

By: Howard of Travis

H.B. No. 4653

A BILL TO BE ENTITLED

AN ACT

relating to certain election practices and procedures relating to the conduct of elections; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 32.033(b), Election Code, is amended to read as follows:

(b) The [~~Except as provided by Subsection (c), the~~] presiding judge shall appoint at least two clerks in addition to the alternate presiding judge for each precinct in each election and may appoint as many additional clerks, within the prescribed limit, as are necessary for the proper conduct of the election.

SECTION 2. Sections 32.034(b) and (c), Election Code, are amended to read as follows:

(b) The county chair of a political party whose candidate for governor received the highest or second highest number of votes in the county in the most recent gubernatorial general election may, not later than the 25th day before a general election or the 10th day before a special election to which Subsection (a) applies, submit to a presiding judge a list containing the names of at least two persons who are eligible for appointment as a clerk. If two [~~a~~] timely lists are [~~list is~~] submitted, the presiding judge shall

appoint at least one clerk from each [~~the~~] list, except as provided by Subsection (c).

(c) If only two [~~one~~] additional clerks are [~~clerk is~~] to be appointed for an election in which the alternate presiding judge will serve as a clerk, the two additional clerks [~~clerk~~] shall be appointed from the lists [~~list~~] of [~~a~~] political parties [~~party~~] with which neither the presiding judge nor the alternate judge are [~~is~~] affiliated or aligned, if such lists are [~~a list is~~] submitted. If three [~~two such~~] lists are submitted, the presiding judge shall decide from which lists [~~list~~] the appointments [~~appointment~~] will be made. If such lists are [~~a list is~~] not submitted, the presiding judge is not required to make appointments [~~an appointment~~] from any list.

SECTION 3. Section 32.035(b), Election Code, is amended to read as follows:

(b) A home-rule city charter may not provide for fewer than four [~~three~~] election officers for each election precinct.

SECTION 4. Section 42.006(a), Election Code, is amended to read as follows:

(a) Except as otherwise provided by this section, a county election precinct must contain at least 100 but not more than 2,000 [~~5,000~~] registered voters.

SECTION 5. Section 42.008(a), Election Code, is amended to read as follows:

(a) In a special election for which use of county election

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precincts is required, the commissioners court may consolidate, on the recommendation of the county election board, two or more county election precincts into a single precinct if the polling place is located so it will adequately serve the voters of the consolidated precinct and the single precinct will contain the permissible number of voters under Section 42.006.

SECTION 6. Section 42.009, Election Code, is amended to read as follows:

Sec. 42.009. CONSOLIDATING PRECINCTS IN PRIMARY ELECTION. The county executive committee of a political party holding a primary election may order two or more county election precincts consolidated into a single precinct if:

(1) the polling place is located so it will adequately serve the voters of the consolidated precinct and the single precinct will contain the permissible number of voters under Section 42.006; and

(2) at least one consolidated precinct is situated wholly within each commissioners precinct.

SECTION 7. Section 42.061, Election Code, is amended by adding Subsection (d) to read as follows:

(d) An election precinct established for an election ordered by an authority of a political subdivision other than a county must:

(1) be established for an area in a manner that will adequately serve the voters of that area; and

(2) contain the permissible number of voters for a county election precinct under Section 42.006.

SECTION 8. Section 61.005, Election Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) The ballots, ballot boxes, and envelopes used for provisional ballots at a polling place shall, from the time the polls open for voting until the precinct returns have been certified and posted under Section 66.051:

(1) be in plain view of at least one election officer;
and

(2) be recorded by a video recording device with a full unobstructed view of the ballots, the ballot boxes, and envelopes used for provisional ballots [~~from the time the polls open for voting until the precinct returns have been certified~~].

(b-1) The authority ordering an election shall provide the video recording device described by Subsection (b)(2) to the presiding judge of the polling place. The video recorded by the device is an election record.

SECTION 9. Section 61.012, Election Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Each [~~Not later than January 1, 2006, each~~] polling place must provide at least one voting station that:

(1) complies with Section 504 of the federal

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Rehabilitation Act of 1973 (9 U.S.C. Section 794) and its subsequent amendments, ~~and~~ Title II of the federal Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.) and its subsequent amendments, and Section 301(a)(3) of the federal Help America Vote Act (42 U.S.C. Section 15481(a)(3)) and its subsequent amendments; and

(2) provides a practical and effective means for voters with physical disabilities to privately and independently mark and cast a secret ballot, including a provisional ballot.

