

SUBJECT: Revising election laws

COMMITTEE: Elections — committee substitute recommended

VOTE: 5 ayes — Cain, Clardy, Jetton, Schofield, Swanson

4 nays — J. González, Beckley, Bucy, Fierro

WITNESSES: *April 1 public hearing:*

For — Chuck DeVore and Chad Ennis, Texas Public Policy Foundation; Susan Fountain, Republican Party of Texas; Juan-Manuel Gonzales, Latinos for America First; Robert L. Green, Travis Co. Republican Party Election Integrity Committee; Demesio Guerrero, Latinos for America First; Heather Hawthorne, County and District Clerks Association of Texas; Matt Long and Angela Smith, Fredericksburg Tea Party; Weston Martinez, Voter Fraud Bureau of Investigation; Richard Mouser, COS Action; Laura Pressley, True Texas Elections; Rolando Rodriguez, Latinos for America First; Marcia Strickler, Wilco We Thee People; Alan Vera, Harris County Republican Party Ballot Security Committee; Gerald Welty, Convention of States; Darcie Wilbanks, Greenwood Forest Republicans of Harris County; and 33 individuals; (*Registered, but did not testify*: Alicia Bell, Barbara Borton, Tom Borton, Tamara Colbert, Paul Hodson, and Wesley Whisenhunt, Grassroots Gold; Fran Rhodes, Rebecca Rodgers, Karen Brooks, Justin Ead, Shelia Franklin, Terry Lynch, Candelario Torres, True Texas Project; Jordan Clements, Young Conservatives of Texas-UT; Michael Conner and Brent Dunklau, Convention of States; Jim Lennon and Robin Lennon, Kingwood TEA Party; David Covey, Texas Republican County Chairman Association; Jonathan Covey, Texas Values Action; Christina Drewry, Texas Nationalist Movement; Donald Garner, Texas Faith & Freedom Coalition; Tom Glass, Texas Election Integrity; Jill Glover, Republican Party of Texas; Sheila Hemphill, TexasRight To Know; Robert Jacoby, Texans for Election Integrity; Becky Lay, Bandera County Election Integrity Committee; Stacy McMahan, East Texans for Liberty; Carol Meyer and Marty Rhymes, Republican Club of Gregg County; Karen Renick, VoteRescue; Jonathan Saenz, Texas Values; Carrie Simmons,

Opportunity Solutions Project; Barb Stauffer, Heritage Action; Manfred Wendt, Young Conservatives of Texas; and 86 individuals)

Against — Gary Bledsoe, Texas NAACP; Dennis Borel, Coalition of Texans with Disabilities; Cassandra Carter, Delta Sigma Theta Sorority Inc.; Ashley Cheng, Asian Pacific Islander Public Affairs; Jeffrey Clemmons, Austin College Student Commission, Huston-Tillotson NAACP, Texas Rising; Rosemarie Clouston, Texas Democratic Party; Mary Dyuty, MCDP; Rocio Fierro-Perez, Texas Freedom Network; Anthony Gutierrez, Common Cause Texas; Joshua Houston, Texas Impact; Savannah Kumar, ACLU of Texas; Linda Jann Lewis, Texas NAACP; Isabel Longoria, Harris County Elections Administrator; Glen Maxey and Jen Ramos, Texas Democratic Party; Cameron Mayfield, Texas Rising; Vanessa McAfee; Texas Democratic Women of Galveston County; Jeff Miller, Disability Rights Texas; Amber Mills, MOVE Texas Action Fund; Denisce Palacios, Texas Rising Action; Nina Perales, MALDEF; James Slattery, Texas Civil Rights Project; Maggie Stern, Children's Defense Fund-Texas; David Stout, El Paso County; Lauren Sullivan, Young County Elections Administrator; Patricia Zavala, Jolt; and 25 individuals; (*Registered, but did not testify*: Leonard Aguilar, Texas AFL-CIO; Heather Allison, Avow and Jane's Due Process; Joey Bennett, Secure Democracy; David Billings, Stand Up Republic Texas; Lon Burnam, Public Citizen; Darcy Caballero, Texas Democratic Party; Katherine Carmichael, Salesforce; Alycia Castillo, Texas Criminal Justice Coalition; Steve Chamberlain, Bastrop County Democratic Party; Daniel Collins, El Paso County; Jonathan Copeland, Cannabis Reform of Houston; Gabrielle Cruz, Jolt Action; Emily Eby, Texas Civil Rights Project; Richard Evans, Emgage Action; Vanessa Fuentes, City of Austin; Danny Diaz, Jesus Montalvo, and Joaquin Garcia, La Union del Pueblo Entero; Stephanie Gharakhanian Workers Defense Action Fund; Joey Gidseg, Texas Democrats with Disabilities Caucus; Diana Gomez, Progress Texas; Eugene Howard, Texas NAACP; Bill Kelly, Mayor's Office, City of Houston; Gloria Leal, League of United Latin American Citizens; Rebecca Marques, Human Rights Campaign; Ricardo Martinez, Equality Texas; Ginger Mayeaux, The Arc of Texas; Melanie Miles, Black Women Of Greater Houston PAC and Texas Alliance Of Black

