

# The State of Texas



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John B. Scott  
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## **ELECTION ADVISORY** **NO. 2021-21**

TO: Election Officials

FROM: Keith Ingram, Director, Elections Division 

DATE: November 19, 2021

RE: 2021 Legislative Summary – Second and Third Special Sessions

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Below is a brief summary of the election-related legislation that passed during the 87th Texas Legislature's Second and Third Special Sessions in 2021.

All statutory references in this advisory are to the Texas Election Code ("the Code"), unless otherwise indicated.

### **Joint Resolutions**

The Texas Legislature adopted two joint resolutions in the Second and Third Special Sessions. As a result, **there will be a statewide constitutional amendment election held on May 7, 2022.**

The Secretary of State (SOS) will provide additional guidance to county election officials in advance of the May 7, 2022 statewide election.

**SJR 2 (2nd C.S.) (Bettencourt):** "The constitutional amendment authorizing the legislature to provide for the reduction of the amount of a limitation on the total amount of ad valorem taxes that may be imposed for general elementary and secondary public school purposes on the residence homestead of a person who is elderly or disabled to reflect any statutory reduction from the preceding tax year in the maximum compressed rate of the maintenance and operations taxes imposed for those purposes on the homestead."

**SJR 2 (3rd C.S.) (Bettencourt):** "The constitutional amendment increasing the amount of the residence homestead exemption from ad valorem taxation for public school purposes from \$25,000 to \$40,000."

## **Senate Bill 13 (2nd C.S.)**

**Senate Bill 13 (Huffman):** Establishes dates for the candidate-filing period, general primary election, and primary runoff election for the 2022 election cycle based on when legislative redistricting plans become law. Directs the SOS to set the dates of the filing period for precinct chair elections and to adjust the schedules for performing any official act relating to the 2022 election cycle as necessary for the efficient and orderly administration of the election. SB 13 takes effect on December 2, 2021. For more information about the precinct chair filing period (which began on September 14, 2021), please see [Advisory 2021-12 Precinct Chair Elections and Candidate Filings for 2022](#). Please also review [Advisory 2021-14 Impact of Redistricting on Certain Election Deadlines and Procedures](#).

As a reminder, the candidate filing period for all public offices began on November 13, 2021 and ends at 6:00 p.m. on December 13, 2021. (Sec. 172.023).

## **Senate Bill 1 (2nd C.S.)**

**Senate Bill 1 (Hughes):** Amends numerous provisions in the Texas Election Code. Pursuant to Section 10.03(b) of the bill, the changes in law made by SB 1 apply only to an election ordered on or after the bill's effective date, December 2, 2021.

This summary will briefly discuss certain changes within each Article of SB 1.

### **Article 1: General Provisions**

- **Legislative Intent**
  - Provides that it is the intent of the legislature that the application of the Texas Election Code and the conduct of elections be uniform and consistent throughout this state to reduce the likelihood of fraud in the conduct of elections, protect the secrecy of the ballot, promote voter access, and ensure that all legally cast ballots are counted. (Sec. 1.0015).
  - Requires election officials and other public officials to strictly construe the provisions of the Election Code to effect the intent of the legislature under Section 1.0015. (Sec. 1.003).
- **Election Official Defined:** Defines “election official” to mean:
  - County clerks, elections administrators, and their permanent or temporary employees;
  - Early voting clerks and deputy early voting clerks;
  - Election judges, alternate judges, and election clerks;
  - Presiding judges, alternate presiding judges, and members of an early voting ballot board (EVBB);

- Chairs, vice chairs, and members of a signature verification committee (SVC);
  - Central counting station presiding judges, alternate presiding judges, managers, clerks, tabulation supervisors, and assistants to tabulation supervisors; and
  - Chairs of political parties holding primary election or primary runoff election. (Sec. 1.005).
- **Reasonable Accommodations or Modifications for Voters with Disabilities:** A provision of the Texas Election Code may not be interpreted to prohibit or limit the right of a qualified individual with a disability to request a reasonable accommodation or modification to any election standard, practice, or procedure mandated by law or rule that the individual is entitled to request under federal or state law. (Sec. 1.022).

## Article 2: Registration of Voters

- **Pre-Filled Information on Voter Registration Applications:** Certain information on a voter registration application must be supplied by the applicant and **cannot** be pre-filled by a person or entity sending an application to the voter:
  - a statement that the applicant is a United States citizen;
  - a statement that the applicant is a resident of the county;
  - a statement that the applicant has not been determined by a final judgment of a court exercising probate jurisdiction to be totally mentally incapacitated or partially mentally incapacitated without the right to vote;
  - a statement that the applicant has not been finally convicted of a felony or that the applicant is a felon eligible for registration under Section 13.001; and
  - the applicant's Texas driver's license number or the number of a personal identification card issued by the Department of Public Safety (DPS); if the applicant has not been issued such a number by DPS, the last four digits of the applicant's social security number; or a statement that the applicant has not been issued any of these numbers. (Sec. 13.002(c-1)).
- **Increased Offense for False Statements on a Voter Registration Application:** Provides additional information about false statements on a voter registration application and increases the offense of making false statements on an application from a Class B to Class A misdemeanor, with certain circumstances constituting a state jail felony. (Sec. 13.007).
- **Online Updates for Voters Moving to New Counties:** Allows currently registered voters to update their registration via texas.gov when they move to a different county within the state. When the voter's current county of registration

receives notice of this update, the registrar shall forward this notice and the voter's application to the new county in which the voter resides. The new county shall process the application and register the voter, if otherwise eligible; the former county shall cancel the voter's existing registration. (Sec. 15.021).