(d) A polling place may provide for voters with disabilities:

(1) an electronic paper ballot marker machine approved for use by the secretary of state that produces a paper ballot similar in appearance to the paper ballots provided to voters at the same polling place who are not disabled; or

(2) a nonelectronic, voter-assist device approved for use by the secretary of state that uses a paper ballot that is the same as or similar in appearance to the paper ballots provided to voters at the same polling place who are not disabled.

SECTION 10. Section 63.011, Election Code, is amended by adding Subsection (f) to read as follows:

(f) The casting of a provisional ballot in compliance with this section complies with Section 302(a) of the federal Help America Vote Act (42 U.S.C. Section 15482(a)).

SECTION 11. Section 65.001, Election Code, is amended to read as follows:

Sec. 65.001. COUNTING OFFICERS. At each polling place, the ballots shall be counted by one or more teams of election officers assigned by the presiding judge. Each team must consist of four [~~two or more~~] election officers.

SECTION 12. Section 65.005, Election Code, is amended by amending Subsections (a) and (c) and adding Subsections (d), (e), and (f) to read as follows:

(a) One member of the counting team shall examine each ballot and clearly announce the name of each candidate for whom a vote has been received or whether a vote has been received for or against a measure. A second member of the counting team shall simultaneously observe the ballot being examined to verify that the correct candidate's name or vote on a measure has been announced. A third member [~~The other members~~] of the counting team shall record the votes on the tally lists as they are announced. A fourth member of the counting team shall observe the tally lists as the vote is being recorded to verify that the correct vote has been recorded.

(c) On completing the count, the [~~each~~] member of the counting team assigned to record [~~tally~~] votes shall compute the total number of votes recorded [~~tallied~~] on each tally [~~the~~] list the member has kept and enter the totals on each [~~the~~] tally list.

After verifying that the three tally lists are in agreement, the recording [~~each counting~~] officer shall sign each [~~the~~] list that the officer has kept. The two team members designated as observers under Subsection (a) shall observe the computing and the entering

of totals on the tally lists and the signing of each list.

(d) To the extent possible, the presiding judge shall assign the tasks of the counting team so that:

(1) the vote announcer and the vote recorder are of different political parties; and

(2) each observer is of a different political party than the team member whom the observer is assigned to observe.

(e) The county election commission designated under Section 31.032(a) shall consider implementing alternative hand-counted paper ballot voting materials, including color-coded perforated paper ballots, and hand counting methods, including the sort-and-stack team counting method.

(f) Any interested citizen may silently observe the opening of the ballot box, the counting of the votes, and the final computation of the precinct results from a position in the polling place that is not disruptive to the work of the election officers.

SECTION 13. Section 65.014(c), Election Code, is amended to read as follows:

(c) The returns shall be prepared as an original and four [~~three~~] copies, and on completing the returns, the presiding judge shall sign each one to certify its accuracy.

SECTION 14. Section 66.003, Election Code, is amended to read as follows:

Sec. 66.003. ENVELOPES FOR DISTRIBUTION OF RECORDS. (a) Five [~~Four~~] envelopes shall be furnished to each polling place for

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use in assembling and distributing the precinct election records.

(b) The envelopes shall be labeled and addressed as follows:

(1) "Envelope No. 1," addressed to the presiding officer of the local canvassing authority;

(2) "Envelope No. 2," addressed to the general custodian of election records;

(3) "Envelope No. 3," addressed to the presiding judge;
[and]

(4) "Envelope No. 4," addressed to the voter registrar;
and

(5) "Envelope No. 5," addressed to the citizens of Texas.

SECTION 15. Subchapter B, Chapter 66, Election Code, is amended by adding Section 66.0242 to read as follows:

Sec. 66.0242. CONTENTS OF ENVELOPE NO. 5. Envelope no. 5 must contain a signed copy of the precinct returns. Each page of the precinct returns must be displayed in a separate sleeve that is resealable, waterproof, transparent, and large enough to display a single unfolded page of the precinct returns.

SECTION 16. Section 66.025(a), Election Code, is amended to read as follows:

(a) Ballot box no. 3 must contain:

(1) the voted ballots;

(2) a copy of the precinct returns;

(3) a tally list; [and]

(4) a copy of the poll list; and

(5) all original video footage recorded at the polling place.

