

BILL ANALYSIS

Senate Research Center
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S.B. 9
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

As efforts to identify and prosecute election crimes have intensified, we have gained a better understanding of the ways certain bad actors take advantage of holes in the electoral process to alter the balance of elections, especially at the local level. At the same time, advances in technology have increased the threat of electronic interference with elections, but also the tools available to prevent that interference.

S.B. 9 seeks to address these issues by requiring a voter verifiable paper audit trail for elections systems, instituting a pilot program to use that paper trail to ensure that the tabulated results match the votes cast with increased certainty, limiting the most common fraudulent practices, and providing better and more timely evidence in investigations into alleged voter fraud.

As proposed, S.B. 9 amends current law relating to election integrity, increases criminal penalties, creates a criminal offense, and creates civil penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the secretary of state in SECTION 5.01 (Sections 65.103 and 65.105, Elections Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. CRIMINAL PROVISIONS

SECTION 1.01. Amends Article 12.01, Code of Criminal Procedure, to add a felony offense under the Election Code to a list of offenses for which felony indictments are authorized to be presented within five years from the date of the commission of the offense and not afterward and to make nonsubstantive changes.

SECTION 1.02. Amends Section 1.018, Election Code, to provide that Titles 1 through 4, Penal Code, rather than Title 4 in addition to Section 1.03 (Effect of Code), and other titles of the Penal Code that may apply to this code, apply to offenses prescribed by this code.

SECTION 1.03. Amends Sections 13.007(b) and (c), Election Code, as follows:

(b) Provides that an offense under this section (False Statement on Application) is a state jail felony, rather than a Class B misdemeanor.

(c) Authorizes the actor, if conduct that constitutes an offense under this section also constitutes an offense under other law, to be prosecuted under this section, the other law, or both. Deletes existing text relating to perjury.

SECTION 1.04. Amends Subchapter A, Chapter 61, Election Code, by adding Section 61.0045, as follows:

Sec. 61.0045. IMPEDING ACCESS TO POLLING PLACE. (a) Provides that a person commits an offense if the person impedes a walkway, sidewalk, parking lot, or roadway

within 1,000 feet of a polling place in a manner that hinders a person from entering the polling place.

(b) Provides that an offense under this section is a Class B misdemeanor.

SECTION 1.05. Amends Section 64.012, Election Code, by amending Subsections (c) and (d), as follows:

(c) Provides that it is sufficient for the purposes of Subsection (a)(1) to establish that the person had knowledge of the person's ineligibility to vote if the person was aware of the facts or circumstances causing the person's ineligibility under this code.

(d) Provides that it is not a defense to prosecution that the ballot was not finally counted.

SECTION 1.06. Amends Section 64.036(d), Election Code, to provide that an offense under this section (Unlawful Assistance) is a state jail felony rather than a Class A misdemeanor.

SECTION 1.07. Amends Subchapter A, Chapter 273, Election Code, by adding Section 273.005, as follows:

Sec. 273.005. DEFENSE TO PROSECUTION FOR PERSON CONDUCTING INVESTIGATION UNDER THIS CODE. Provides that it is a defense to prosecution of an offense under this code that a person employed by a law enforcement agency in the commission of the offense is engaged in the investigation or prosecution of a violation of a law under this code or in official activities investigating a weakness in the electoral process.

SECTION 1.08. (a) Provides that the change in law made by this article in amending Article 12.01, Code of Criminal Procedure, does not apply to an offense if the prosecution of that offense becomes barred by limitation before the effective date of this Act. Provides that the prosecution of that offense remains barred as if this article had not taken effect.

(b) Makes application of this Act prospective. Provides that for purposes of this section an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

ARTICLE 2. VOTERS, ASSISTANTS, AND WATCHERS

SECTION 2.01. Amends Section 13.002, Election Code, by adding Subsection (c-1) to require a registration application to require the applicant to affirmatively indicate all information provided on the application.

SECTION 2.02. Amends Section 33.004(b), Election Code, to require a person, to be eligible to participate in the appointment under this section of a watcher for an early voting polling place, the meeting place of an early voting ballot board or signature verification committee, or a central counting station, to be a registered voter of the territory served by that facility.