- **Reporting Requirements for Voter Registrars:** If a registrar determines that a person who is not eligible to vote registered to vote or voted in an election, the registrar shall, within 72 hours not including weekends after making the determination, execute and deliver to the attorney general, SOS, and the county or district attorney an affidavit stating the relevant facts. (Sec. 15.028).
- **Non-Citizen List Maintenance Process:** Requires the SOS to enter into an agreement with DPS under which information in the existing statewide voter registration list is compared against information in the DPS database each month to verify the accuracy of citizenship status information previously provided on voter registration applications. In comparing this information, the SOS shall consider only a voter's information in the DPS database that was derived from documents presented by the voter to DPS after the person's current voter registration became effective. If the registrar is provided notification of persons who indicate a lack of citizenship status in connection with a DPS record under this process, the registrar must deliver to each registered voter whose name appears on the list a written notice requiring proof of citizenship. (Sec. 16.0332).
- **Monitoring of Registrar's Compliance:** Requires the SOS to monitor a county voter registrar's compliance with certain requirements in the Texas Election Code. If a registrar is not in substantial compliance with these requirements, the SOS must take additional action, including providing training and auditing the county's voter registration list. If the SOS determines that the registrar has not performed any overt actions to pursue compliance within 14 days of receiving the results of an SOS audit, the SOS shall inform the attorney general of these violations and the county may be subject to a civil penalty of \$1,000 for each day of noncompliance. (Sec. 18.065).
- **Notification to County Voter Registrar of Non-Residents in Counties**
  - Requires the SOS to compare information obtained from jury responses that indicate someone is a nonresident of the county to the statewide voter registration list and provide notice to the counties of these voters. Notice need not be provided for a voter who is subject to an exemption from jury service under Section 62.106 of the Government Code if that exemption is the only reason the voter is excused from jury service. (Sec. 18.068).
  - The clerk shall send a copy of the list of individuals excused for jury service due to their nonresident status to the county voter registrar and the SOS. (Sec. 62.114, Government Code).
- **Referrals to Attorney General:** If, after receiving or discovering information indicating that criminal conduct in connection with an election has occurred, the

SOS determines there is reasonable cause to suspect that criminal conduct occurred, the SOS shall promptly refer the information to the attorney general. (Sec. 31.006).

- **Access to Information on Statewide Voter Registration List:** On request, a county election official shall provide to a member of the early voting ballot board or signature verification committee all available information necessary to fulfill the functions of the board or committee, including information from the statewide voter registration list. Directs the SOS to adopt rules as necessary to prevent EVBB and SVC members from retaining or sharing voters' personally identifiable information for any reason unrelated to the members' official duties. (Sec. 87.028).

### **Article 3: Conduct and Security of Elections**

- **Mandatory Cancellation of Elections:** Requires that unopposed candidates be declared elected for the office sought. Unopposed candidates will no longer have votes cast for them and shall appear on the ballot under the header, "Unopposed Candidates Declared Elected." (Secs. 2.053, 2.056).
- **Countywide Polling Place Program:** Expands the types of paper-based systems authorized for use in the countywide polling place program. (Sec. 43.007).
- **Voting from Inside a Vehicle:** Specifies that no voter may cast a vote from inside a motor vehicle unless the voter meets the requirements for curbside voting under Section 64.009. (Sec. 43.031).
- **Opening/Closing of Polls When Using Electronic Voting Systems:** Immediately before the opening of the polls on the first day of early voting and on election day, the presiding judge or alternate judge shall confirm that the public counters on each voting machine are set to zero and shall print the tape that shows that there are zero votes for each candidate or measure on the ballot. In addition, immediately after the closing of the polls on election day, the presiding judge or alternate judge shall print the tape to show the number of votes cast for each candidate or measure. Each election judge and alternate judge shall sign the printed tapes. (Sec. 61.002).
- **Checklists for Opening and Closing the Polling Place:** Requires the SOS to create a checklist or similar guidelines to assist the presiding judge of a polling place in processing forms and conducting procedures required for the opening and closing of the polling place. (Sec. 66.004).
- **Modifications to Days/Hours of Early Voting:** Modifies the required days and hours for weekday early voting by personal appearance (Sec. 85.005) and for weekend voting (Sec. 85.006).