PACs; Rene Perez and Elizabeth Miller, Libertarian Party of Texas; Elysia Perkins, Jolt Action; Marlene Plua, Jolt Initiative; Patty Quinzi, American Federation of Teachers; Cyrus Reed, Lone Star Chapter Sierra Club; Ender Reed, Harris County Commissioners Court; Elyse Rosenberg, National Council of Jewish Women; Kathryn Sadasivan, NAACP Legal Defense and Educational Fund, Inc.; Keyli Sandoval, Jolt; Susan Schultz, League of Women Voters of Texas; Rhea Shahane, Texas Law Democrats; Melissa Shannon, Bexar County Commissioners Court; Matt Simpson, ACLU of Texas; Jasmine Tolhurst, TDW-GC; David Weinberg, Brennan Center for Justice; Julie Wheeler, Travis County Commissioners Court; LaTonya Whittington, Cannabis Reform of Houston; Christine Wright, City of San Antonio; and 93 individuals)

On — Chris Davis, Texas Association of Elections Administrators; Keith Ingram, Texas Secretary of State; Jonathan White, Office of the Attorney General; (*Registered, but did not testify*: Thomas Parkinson)

*Full witness list for March 25 public hearing available here:*  
<https://capitol.texas.gov/tlodocs/87R/witlistbill/html/HB00006H.htm>

DIGEST:

CSHB 6 would modify statutes pertaining to poll watchers, persons eligible to be present in certain election-related locations, voter assistance, fraud, election procedures, death abstracts provided to the secretary of state, and enforcement of election laws. The bill would modify existing election-related offenses and create new offenses.

**Legislative intent.** The bill would establish the intent of the Legislature that the application of the Election Code and the conduct of elections be uniform and consistent throughout the state to reduce the likelihood of fraud in elections. A public official would have to construe the provisions of the Election Code strictly to effect the intent of the Legislature.

“Public official” would mean any person elected, selected, appointed, employed, or otherwise designated as an officer, employee, or agent of the state, a government agency, a political subdivision, or any other public body established by state law.

**Election watchers.** The bill would specify that the purpose of Election Code ch. 33 is to preserve the integrity of the ballot box in accordance with Tex. Const. Art. 4, sec. 4 by providing for the appointment of watchers. A watcher would have to observe the conduct of an election and call to the attention of an election officer any observed or suspected irregularity or violation of law in the conduct of the election.

*Removal of watcher.* A presiding judge could remove a watcher from a polling place only if the watcher engaged in activity that would constitute an offense related to the conduct of the election. A presiding judge otherwise could not have an appointed election watcher removed from a polling place or require a watcher to leave a polling place.