SECTION 2.03. Amends Section 33.006(b), Election Code, to require a certificate of appointment as a watcher to contain an affidavit executed by the appointee stating that the appointee will not use a device capable of recording images or sound while serving as a watcher except as permitted by Section 61.014(b) (relating to recording near a voting station), rather than an affidavit executed by the appointee stating that the appointee will not have possession of a device capable of recording images or sound or that the appointee will disable or deactivate the device while serving as a watcher.

SECTION 2.04. Amends Section 33.007(a), Election Code, to make a conforming change.

SECTION 2.05. Amends Section 33.051(a), Election Code, to make a conforming change.

SECTION 2.06. Amends Section 33.054, Election Code, as follows:

Sec. 33.054. New heading: HOURS OF SERVICE AT EARLY VOTING BALLOT BOARD MEETING OR SIGNATURE VERIFICATION COMMITTEE MEETING. (a) Makes conforming changes.

(b) Prohibits a watcher serving at the meeting place of an early voting ballot board from leaving during voting hours on election day without the presiding judge's permission if the board has recorded any votes cast on voting machines or counted any ballots, unless the board has completed its duties and has been dismissed by the presiding judge.

SECTION 2.07. Amends Section 33.056, Election Code, by adding Subsections (e) and (f), as follows:

(e) Provides that a watcher serving at the meeting place of an early voting ballot board or signature verification committee is entitled to inspect a form submitted in accordance with Section 64.0322.

(f) Provides that a watcher serving at a polling place is entitled to inspect any identifying documentation presented by a person assisting a voter in accordance with Subchapter B (Assisting Voter), Chapter 64.

SECTION 2.08. Amends Section 33.057, Election Code, as follows:

Sec. 33.057. OBSERVING PREPARATION OF VOTER'S BALLOT. (a) Defines "family member."

(b) Creates this subsection from existing text. Provides that a watcher or election officer is entitled to be present at the voting station when a voter is being assisted by a person who is not a family member, rather than by an election officer, and entitles the watcher or election officer to examine the ballot before it is deposited in the ballot box to determine whether it is prepared in accordance with the voter's wishes.

(c) Redesignates existing Subsection (b) as Subsection (c). Prohibits a watcher or election officer from being present at the voting station when a voter is preparing the voter's ballot, rather than prohibiting a watcher from being present at the voting station when a voter is preparing the voter's ballot or is being assisted by a person of the voter's choice.

SECTION 2.09. Amends Section 33.060(a), Election Code, to make a conforming change.

SECTION 2.10. Amends Section 61.014(b), Election Code, to prohibit a person, other than a watcher solely recording the counting of ballots, from using any mechanical or electronic means of recording images or sound within 100 feet of a voting station.

SECTION 2.11. Amends Section 64.009, Election Code, by adding Subsections (e) and (f), as follows:

(e) Requires a person who assists a voter voting under this section by providing the voter with transportation to the polling place to complete and sign a form that:

(1) requires the person to affirm that the voter is physically unable to enter the polling place without personal assistance or likelihood of injuring the voter's health; and

(2) contains the following information:

(A) the person's name and address; and

(B) whether the person is providing assistance solely under this section or under both this section and Subchapter B (Assisting Voter).

(f) Requires the secretary of state (SOS) to prescribe the form described by Subsection (e).

SECTION 2.12. Amends Subchapter B, Chapter 64, Election Code, by adding Section 64.0322, as follows:

Sec. 64.0322. SUBMISSION OF FORM BY ASSISTANT. (a) Requires a person, other than an election officer, who assists a voter in accordance with this chapter to complete a form stating certain information.

(b) Requires SOS to prescribe the form required by this section. Requires the form to be incorporated into the official carrier envelope if the voter is voting an early voting ballot by mail and receives assistance under Section 86.010 (Unlawfully Assisting Voter Voting Ballot by Mail), or to be submitted to an election officer at the time the voter casts a ballot if the voter is voting at a polling place or under Section 64.009 (Voter Unable to Enter Polling Place).