- For elections in which the county election officer is serving as the early voting clerk, early voting must be conducted at the main early voting location on each weekday that is not a legal state holiday for a period of at least nine hours. Voting may not be conducted earlier than 6:00 a.m. or later than 10:00 p.m. (Sec. 85.005(a)).
- For all other elections in which the county election officer is not the early voting clerk, early voting must be conducted at the main early voting location on each weekday that is not a legal state holiday for a period of at least nine hours unless the territory has fewer than 1,000 registered votes. For territories with less than 1,000 registered voters, voting shall be conducted for at least four hours each day. (Sec. 85.005(b)).
- In a county with a population of 55,000 or more:
  - Voting in a primary election or general election for state and county officers shall be conducted at the main early voting location for at least 12 hours on each weekday of the last week of the early voting period. Voting may not be conducted earlier than 6:00 a.m. or later than 10:00 p.m. (Sec. 85.005(c)).
  - Voting in a special election ordered by the governor shall be conducted at the main early voting location for at least 12 hours on each of the last two days of the early voting period. Voting may not be conducted earlier than 6:00 a.m. or later than 10:00 p.m. (Sec. 85.005(c)).
  - Voting in a primary election or general election for state and county officers shall be conducted at the main early voting location on the last Saturday of the early voting period for at least 12 hours and on the last Sunday of the early voting period for at least six hours. Voting may not be conducted earlier than 6:00 a.m. or later than 10:00 p.m. on Saturday, or earlier than 9:00 a.m. or later than 10:00 p.m. on Sunday. (Sec. 85.006(e)).
- In a county with a population of less than 55,000:
  - On receipt of a written request submitted by at least 15 registered voters of the county, voting shall be conducted at the main early voting location for at least 12 hours on each weekday of the last week of the early voting period. Voting may not be conducted earlier than 6:00 a.m. or later than 10:00 p.m. (Sec. 85.005(c)).
  - On receipt of a written request submitted by at least 15 registered voters of the county, voting shall be conducted at the main early voting location on the last Saturday of the early voting period for at least 12 hours and on the last Sunday of the early voting period for at least six hours. Voting may not be conducted earlier than 6:00 a.m. or later than 10:00 p.m. on Saturday, or earlier than 9:00 a.m. or later than 10:00 p.m. on Sunday. (Sec. 85.006(e)).

- A voter in line at the scheduled time for closing a polling place is entitled to vote after the time if the voter is in line at the polling place by closing time. (Sec. 85.005(d)).
- **Permanent Branch Polling Place:** In a countywide election in which the county clerk is the early voting clerk, an early voting polling place must be located inside each branch office regularly maintained for the clerk's general clerical functions. If a suitable room is unavailable inside the branch office, the polling place may be located in another room inside the same building as the branch office. (Sec. 85.061(a)).
- **Early Voting Locations**
  - Early voting polling places established under Section 85.062 must be located inside any building, and cannot be located in a movable structure for the general election for state and county officers, general primary election, or primary runoff election. (Sec. 85.062(b)).
  - The location of temporary branch polling places in an election in which countywide polling places are used must be determined with the same methodology that is used for the location of countywide polling places. (Sec. 85.062(f-1)).
- **Composition of Early Voting Ballot Board:** The EVBB must have an alternate judge, appointed in the same manner as the presiding judge. For the general election for state and county officers, the names on the list of individuals eligible for appointment to the EVBB must be submitted in order of the county chair's preference. The county election board shall appoint persons as members of the EVBB in the order of preference indicated on each list. The presiding judge and the alternate judge of the EVBB shall be appointed from the lists provided and must be the highest-ranked persons on the respective lists from the political parties whose nominee for governor received the most and second most votes in the county in the most recent gubernatorial general election. (Sec. 87.002).
- **Voting System Ballot Alignment:** Voting system ballots may not be arranged in a manner that allows a political party's candidates to be selected in one motion or gesture. (Sec. 124.002).
- **Central Counting Station Practices**
  - **Appointment of Central Counting Station Clerks:** The alternate judge of the central counting station may appoint central counting station clerks. Clerks appointed by the alternate judge serve under the direction of the presiding judge of the central counting station. (Sec. 127.006).
  - **Electronic Devices in the Central Counting Station:** In a county with a population of 250,000 or more, any electronic device inside a central counting station that is necessary to count votes must be equipped with audit logs to track input and activity on the device. Copies of audit logs

shall be delivered to the SOS not later than the fifth day after vote counting is complete. (Sec. 127.009).

- **Security at the Central Counting Station**

- The general custodian of election records must post a licensed peace officer to ensure the security of ballot boxes containing voted ballots throughout the period of tabulation at the central counting station. (Sec. 127.1232(a)).
- In counties with a population of 100,000 or more, the general custodian of election records shall implement a video surveillance system that retains a record of all areas containing voted ballots: (1) from the time the voted ballots are delivered to the central counting station until the canvass of the precinct election returns; and (2) from the time the voted ballots are delivered to the signature verification committee or early voting ballot board until the canvass of precinct election returns. Video from the surveillance system shall be made available to the public by live stream. The recorded video is considered an election record and shall be retained by the general custodian until the end of the calendar year in which an election is held or until an election contest filed in the county has been resolved, whichever is later. (Sec. 127.1232(b)).

- **Randomized County Audits:** Immediately after the uniform election date in November of an even-numbered year, the SOS shall conduct an audit of the elections held in four randomly selected counties during the previous two years. Two of the counties must have a population of 300,000 or more; two counties must have a population of less than 300,000. A county selected for an SOS audit may not pay the cost of performing the audit. (Sec. 127.351).