*Watcher observation.* A watcher appointed to serve at a polling place in an election could observe the sealing and transfer of a memory card, flash drive, hard drive, data storage device, or other medium now existing or later developed that was used by the voting system equipment.

A poll watcher would be entitled to observe the delivery of marked ballots in person to the early voting clerk's office. The poll watcher would have to be able to determine how the ballots were being delivered and how election officials were making decisions about the delivery of ballots, if applicable. A poll watcher could not disrupt the process of delivering ballots.

The bill would specify that a watcher entitled to "observe" an activity or procedure would be entitled to sit or stand near enough to see and hear the activity or procedure.

*Offenses.* It would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) for an election officer to intentionally or knowingly refuse to accept a watcher for service when acceptance of the watcher was required by statute.

A person serving in an official capacity at a location at which watchers

were authorized would commit a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if the person knowingly prevented a watcher from observing a procedure a watcher was entitled to observe, including by taking any action to obstruct the view of a watcher or distance the watcher from the activity or procedure in a manner that would make observation not reasonably effective.

**Persons present in certain election-related locations.** The bill would specify certain time periods in which only certain individuals could be present in a polling place, a meeting place of an early voting ballot board, or a central counting station.

*Polling places.* From the time a presiding judge arrived at a polling place on election day to make preliminary arrangements until precinct returns had been certified and election records had been assembled for distribution, only certain persons could be lawfully present in a polling place, including:

- an election judge or clerk;
- a watcher;
- the secretary of state;
- a staff member of the Elections Division of the Secretary of State's Office performing an official duty;
- an election official, a sheriff, or a staff member of an election official or sheriff delivering election supplies;
- a state inspector;
- a person admitted to vote;
- a child under 18 years old who was accompanying a parent who had been admitted to vote;
- a person providing authorized assistance to a voter;
- a person accompanying a voter with a disability;
- a special peace officer appointed by the presiding judge;
- the county chair of a political party conducting a primary election;
- a voting system technician;
- the county election officers, as necessary to perform tasks related to

- the administration of the election; or
- a person whose presence had been authorized by the presiding judge in accordance with the Election Code.

*Early voting ballot board meeting places.* During the time of an early voting ballot board's operations, only certain persons could be lawfully present in the meeting place of the board, including:

- a presiding judge or member of the board;
- a watcher;
- a voting system technician;
- the county election officer, as necessary to perform tasks related to the administration of the election; or
- a person whose presence had been authorized by the presiding judge in accordance with the Election Code.

*Central counting stations.* While ballots were being counted, only certain persons could be present in a central counting station, including:

- a counting station manager, tabulation supervisor, assistant to the tabulation supervisor, presiding judge, or clerk;
- a watcher;
- a voting system technician;
- the county election officer, as necessary to perform tasks related to the administration of the election; or
- a person whose presence had been authorized by the presiding judge in accordance with the Election Code.

**Voter assistance.** The bill would revise certain statutes related to voter assistance and introduce and revise offenses related to voter assistance and unlawful compensation. The bill would provide for penalty enhancements for certain offenses.

*Required form.* A person other than an election officer who assisted a voter would have to complete a form stating the name and address of the

person assisting the voter, the manner in which the person assisted the voter, the reason the assistance was necessary, and the relationship of the assistant to the voter.

The secretary of state would have to prescribe the required form. A form would have to be incorporated into the official carrier envelope if the voter was voting an early voting ballot by mail and received assistance, or would have to be submitted to an election officer at the time the voter cast a ballot if the voter was voting at a polling place or at the polling place entrance or curb in certain cases.

*Oath.* The bill would require a person selected to provide assistance to a voter to take the existing required oath under penalty of perjury, and would add to the oath the phrase, “I did not pressure, encourage, coerce, or intimidate the voter into choosing me to provide assistance.”