SECTION 2.13. Amends Section 84.002, Election Code, by adding Subsection (c) to require an application for a ballot to be voted by mail on the ground of disability to require the applicant to affirmatively indicate that the applicant agrees with a specified statement as prescribed by Section 82.002(a) (relating to early voting for certain disabled voters).

SECTION 2.14. Amends Section 86.013(f), Election Code, to require the oath of a person assisting a voter and the form described by Section 64.0322(a) to be included on the official carrier envelope as part of the certificate prescribed by Subsection (c).

SECTION 2.15. Amends Section 213.013(i), Election Code, to allow a person who is a watcher to be present in a room where a recount is conducted.

ARTICLE 3. ELECTION CONTESTS

SECTION 3.01. Amends Section 232.006(a), Election Code, as follows:

(a) Provides that the venue of an election contest for a statewide office is in Travis County or any county where a contestee resided at the time of the election. Provides that for purposes of this section, a contestee's residence is determined under Section 411.0257 (Residence), Government Code.

SECTION 3.02. Amends Chapter 232, Election Code, by adding Subchapter C, as follows:

SUBCHAPTER C. CONTEST INVOLVING ALLEGED FRAUD

Sec. 232.061. PETITION ALLEGING FRAUD. Provides that this subchapter applies to an election contest in which the contestant alleges in the petition that an opposing candidate, an agent of the opposing candidate, or a person acting on behalf of the opposing candidate with the candidate's knowledge committed election fraud under certain enumerated sections of this code.

Sec. 232.062. EVIDENTIARY STANDARD. Requires a contestant to prove an allegation described by Section 232.061 by a preponderance of the evidence.

Sec. 232.063. CIVIL PENALTY. (a) Provides that if the court in its judgment finds that the contestee, an agent of the contestee, or a person acting on behalf of the contestee with the contestee's knowledge committed one or more violations of a section described by Section 232.061, the contestee is liable to this state for a civil penalty of \$1,000 for each violation.

(b) Requires a penalty collected under this section by the Texas attorney general to be deposited in the state treasury to the credit of the general revenue fund.

Sec. 232.064. ATTORNEY'S FEES. Authorizes the court, in an election contest to which this subchapter applies, to award reasonable attorney's fees to the prevailing party.

SECTION 3.03. Makes application of the changes in law made by this article prospective.

ARTICLE 4. STATE AND COUNTY OFFICERS

SECTION 4.01. Amends Section 18.061, Election Code, by amending Subsection (b) and adding Subsection (f), as follows:

(b) Requires the statewide computerized voter registration list to:

(1)–(2) makes no changes to these subdivisions; and

(3) be available to any election official in the state, including any official responsible for ensuring the integrity of the voter rolls or compliance with the election laws of this state, through immediate electronic access.

(f) Requires appropriate state or local officials and agencies to provide technological security measures to prevent unauthorized access to the statewide computerized voter registration list.

SECTION 4.02. Amends Section 18.062, Election Code, by adding Subsection (c) to authorize SOS, for the purposes of Subsection (a) (relating to the interstate voter registration crosscheck program), to disclose a voter's social security number or date of birth to other states and jurisdictions.

SECTION 4.03. Amends Section 43.007, Election Code, by adding Subsection (f-1) to prohibit the commissioners court of a county with a population of more than one million, in selecting countywide polling places, from designating a location as a polling place that would require a voter who resides in the precinct where the polling place is located to travel more than three miles from the voter's residence to the polling place.

SECTION 4.04. Amends Section 67.007, Election Code, by adding Subsection (f) to require the county clerk, not later than 24 hours after completing county election returns under this section, to post on the county's Internet website, if the county maintains a website, the number of votes that were cast in the county and the number of registered voters in the county.

SECTION 4.05. Amends Section 216.001, Election Code, as follows:

Sec. 216.001. APPLICABILITY OF CHAPTER. (a) Creates this subsection from existing text. Creates an exception under Subsection (b) to the provision that this chapter (Automatic Recount) applies only to an election that results in a tie vote as provided by Sections 2.002(i) (relating to an automatic recount), 2.023(b) (relating to an election where more than two candidates tie for the highest number of votes), and (c) (relating to an election where more than two candidates tie for the second highest number of votes), and 2.028 (Tie Vote in Runoff).