## **Article 4: Election Officers and Observers**

- **Modifications to Poll Watcher Provisions**

- **Purpose and Duty of Poll Watchers:** Provides that it is the intent of the legislature that watchers duly accepted for service under Chapter 33 be allowed to observe and report on irregularities in the conduct of any election, but may not interfere in the orderly conduct of an election. A watcher appointed under Chapter 33 shall observe without obstructing 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. (Sec. 33.0015).
- **Removal of a Poll Watcher:** A presiding judge may not have a poll watcher removed from the polling place for violating the Texas Election Code or any other law relating to the conduct of an election, other than a violation of the Penal Code, unless the violation was observed by an election judge or clerk. A presiding judge may call a law enforcement

officer to request that a poll watcher be removed if the poll watcher commits a breach of the peace or a violation of law. (Sec. 32.075).

- **Required Training for Poll Watchers:** Requires the SOS to develop and maintain a training program for watchers. The training must be available entirely via the Internet and at any time, without a requirement for prior registration. The training also must provide the watcher with a certificate of completion. To be eligible to serve as a watcher, a person must complete the SOS training. To be accepted for service, a poll watcher must present a certificate of completion of the SOS training and a certificate of appointment to the presiding judge of the polling place, EVBB, or SVC. (Secs. 33.008, 33.031, 33.051).
- **Poll Watcher Oath:** Before accepting a watcher, an election officer shall require the watcher to take the following oath: "I swear (or affirm) that I will not disrupt the voting process or harass voters in the discharge of my duties." (Sec. 33.051(h)).
- **Refusal to Accept a Watcher:** An election officer commits a Class A misdemeanor offense by intentionally or knowingly refusing to accept a watcher for service as required by Section 33.051. (Sec. 33.051(g)).
- **Poll Watcher Rights:** A watcher is entitled to sit or stand near enough to see and hear the election officers conducting the observed activity, except as otherwise prohibited by Chapter 33 of the Code. Except as provided by Section 33.057(b), a watcher may not be denied free movement where election activity is occurring within the location at which the watcher is serving. A watcher who is entitled to "observe" an election activity under the Code is entitled to sit or stand near enough to see and hear the activity. (Sec. 33.056).
- **Observing Data Storage Sealing and Transfer**
  - A watcher appointed to serve at a polling place may observe all election activities relating to closing the polling place, including the sealing and transfer of a memory card, flash drive, hard drive, data storage device, or other medium now existing or later developed for use with voting system equipment. (Sec. 33.0605(a)).
  - A watcher duly accepted for service at a polling location is entitled to follow the transfer of election materials from the polling place to the regional tabulating center, central counting station, or other location designated to process election materials. The authority responsible for the designated location must accept a duly appointed watcher for service in the same manner as a watcher is accepted under Section 33.051 and must accept the same number of watchers that may serve under Section 33.007(a). (Sec. 33.0605(b)).

- **Obstructing View of Watcher:** It is an offense if a person takes any action to obstruct the view of a watcher or distance the watcher from the activity or procedure to be observed in a manner that would make observation not reasonably effective. (Sec. 33.061).
- **Relief to Aggrieved Party:** A watcher's appointing authority who believes that the watcher was unlawfully prevented or obstructed from the performance of the watcher's duties may seek: (1) injunctive relief under Section 273.081, including temporary relief; (2) a writ of mandamus under Section 161.009 or Section 273.061; and (3) any other remedy available under law. (Sec. 33.063). The SOS is provided the same remedial options if the SOS believes that a state inspector was unlawfully prevented or obstructed from performing their duties. (Sec. 34.005).
- **In-Person Delivery of Marked Ballots:** A marked ballot delivered in person must be received by an election official at the time of delivery. The election official shall record the voter's name, signature, and type of identification provided on a roster prescribed by the SOS. (Sec. 86.006(a-2)).
- **Communications with Voting System Vendors:** Any communication between a public official and a voting systems vendor constitutes public information under Chapter 552 of the Texas Government Code and is not confidential, unless it is subject to certain specified exemptions or the communication discloses information, data, or records relating to the security of elections critical infrastructure. (Sec. 121.004).
- **Write-Once Data Storage Discs for Ballot Scanning System:** By September 1, 2026, an authority operating a central counting station may not purchase or use a centrally counted optical ballot scan system that uses a data storage disc on which information, once written, is capable of being modified. An authority that purchases system components to comply with this requirement is eligible for full reimbursement of the cost of the system components. (Sec. 127.1301).
- **Written Reconciliation of Votes and Voters:** Requires the presiding judge of the central counting station to provide and attest to a written reconciliation of votes and voters at the close of tabulation for election day and again after the central counting station meets for the last time to process late-arriving ballots by mail and provisional ballots. Directs the SOS to create a form to facilitate compliance with this section, and requires that the form be posted on a website maintained by the county along with election returns and results. (Sec. 127.131).
- **Voting System Testing**
  - If logic and accuracy testing is being conducted for an election in which a county election board has been established under Section 51.002, the general custodian of election records shall notify each member of the board of the test at least 48 hours before the date of the test. If the county

election board chooses to witness the test, each member shall sign the statement required for logic and accuracy testing. (Sec. 129.023(b-2)).