*Carrier envelope.* In addition to the person’s signature, printed name, and residence address, a person assisting a voter to prepare a ballot to be voted by mail would have to enter on the official carrier envelope of the voter:

- the manner of any assistance provided to the voter by the person;
- the relationship of the person providing assistance to the voter; and
- whether the person received or accepted any form of compensation or other benefit from a candidate, campaign, or political committee in exchange for providing assistance.

Spaces would have to appear on the reverse side of the official carrier envelope for indicating the manner of any assistance provided by a person assisting the voter, and the relationship of that person to the voter.

*Offenses.* The bill would specify that the current state-jail felony offense (180 days to two years in a state jail and an optional fine of up to \$10,000) of knowingly failing to comply with the carrier envelope marking requirements would not apply if a person was related to the voter within the second degree by affinity or the third degree by consanguinity. This offense would not apply if a person was physically living in the same

dwelling as the voter at the time of the event.

The bill would remove the penalty enhancement for an offense for a violation of provisions regarding the entering of certain information on the official carrier envelope of a voter. An offense for a violation of these provisions would be a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if it was shown on trial that the person committed the offense of providing unlawful assistance to the same voter in connection with the same ballot.

The bill would make the offense of unlawful compensation for assisting voters uniformly a state-jail felony, regardless of the number of previous convictions. The bill would remove certain statutory language related to the offense of unlawful compensation for assisting voters and specify that unlawfully compensating or offering to compensate another person for assisting voters or soliciting, receiving, or accepting compensation for assisting voters would constitute the offense. The definition of “compensation” would be expanded to include political favors and beneficial or favorable discretionary official acts.

The bill would repeal the misdemeanor penalty for prohibited compensation for a carrier envelope action and retain the offense as a state-jail felony if a defendant previously had been convicted two or more times of the offense.

**Election fraud offenses.** The bill would introduce new offenses and modify existing offenses related to election fraud with respect to provisional voting, prohibited votes, ballot alteration, inappropriate vote counting, fraud, voter registration, false information provided to voters, paid vote harvesting, distributing mail voting applications and early voting ballots, and perjury.

*Provisional voting.* The bill would make it a state-jail felony for an election judge to knowingly provide a voter with a form or affidavit required to accept a voter if the form contained false information that was entered on the form by the judge.



*Prohibited voting.* It would be an offense for a person to knowingly vote or attempt to vote in an election in Texas after voting in another state in an election in which a federal office appeared on the ballot and the election day for both states was the same day. If conduct related to prohibited voting constituted an offense under another law, a person could be prosecuted under these provisions, the other law, or both. The offense would be a second-degree felony unless the person was convicted of an attempt, in which case the offense would be a state-jail felony.

*Ballot alteration, vote counting.* The bill would make it a state-jail felony for a person to knowingly or intentionally make any effort to:

- influence the independent exercise of the vote of another in the presence of the ballot or during the voting process, including by altering the ballot of another or by otherwise causing a ballot to not reflect the intent of the voter;
- count invalid votes or alter a report to include invalid votes; or
- fail to count valid votes or alter a report to exclude valid votes.

*Fraudulent votes, registrations, information.* The bill would increase from a class A misdemeanor to a state-jail felony the offense of knowingly or intentionally making any effort to:

- cause a voter to become registered, a ballot to be obtained, or a vote to be cast under false pretenses; or
- cause any intentionally misleading statement, representation, or information to be provided to an election official or on an application for ballot by mail, carrier envelope, or any other official election-related form or document.

*Paid vote harvesting.* The bill would make it a third-degree felony for a person to, directly or through a third party, knowingly provide or offer to provide vote harvesting services in exchange for compensation or other benefit, or provide or offer to provide compensation to a person in exchange for vote harvesting services. The bill would create an offense

making it a third-degree felony for a person to knowingly collect or possess a ballot voted by mail or official carrier envelope from a voter in connection with vote harvesting services.