(b) Requires the authority designated under Section 212.026 (Authority to Whom Petition Submitted), if the results of an election show that the number of votes cast in an election precinct exceeds the number of registered voters in the precinct, to initiate an automatic recount for that precinct in accordance with this chapter.

ARTICLE 5. AUDITABLE VOTING SYSTEMS

SECTION 5.01. Amends Chapter 65, Election Code, by adding Subchapter C, as follows:

SUBCHAPTER C. RISK-LIMITING AUDIT

Sec. 65.101. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter applies to an election:

- (1) that occurs after August 31, 2025; and
- (2) in which an auditable voting system described by Section 129.003(a) is used.

Sec. 65.102. RISK-LIMITING AUDIT. (a) Requires the counting team, on completion of the vote count, to conduct an audit of the results by manually inspecting the paper records or receipts generated by the voting system.

(b) Provides that an audit under this section continues until the counting team has counted a sufficient number of paper records or receipts to provide strong evidence that the reported outcome of the election matches the result that a full counting of the paper records or receipts would reveal.

(c) Requires the number or percentage of paper records or receipts counted in an audit under this section to be consistent with rules adopted by SOS under Section 65.103.

Sec. 65.103. RULES. (a) Requires SOS to adopt rules as necessary to implement this subchapter.

(b) Requires rules adopted under this subchapter to include a rule, using widely accepted statistical methods, that provides for the number or percentage of paper records or receipts that is required to be counted in an audit under Section 65.102.

Sec. 65.104. PUBLICATION OF RESULTS. Requires the results of a risk-limiting audit conducted under this subchapter to be published on the Internet website of SOS not later than three days after the completion of the audit.

Sec. 65.105. PILOT PROGRAM. (a) Requires SOS, notwithstanding Section 65.101(1), to conduct a pilot program, beginning with the election taking place November 5, 2019, of the risk-limiting audit program created under this subchapter.

(b) Requires SOS to adopt rules as necessary to implement this section.

(c) Provides that this section expires August 31, 2025.

SECTION 5.02. Amends Subchapter A, Chapter 129, Election Code, by adding Section 129.003, as follows:

Sec. 129.003. PAPER AUDIT TRAIL REQUIRED. (a) Defines "auditable voting system."

(b) Prohibits a voting system that consists of direct recording electronic voting machines, except as provided by Subsection (e), from being used in an election unless the system is an auditable voting system.

(c) Provides that except for a recount under Title 13 (Recounts), or if an audit conducted under Section 65.102 fails to produce strong evidence that the reported outcome of the election matches the result that a full counting of the paper records or receipts would reveal, the electronic vote is the official record of the ballot. Provides that for a recount of ballots cast on a system involving direct recording electronic voting machines, or if an audit conducted under Section 65.102 fails to produce strong evidence that the reported outcome of the election matches the

result that a full counting of the paper records or receipts would reveal, the paper record or receipt copy is the official record of the vote cast.

(d) Authorizes an authority that purchased a voting system other than an auditable voting system after September 1, 2014, and before September 1, 2019, to use available federal funding and, if federal funding is not available, available state funding to retrofit the purchased voting system as an auditable voting system in accordance with the following schedule:

(1) if the voting system was retrofitted as an auditable voting system not later than the election taking place November 3, 2020, the authority is eligible to have 100 percent of the cost of retrofitting reimbursed under this section; and

(2) if the authority is not eligible for a 100 percent reimbursement of cost under Subdivision (1) and the voting system was retrofitted as an auditable voting system not later than the election taking place November 5, 2024, the authority is eligible to have 50 percent of the cost of retrofitting reimbursed under this section.

(e) Provides that Subsections (a)-(c) do not apply to an election held before September 1, 2024.

ARTICLE 6. REPEALER AND EFFECTIVE DATE

SECTION 6.01. Repealer: Section 33.051(c) (relating to a watcher's possession of a recording device), Election Code.

Repealer: Section 61.003(a-1) (relating to electioneering or loitering at a polling place), Election Code.

Repealer: Section 85.036(b) (relating to reasonable electioneering regulations), Election Code.

SECTION 6.02. Effective date: September 1, 2019.