- The general custodian of election records must demonstrate, using a representative sample of voting system equipment, that the source code of the equipment has not been altered. (Sec. 129.023(c-1)).

## **Article 5: Voting by Mail**

### **• Requirements for Application to Vote by Mail**

- An application for ballot by mail (ABBM) must be submitted in writing and signed by the applicant using ink on paper. An electronic signature or photocopied signature is not permitted. (Sec. 84.001(b)).
- An ABBM must contain: (1) the number of the applicant's driver's license, election identification certificate (EIC), or personal identification card issued by the DPS; (2) the last four digits of the applicant's social security number, if the applicant has not been issued a DPS number described above; or (3) a statement that the applicant has not been issued a number described by (1) or (2). (Sec. 84.002(a)(1-a)). An applicant may use the number of an expired driver's license, EIC, or personal identification card to fulfill this requirement if the license or identification is otherwise valid. (Sec. 84.002(b-1)).
- The official ABBM form prescribed by the SOS must provide a space for entering the information required in Section 84.002(a)(1-a). (Sec. 84.011).
- If the information required by Section 84.002(a)(1-a) included on the ABBM does not identify the same voter identified on the applicant's voter registration application, the clerk shall reject the application. (Sec. 86.001(f)). If an ABBM is rejected under Section 86.001(f), the clerk shall provide notice of the rejection. The notice must include information regarding the ability to correct or add the required information through the online ballot by mail tracker described in Section 86.015(c). (Sec. 86.001(f-1)). If the applicant corrects the ABBM online and that application subsequently identifies the same voter identified on the applicant's voter registration application, the clerk shall provide a ballot to the voter. (Sec. 86.001(f-2)).

- Prohibitions on Distribution of Application for Ballot by Mail Form:** Except as provided by Section 84.011(c) or as otherwise authorized by the Texas Election Code, an officer or employee of this state or of a political subdivision of this state may not distribute an ABBM to a person who did not request an application under Section 84.001. (Sec. 84.011(a)). An officer or employee of this state or of a political subdivision of this state may not use public funds to facilitate the distribution by another person of an ABBM to a person who did not request an application under Section 84.001. (Sec. 84.011(b)). A political party

or a candidate for office may distribute an ABBM to a person who did not request an application under Section 84.001. (Sec. 84.0111(c)).

- **Mail Ballot Cancellation**

- A person who receives a notice of defect related to a submitted mail ballot from the early voting ballot board or the signature verification committee under Section 87.0271 or 87.0411 may cancel their mail ballot application by appearing in person at the early voting clerk's office and executing an affidavit that the applicant received notice of a defect. (Sec. 84.032).
- An election judge may permit a person to whom an early voting ballot has been sent who cancels the person's application in accordance with Section 84.032 but fails to surrender the mail ballot to the early voting clerk, deputy early voting clerk, or presiding judge as provided by Section 84.032 to vote only a provisional ballot. (Sec. 84.035).

- **Requirements for Carrier Envelopes**

- The carrier envelope must include a space that is hidden from view when the envelope is sealed for the voter to enter: (1) the number of the voter's driver's license, EIC, or personal identification card issued by the DPS; (2) the last four digits of the voter's social security number, if the voter has not been issued a DPS number described above; or (3) a statement that the voter has not been issued a number described by (1) or (2). (Sec. 86.002(g)). A voter may use the number of an expired driver's license, EIC, or personal identification card to fulfill this requirement if the license or identification is otherwise valid. (Sec. 86.002(h)).
- No record associating an individual voter with a ballot may be created. (Sec. 86.002(i)).

- **Storage of Mail Ballots not Timely Returned:** If a mail ballot is not timely returned, the clerk shall enter the time of receipt on the carrier envelope and retain it in a locked container for the period for preserving precinct election records. (Sec. 86.011(c)).

- **Curing Certain Defects in the Mail Ballot Tracker:** The online ballot by mail tracker must allow the voter to add or correct identification information required under Section 84.002(a)(1-a) or 86.002(g). (Sec. 86.015(c)).

- **Signature Verification Committee Appointment Procedures**

- For elections in which party alignment is indicated on the ballot, the signature verification committee must be appointed from the list provided by the county chair, and the names shall be listed in order of the county chair's preference. The chair and the vice chair of the SVC shall be appointed from the lists provided and must be the highest-ranked persons on the respective lists from the political parties whose nominee for

governor received the most and second most votes in the county in the most recent gubernatorial general election. (Sec. 87.027(d)).