SECTION 17. Section 66.051, Election Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) The presiding judge shall take envelope no. 5 to the public entrance through which voters entered the polling place and:

(1) remove the sleeve-protected signed copy of the precinct returns from the envelope;

(2) securely fasten each page of the precinct returns to the outside surface of the entrance door at a height not greater than six feet; and

(3) ensure that every page is separately posted, is easily readable, and can be documented by a person.

(f) A presiding judge who fails to fasten the precinct returns to the outside surface of the entrance door as required by Subsection (e) commits an offense. An offense under this subsection is a state jail felony.

SECTION 18. Subchapter C, Chapter 66, Election Code, is amended by adding Section 66.0525 to read as follows:

Sec. 66.0525. RETURNS MUST REMAIN POSTED. (a) The posted precinct returns must remain posted on the public entrance to the polling place for 24 hours and may not be removed or torn, defaced, or otherwise altered during that period.

(b) A person who removes or alters precinct returns posted

under this section commits an offense. An offense under this subsection is a state jail felony.

SECTION 19. Section 66.057, Election Code, is amended by adding Subsection (d) to read as follows:

(d) Precinct records not otherwise provided for by this section become public information when the returns are posted under Section 66.051(e).

SECTION 20. Section 68.032(a), Election Code, is amended to read as follows:

(a) The [~~In precincts using paper ballots, voting machines, or electronic voting system ballot counters, the~~] copy of the returns required to be delivered to the county clerk shall be delivered not later than two hours, or as soon thereafter as practicable, after the closing of the polls or after the last person voted, whichever is later.

SECTION 21. Section 85.032(b), Election Code, is amended to read as follows:

(b) The ballot box in which voters deposit their marked early voting ballots must have two locks, each with a different key, and must be designed and constructed so that the box can be sealed to detect any unauthorized opening of the box and that the ballot slot can be sealed to prevent any unauthorized deposit in the box. The seals for the boxes must be serially numbered for each election. [~~The procedures prescribed by Sections 127.064, 127.065, 127.066, and 127.068 governing the use of sealed ballot boxes in electronic~~

~~voting system elections apply to the use of sealed ballot boxes under this title to the extent those procedures can be made applicable, with references to the central counting station being applied to the early voting ballot board.]~~ The secretary of state shall prescribe any procedures necessary to implement the use of sealed ballot boxes in early voting.

SECTION 22. Section 87.026, Election Code, is amended to read as follows:

Sec. 87.026. CITIZENS WELCOMED [~~BYSTANDERS EXCLUDED~~]. Any interested citizen [~~Except as permitted by this code, a person~~] may [~~not~~] be in the meeting place of an early voting ballot board during the time of the board's operations. A person whose presence in the meeting place is authorized by this section and by no other provision of this code must silently observe the board's operations from a position in the meeting place that is not disruptive to the work of the early voting ballot board.

SECTION 23. Section 172.126(g), Election Code, is amended to read as follows:

(g) A separate set of ballot boxes or other suitable containers approved by the secretary of state shall be used for each party's primary [~~, except that one set of ballot boxes or other containers may be used in a joint primary using an electronic voting system in which the ballots are deposited by the voters directly into a unit of automatic tabulating equipment~~]. The lists of registered voters and the voters' registration certificates

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shall be marked and stamped to show the appropriate party affiliation for each voter. A separate list of registered voters shall be used for each party's primary. The secretary of state by rule shall prescribe requirements to ensure that one party's ballot is readily distinguished from another's, which may include the use of different colors of ink.

SECTION 24. The following laws are repealed:

- (1) Sections 32.033(c), 42.006(d), 61.012(b), 66.057(a), 68.032(b), 81.003, 85.033, 87.023, 87.024, 87.063(b), 111.005(c), and 111.006, Election Code;
- (2) Subchapter F, Chapter 87, Election Code; and
- (3) Title 8, Election Code.

SECTION 25. A home-rule city shall amend its charter as necessary to comply with the change in law made by this Act to Section 32.035(b), Election Code, not later than September 1, 2010.

SECTION 26. The secretary of state shall prescribe any procedure necessary for the implementation of the changes in law made by this Act.

SECTION 27. This Act takes effect September 1, 2009.