The bill would codify definitions of "benefit" and "vote harvesting services" and specify that compensation or other benefit in exchange for vote harvesting services would be inferred if a person who performed the vote harvesting services for a candidate or campaign solicited, received, or was offered compensation from the candidate or campaign, directly or through a third party, for services other than the vote harvesting services provided.

The offense of paid vote harvesting would not apply to political speech or other acts merely promoting a candidate or measure that did not involve direct interaction with an application for ballot by mail, in the presence of the voter, or a voter's official ballot, ballot voted by mail, or carrier envelope.

If this offense constituted an offense under any other law, the actor could be prosecuted under these provisions, the other law, or both.

*Distributing mail voting application, early voting ballots.* It would be a state-jail felony for a public official to knowingly, while acting in an official capacity:

- solicit the submission of an application to vote by mail from a person who did not request an application;
- distribute an application to vote by mail to a person who did not request the application unless the distribution was expressly authorized by another provision of Election Code, unless the official was providing access to an application to vote by mail from a publicly accessible internet website;
- authorize or approve the expenditure of public funds to facilitate third-party distribution of an application to vote by mail to a person who did not request the application; or
- complete any portion of an application to vote by mail and

distribute the application to an applicant, unless the official was lawfully assisting an applicant.

It would be a state-jail felony for an early voting clerk or other election official to knowingly mail or otherwise provide an early voting ballot by mail or other early voting by mail ballot materials to a person who did not submit an application for a ballot to be voted by mail.

*Perjury.* It would be a state-jail felony for a person to make a false statement or swear to the truth of a false statement previously made while making the required oath before assisting a voter.

**Alteration of election procedures.** A public official could not alter, waive, or suspend an election standard, practice, or procedure mandated by law or rule unless the alteration, waiver, or suspension was expressly authorized in the Election Code.

**Enforcement.** The bill would require the prioritization of certain proceedings related to violations of the Election Code and specify requirements for courts in handling these cases.

The Texas Supreme Court, a court of appeals, or a trial court would have to prioritize over any other proceeding pending or filed in the court a proceeding for injunctive relief under Election Code ch. 273 based on alleged conduct constituting an offense under ch. 276 pending or filed in the court on or after the 60th day before a general or special election.

The court with jurisdiction over such a proceeding, on request of any party, would have to grant the party the opportunity to present an oral argument and begin hearing the argument as soon as practicable but no later than 24 hours after the last brief was due to the court. Oral arguments could be given in person or through electronic means.

The bill would specify that a court proceeding entitled to priority that was filed in a court of appeals would be docketed by the clerk of the court and assigned to a panel of three justices determined using an automated

assignment system. It would be a state-jail felony for a person, including a public official, to communicate with a court clerk with the intention of influencing or attempting to influence the composition of a three-justice panel assigned a specific proceeding under these provisions.

On written request of any party to a prioritized case, a trial court would have to hold a hearing on a prioritized proceeding as soon as practicable but no later than 24 hours after the court received a hearing request. A hearing could be held in person or through electronic means.

The clerk of a district court, county court, or statutory county court in which a prioritized proceeding was filed would have to docket the proceeding and, if more than one court in the county had jurisdiction over the proceeding, randomly assign the proceeding to a court using an automated assignment system.

It would be a state-jail felony for a person, including a public official, to communicate with a county or district clerk with the intention of influencing or attempting to influence the court or judge assigned to a prioritized proceeding.

**Death abstracts.** The bill would require abstracts prepared by local registrars of death and clerks of courts with probate jurisdiction to be filed with voter registrars and the secretary of state as soon as possible, and no later than seven days after an abstract was prepared.

**Spoiled ballots.** The bill would specify that a register of spoiled ballots at a polling place maintained by an election officer would include spoiled ballots from a direct recording electronic voting unit.

**Severability.** If any provision of the bill or its application to any person or circumstance was held invalid, the invalidity would not affect other provisions or applications of the bill that could be given effect without the invalid provision or application, and to this end the provisions of CSHB 6 would be declared to be severable.