- To be eligible to serve on the SVC, a person must be eligible for appointment as a presiding election judge, except that the person must be a qualified voter of the territory prescribed by Section 87.027. (Sec. 87.027(e)).
- **SVC Signature Comparison:** The SVC may compare the signatures on the voter's ballot application and the carrier envelope certificate with any known signature of the voter on file with the county clerk or voter registrar to determine whether the signatures are those of the voter. (Sec. 87.027(i)).
- **EVBB Signature Comparison**
  - The EVBB may only accept a ballot if the identification information provided by the voter on the carrier envelope under Section 86.002(g) identifies the same voter identified on the voter's application for voter registration. (Sec. 87.041(b)).
  - If a voter provides the required identification information on the carrier envelope under Section 86.002(g) and such information identifies the same voter identified on the voter's application for voter registration, the signature on the ballot application and on the carrier envelope certificate shall be rebuttably presumed to be the signatures of the voter. (Sec. 87.041(d-1)).
  - In making the determination as to whether the signatures on the voter's ballot application and the carrier envelope certificate are those of the voter, the EVBB may also compare the signatures with any known signature of the voter on file with the county clerk or voter registrar. (Sec. 87.041(e)).
- **Opportunity to Correct Defect: Signature Verification Committee**
  - Section 87.0271 provides a procedure by which a voter can correct certain defects in their carrier envelope containing their voted ballot. Not later than the second business day after a signature verification committee discovers the defect and before the committee decides whether to accept or reject a timely delivered ballot under Section 87.027, the committee shall: (1) determine if it would be possible for the voter to correct the defect and return the carrier envelope before the time the polls are required to close on election day; and (2) return the carrier envelope to the voter by mail, if the committee determines that it would be possible for the voter to correct the defect and return the carrier envelope before the time the polls are required to close on election day. (Sec. 87.0271(a), (b)).
  - If the SVC determines that it would not be possible for the voter to correct the defect and return the carrier envelope before the time the polls are

required to close on election day, the SVC may notify the voter of the defect by phone or email and inform the voter that the voter may cancel their mail ballot in accordance with Section 84.032 or come to the early voting clerk's office in person not later than the sixth day after election day to correct the defect. (Sec. 87.0271(c)).

- If the SVC takes one of the actions described above, the committee must take that action with respect to each ballot in the election to which these options apply. (Sec. 87.0271(d)).
- Poll watchers are entitled to observe these activities by the SVC. (Sec. 87.0271(e)).
- The SOS is authorized to prescribe any procedures necessary to implement Section 87.0271. (Sec. 87.0271(f)).

- **Opportunity to Correct Defect: Early Voting Ballot Board**

- Section 87.0411 provides a procedure by which a voter can correct certain defects in their carrier envelope containing their voted ballot. Not later than the second business day after an early voting ballot board discovers the defect and before the board decides whether to accept or reject a timely delivered ballot under Section 87.041, the board shall: (1) determine if it would be possible for the voter to correct the defect and return the carrier envelope before the time the polls are required to close on election day; and (2) return the carrier envelope to the voter by mail, if the board determines that it would be possible for the voter to correct the defect and return the carrier envelope before the time the polls are required to close on election day. (Sec. 87.0411(a), (b)).
- If the EVBB determines that it would not be possible for the voter to correct the defect and return the carrier envelope before the time the polls are required to close on election day, the EVBB may notify the voter of the defect by phone or email and inform the voter that the voter may cancel their mail ballot in accordance with Section 84.032 or come to the early voting clerk's office in person not later than the sixth day after election day to correct the defect. (Sec. 87.0411(c)).
- If the EVBB takes one of the actions described above, the board must take that action with respect to each ballot in the election to which these options apply. (Sec. 87.0411(d)).
- Poll watchers are entitled to observe these activities by the EVBB. (Sec. 87.0411(e)).
- The SOS is authorized to prescribe any procedures necessary to implement Section 87.0411. (Sec. 87.0411(f)).

- **Submission of Information to the Attorney General:** Not later than the 30th day after election day, the early voting clerk shall deliver notice to the attorney

general of any ballot rejected because the EVBB or SVC determined that a violation of the Election Code occurred. (Sec. 87.0431(b)).

- **Separate Storage and Tabulation of Mail Ballots, Early Voting in Person Ballots, and Election Day Ballots**
  - Ballots voted by mail shall be tabulated and stored separately from the ballots voted by personal appearance and shall be separately reported on the returns. (Sec. 87.062).
  - Early voting in person ballots, election day ballots, and ballots voted by mail shall be tabulated separately and shall be separately reported on the election returns. (Sec. 87.103).
- **Scanning of Mail Ballot Records:** Electronic records made under Section 87.126 shall record both sides of any application, envelope, or ballot recorded, and all such records shall be provided to the EVBB, SVC, or both. (Sec. 87.126(a-1)).
- **Notes of EVBB/SVC Members:** Permits EVBB and SVC members to take any notes reasonably necessary to perform the members' duties. Notes taken by these individuals may not contain personally identifiable information. Each member who takes notes shall sign the notes and deliver them to the presiding judge or committee chair, as applicable, for delivery to the custodian of election records. Notes collected under this section shall be preserved in the same manner as precinct election records under Section 66.058. (Sec. 87.128).

## **Article 6: Assistance of Voters**

- **Poll Watchers' Presence at Curbside Voting:** Except as provided by Section 33.057, a poll watcher is entitled to observe any activity related to curbside voting. (Sec. 64.009(e)).
- **Driving Seven or More Curbside Voters to the Polls**
  - A person who simultaneously assists seven or more voters voting curbside by providing transportation to the polling place must complete and sign a form, provided by an election officer, that contains the person's name, address, and whether the person is providing assistance solely by providing transportation or by providing transportation and serving as an assistant under Subchapter B, Chapter 64. (Sec. 64.009(f)). This provision does not apply if the person is related to each voter within the second degree by affinity or the third degree by consanguinity. (Sec. 64.009(f-1)).
  - Any form completed under Section 64.009(f) shall be delivered to the SOS as soon as possible. The SOS shall retain these forms for the period of preserving precinct election records and shall make the forms available to the attorney general for inspection upon request. (Sec. 64.009(g)).

