvass. Authorizes the state executive committee, by rule, to prescribe procedures as necessary to conduct the new state canvass under Subsection (i).

SECTION 55. Amends Chapter 172E, Election Code, by adding Section 172.126, as follows:

Sec. 172.126. JOINT PRIMARIES AUTHORIZED. Sets forth procedures regarding joint primaries.

SECTION 56. Amends Chapter 173A, Election Code, by adding Section 173.011, as follows:

Sec. 173.011. FINANCING OF JOINT PRIMARY ELECTIONS GENERALLY. Sets forth regulations regarding the financing of joint primary elections.

SECTION 57. Amends Section 181.006(k), Election Code, to authorize the secretary of state to verify the petition signatures regardless of whether the petition is timely challenged. Deletes existing text regarding a petition that appears valid on its face.

SECTION 58. Amends Chapter 203, Election Code, by adding Section 203.0121, as follows:

Sec. 203.0121. REPLACEMENT CANVASS. Requires the governor to conduct a new state canvass for a race under Section 203.012 under certain conditions. Requires the canvass required by Subsection (a) to be within a certain time period. Provides that the new state canvass replaces the original state canvass.

SECTION 59. Amends Section 212.005, Election Code, by amending Subsection (c) and adding Subsection (d), to authorize only one method to be used in a recount, if different counting methods are chosen under Section 214.042(a) among multiple requests for a recount of electronic voting system results. Requires a manual recount to be conducted in preference to an electronic recount and an electronic recount using a corrected program shall be conducted in preference to an electronic recount using the same program as the original count. Makes a conforming change.

SECTION 60. Amends Section 212.0241, Election Code, to authorize a candidate for nomination or election to an office to obtain an initial recount of electronic voting system results in an election in which the person was a candidate only if the candidate is shown by the election returns not to be nominated or elected. Provides that this section does not affect the scope of a recount as governed by Subchapter F. Makes conforming changes.

SECTION 61. Amends Sections 212.081, 212.083, and 212.085, Election Code, to delete text regarding a regularly scheduled runoff election. Makes a conforming change.

SECTION 62. Amends Section 212.113, Election Code, to require the recount coordinator to return to each person requesting a recount whose chosen counting method is not used under Section 212.005(d) the recount deposit less any necessary expenditures made toward the conduct of the recount before the other counting method was determined to be the preferential method. Makes conforming changes.

SECTION 63. Amends Section 232.008, Election Code, by adding Subsection (d), to require a contestant to deliver a copy of the petition to the secretary of state by the same deadline prescribed for the filing of the petition.

SECTION 64. Amends Section 233.006, Election Code, by adding Subsection (c), to require the contestant to deliver a copy of the petition to the secretary of state by the same deadline

prescribed for the filing of the petition.

SECTION 65. Amends Chapter 271, Election Code, by adding Section 271.0071, as follows:

Sec. 271.0071. MULTIPLE METHODS OF VOTING ALLOWED. Provides that the restrictions on multiple methods of voting at the same polling place or in early voting prescribed by Sections 123.005-123.007 do not apply to a joint election as if the joint election were a single election but rather apply independently to the elections of each participating political subdivision in the joint election.

SECTION 66. Amends Sections 277.002(a) and (d), Election Code, to make conforming changes.

SECTION 67. (a) Amends Chapter 41A, Election Code, by adding Section 41.0031, as follows:

Sec. 41.0031. ELECTIONS IN MARCH IN CERTAIN POLITICAL SUBDIVISIONS. Provides that this section applies only to certain political subdivisions. Requires a general or special election of officers of a political subdivision covered by this section to be held on the fourth Saturday in March.

(b) Amends Section 7(c), Chapter 429, Acts of the 70th Legislature, Regular Session, 1987, to make a conforming change.

(c) Requires the governing body of a political subdivision holding an election under Section 41.0031, Election Code, as added by this SECTION, to adjust the terms of office to conform to the new election date. Requires the governing body to adjust the election schedule to conform to the new date as provided by Section 41.006, Election Code.

(d) Provides that this section prevails over another Act of the 75th Legislature, Regular Session, 1997, to the extent of a conflict.

SECTION 68. Repealer: Section 84.006, Election Code (Making Application for Ballot Voted by Personal Appearance).

SECTION 69. Repealer: Chapter 101, Election Code (Voting By Resident Federal Postcard Applicant).

SECTION 70. Requires the secretary of state, not later than January 15, 1999, to file a report with certain persons on the costs of elections held by political subdivisions of this state on dates other than the uniform election dates prescribed by Section 41.001, Election Code.

SECTION 71. Effective date: September 1, 1997.

SECTION 72. Emergency clause.