The bill would take effect September 1, 2021, and changes in law made by the bill would apply only to an offense committed on or after that date.

SUPPORTERS  
SAY:

CSHB 6 would help to restore voter confidence in the integrity and security of elections in Texas. It would empower poll watchers to oversee election conduct without fear of being removed, add safeguards for the lawful assistance of a voter, and strengthen the consequences for violations of election law.

**Election watchers.** The bill would empower poll watchers to perform their roles as observers by prohibiting election judges from removing them for arbitrary reasons or improperly refusing to accept them. If a poll watcher did disrupt a polling place in violation of the Penal Code, that person could be removed by a police officer.

**Voter assistance.** The bill would provide greater protections from exploitation for individuals who may require voting assistance. This includes individuals over 65 years old casting a ballot by mail and those with disabilities, the visually impaired, and those who could not read the language in which a ballot was printed. By modifying the required oath to include acknowledgement that assistance was not provided under coercion and requiring new information to be written on carrier envelopes, the bill would help deter attempts to take advantage of the voter needing assistance. The bill would not seek to deter individuals from assisting voters or make it harder for individuals who need help, but it would increase safeguards to protect such voters from exploitation by bad actors.

**Election fraud offenses.** The bill would deter various forms of election fraud by creating new criminal penalties and enhancing existing ones, sending a strong message about Texas' commitment to election integrity. Election fraud is a serious offense that undermines a core civic duty and should be treated as such under the law. The bill would not deter lawful voting, but rather would deter bad actors seeking to fraudulently cast votes or illicitly modify or exclude the votes of others. The bill would not punish individuals for making simple clerical errors or other mistakes

because an action prohibited under the bill would have to be carried out knowingly or intentionally to qualify as an offense.

**Enforcement.** By requiring courts to prioritize and expedite certain cases, the bill would provide for the quick disposition of time-sensitive election matters. The bill would not jeopardize other time-sensitive legal proceedings but simply ensure that election complaints within 60 days of an election were handled expeditiously. This would enable legitimate legal complaints about the election process to be addressed before election day and for injunctive relief to be provided.

CRITICS  
SAY:

CSHB 6 could exacerbate an already needlessly restrictive elections system by creating overly harsh penalties and making voting even more cumbersome. Texas already has some of the harshest voting restrictions in the country and low voter turnout rates. Instead of complicating the process of voting, the Legislature should make it easier for Texans to access the ballot box.

**Election watchers.** The bill would remove the ability of election judges to remove poll watchers who were harassing voters or engaging in otherwise disruptive behaviors. Poll watchers are partisan agents appointed by candidates and political parties. The bill could enable harassment of voters by disruptive watchers and remove the remedy for this harassment.

**Voter assistance.** The bill would create a chilling effect on individuals wishing to provide lawful assistance to voters with disabilities or elderly voters voting by mail by creating overly burdensome requirements and harsh criminal penalties. Its overly broad language could cause individuals to be prosecuted for election offenses due to simple mistakes in the required form.

**Election fraud offenses.** By implementing a variety of overly punitive election offenses, the bill could discourage voters and potential poll workers, further depressing Texas' already low voter turnout. Some offenses under the bill would be second-degree felonies, placing election

crimes on the same level as certain high-value property theft and other serious crimes. The bill also would limit the information provided to voters by criminalizing routine get-out-the-vote activities related to applications for a ballot by mail or the collection of ballots. Election fraud is rare in Texas and existing law is more than sufficient to deter individuals from fraudulently casting a ballot, changing votes, or otherwise illicitly influencing an election.

**Enforcement.** The bill would require the prioritization of certain election cases over potentially more pressing judicial matters. The special treatment of election fraud cases under the bill, regardless of merit, could bog down the court system and jeopardize certain time-sensitive legal proceedings, such as cases involving protective orders.