- **Eligibility for Assistance:** A voter is eligible to receive assistance in reading the ballot if the voter cannot prepare or read the ballot because of: (1) a physical disability that renders the voter unable to write or see; or (2) an inability to read the language in which the ballot is written. (Sec. 64.031).
- **Submission of Form by Assistant:** A person, other than an election officer, who assists a voter must complete a form stating: (1) the name and address of the assistant; (2) the relationship to the voter of the assistant; and (3) whether the assistant received or accepted any form of compensation or other benefit from a candidate, campaign, or political committee. The form, prescribed by the SOS, must be incorporated into the official carrier envelope for voters receiving assistance in voting by mail, or must be submitted to an election officer if the voter casts a ballot at a polling place or under Section 64.009. (Sec. 64.0322).
- **Assistant Requirements for Mail Ballot Carrier Envelope**
  - Provides additional requirements for the carrier envelope. In addition to an assistant's signature, printed name, and residence address, the voter's assistant must include their relationship 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. (Sec. 86.010).
  - Requires a space on the reverse side of the official carrier envelope for an assistant to indicate their relationship to the voter. (Sec. 86.013).
- **Prohibitions on Compensation:** A person commits an offense if the person (1) compensates or offers to compensate another person for assisting voters as provided by Section 86.010; or (2) solicits, receives, or accepts compensation for an activity described by (1) above. For purposes of this section, compensation means an economic benefit as defined by Section 38.01 of the Texas Penal Code. Section 86.0105 does not apply if the person assisting a voter is an attendant or caregiver previously known to the voter. (Sec. 86.0105).
- **Study on Educational Programs for Voters with Disabilities:** Directs the SOS to conduct a study regarding the implementation of educational programs, including the production and publication on the SOS's website of instructional videos, to help voters with disabilities understand how to use voting systems. SOS must submit a report on the study to the legislature by December 1, 2022.

## Article 7: Fraud and Other Unlawful Practices

- **Offenses Related to Provisional Voting:** An election judge commits an offense, punishable as a state jail felony, if the judge knowingly provides a voter with a form for an affidavit required by Section 63.001 if the form contains information that the judge entered on the form knowing it was false. (Sec. 63.0111).

- **Mandatory Time off for Early Voting:** A person commits an offense if, with respect to another person over whom the person has authority in the scope of employment, the person knowingly: (1) refuses to permit the other person to be absent from work during early voting for the purpose of voting; or (2) subjects or threatens to subject the other person to a penalty for attending the polls during early voting. (Sec. 276.004). This provision previously applied only to election day.
- **Changes to Election Fraud Offense:** Identifies additional actions that constitute election fraud, and revises the offense level for certain actions. (Sec. 276.013).
- **Vote Harvesting:** Creates criminal penalties associated with vote harvesting services. (Sec. 276.015).
- **Unlawful Solicitation and Distribution of Application to Vote by Mail**
  - A public official or election official commits an offense if the official, while acting in an official capacity, knowingly: (1) solicits the submission of an application to vote by mail from a person who did not request an application; (2) distributes an ABBM to a person who did not request the application unless the distribution is expressly authorized by another provision of the Texas Election Code; (3) authorizes or approves the expenditure of public funds to facilitate third-party distribution of an ABBM to a person who did not request the application; or (4) completes any portion of an ABBM and distributes the application to an applicant. An offense under this section is a state jail felony. (Sec. 276.016(a), (b)).
  - These provisions do not apply if the public official or election official:
    - Engaged in the conduct described by Section 276.016(a)(2) by providing access to an ABBM from a publicly accessible Internet website (Sec. 276.016(c));
    - Engaged in the conduct described by Section 276.016(a)(4) by providing an ABBM while lawfully assisting the applicant under Section 84.003 (Sec. 276.016(d));
    - Provided general information about voting by mail, the vote by mail process, or the timelines associated with voting to a person or the public (Sec. 276.016(e)(1)); or
    - Engaged in the conduct described by Section 276.016(a) while acting in the official's capacity as a candidate for a public elective office (Sec. 276.016(e)(2)).
  - A violation of Section 276.016 is subject to injunctive relief or mandamus as provided by the Election Code. (Sec. 276.016(f)).
- **Unlawful Distribution of Early Voting Ballots and Balloting Materials:** An early voting clerk or other election official commits a Class A misdemeanor

offense by knowingly mailing or otherwise providing an early voting ballot by mail or other mail ballot materials to a person who the clerk or official knows did not submit an ABBM under Section 84.001. (Sec. 276.017).

- **Perjury in Connection with Certain Election Procedures:** A person commits an offense if, with the intent to deceive, the person knowingly or intentionally makes a false statement or swears to the truth of a false statement: (1) on a voter registration application; or (2) previously made while making an oath, declaration, or affidavit described by the Texas Election Code. An offense under this section is a state jail felony. (Sec. 276.018).
- **Unlawful Altering of Election Procedures:** A public official or election official may not create, alter, modify, waive, or suspend any election standard, practice, or procedure mandated by law or rule in a manner not expressly authorized by the Election Code. (Sec. 276.019).

## Article 8: Enforcement

- **Restrictions on Eligibility to Serve as Election Official:** A person may not serve as an election official if the person has been finally convicted of an offense under the Election Code. In this section, “election official” does not include a chair of a county political party holding a primary election or a runoff primary election. (Sec. 31.128).
- **Civil Penalties and Suits Involving Election Officials**
  - An election official—as described in Section 31.128—may be liable to this state for a civil penalty if the official: (1) is employed by or is an officer of this state or a political subdivision of this state; and (2) violates a provision of the Election Code. The penalty may include termination of the person’s employment and loss of the person’s employment benefits. (Sec. 31.129).
  - An action, including an action for a writ of mandamus, alleging that an election officer violated a provision of the Election Code while acting in the officer’s official capacity may only be brought against the officer in the officer’s official capacity. (Sec. 31.130).
- **Election Contest Procedures:** Extends the time for filing an election contest by providing that a contest must be must be filed no later than 15 days after the date the election records are publicly available under Section 1.012 or the official result of the contested election is determined, in the case of a primary, runoff primary, or runoff election following a general or special election; for all other elections, a contest must be filed no later than 45 days after the date the election records are publicly available or the official result of the contested election is determined. (Sec. 232.008).
- **Lawsuit Alleging Improper Election Activities:** Provides a mechanism for candidates to file civil suits regarding certain violations of the Election Code. A

candidate may file a petition in any county where a defendant resided at the time of the election. If the election is for a statewide office, the candidate may also file the petition in a district court in Travis County. (Ch. 247).

- **Appellate Court Mandamus Jurisdiction:** The court of criminal appeals may issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the provision, sequestration, transfer, or impoundment of evidence in or records relating to a criminal investigation conducted under the Election Code or conducted in connection with the conduct of an election or political party convention. If a writ of mandamus is issued under this subsection, it shall include an order requiring the provision, sequestration, transfer, or impoundment of the evidence or record. (Sec. 273.061).
- **Courts Sitting in Panels for Certain Election Proceedings:** A court proceeding entitled to priority under Section 22.305 of the Texas Government Code and filed in a court of appeals shall be docketed by the clerk of the court and assigned to a panel of three justices determined using an automated assignment system. (Sec. 22.304, Government Code).
- **Priority of Certain Election Proceedings**
  - The supreme court or a court of appeals shall prioritize over any other proceeding pending or filed in the court a proceeding for injunctive relief or for a writ of mandamus under Chapter 273 of the Election Code pending or filed in the court on or after the 70th day before a general or special election. (Sec. 22.305, Government Code).
  - Except for a criminal case in which the death penalty has been or may be assessed or when it would otherwise interfere with a constitutional right, the trial courts of this state shall prioritize over any other proceeding pending or filed in the court a proceeding for injunctive relief under Chapter 273 of the Election Code pending or filed in the court on or after the 70th day before a general or special election. (Sec. 23.101, Government Code).
  - The clerk of a district court, county court, or statutory county court in which a proceeding entitled to priority under Section 23.101(b-1) is filed shall docket the proceeding and, if more than one court in the county has jurisdiction over the proceeding, randomly assign the proceeding to a court using an automated assignment system. A person may seek from the supreme court or a court of appeals a writ of mandamus as provided by Section 273.061 of the Election Code to compel compliance with this section. (Sec. 23.301, Government Code).

## **Article 9: Ineligible Voters and Related Reforms**

- **Finding Regarding Felony Conviction:** If a defendant is adjudged guilty of a felony offense, the court shall: (1) make an affirmative finding that the person has

been found guilty of a felony and enter the affirmative finding in the judgment of the case; and (2) instruct the defendant regarding how the felony conviction will impact the defendant's right to vote in this state. (Art. 42.0194, Code of Criminal Procedure). The judgment must reflect the affirmative finding and instruction entered pursuant to Article 42.0194. (Art. 42.01, Code of Criminal Procedure).

- **Modifications to Illegal Voting:** The offense of illegal voting includes knowingly or intentionally voting or attempting to vote in an election in this state after voting in another state in an election in which a federal office appears on the ballot and the election day for both states is the same day. (Sec. 64.012(a)). The offense of illegal voting is a Class A misdemeanor. (Sec. 64.012(b)). A person may not be convicted solely upon the fact that they signed a provisional ballot affidavit unless corroborated by other evidence that the person knowingly committed the offense. (Sec. 64.012(c)). The change in law adding Section 64.012(c) applies to an offense committed before, on, or after SB 1's effective date, except for those cases in which there is a final felony conviction as of the bill's effective date.

## **Article 10: Repealed Provisions**

The following provisions of the Texas Election Code are repealed:

- Section 85.062(e);
- Section 86.0105(b); and
- Section 127.201(f).

If you have any questions regarding this advisory, please contact the Elections Division toll-free at 1-800-252-VOTE(8683).

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