

2021 Legislative and Policy Updates



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SOS UPDATES



- Litigation Update
- Additional Trainers



LEGISLATIVE UPDATE



GENERAL ELECTION LAW CHANGES



Voter ID

- **House Bill 368 (Sherman):** Provides that when offering proof of identification for the purposes of voting in person, the proof of identification is presented only for the purpose of identifying the voter and not for verification of residence.
- Effective Date: September 1, 2021
- Statutes Affected: Election Code § 63.0101; Transportation Code § 521.1211



Offense for Altering Votes/Reports

- **House Bill 574 (Bonnen):**

- Provides that a person commits an offense if the person knowingly or intentionally makes any effort to: (1) count votes the person knows are invalid or alter a report to include voters the person knows are invalid; or (2) refuse to count votes the person knows are valid or alter a report to exclude votes the person knows are valid.
- An offense under this section is a felony of the second degree.

- Effective Date: September 1, 2021
- Statutes Affected: Election Code § 276.014



Individuals Permitted in Election Locations

- **House Bill 1128 (Jetton):**
 - Provides a list of individuals who are permitted to be lawfully present in certain locations related to elections. The bill creates lists for the following locations:
 - **Polling Place/Early Voting Locations**
 - **Early Voting Ballot Board**
 - **Central Counting Station**
- **Effective Date:** September 1, 2021
- **Statutes Affected:** Election Code §§ 61.001, 87.026, 127.008



Interpreter Requirements

- **Senate Bill 331 (Johnson)**: Modifies certain provisions related to serving as an interpreter.
 - To be eligible to serve as an interpreter, a person may be any person other than the voter's employer, an agent of the voter's employer, or an officer or agent of a labor union to which the voter belongs, if appointed by the voter.
 - If appointed to serve as an interpreter by an election officer, the person must be a registered voter of the county in which the voter needing assistance resides or a registered voter of an adjacent county.
 - A person providing ballot assistance under Section 61.034 (translating the ballot) must also take the oath required for persons providing assistance and meet all other requirements of the subchapter related to assistance.
- Effective Date: Immediately
- Statutes Affected: Election Code §§ 61.032, 61.033, 61.034, 61.035



Modifications to Disability Requirements for Voting by Mail

- **House Bill 3920 (Dean):** Makes certain changes to the eligibility requirements for, and the process relating to, voting by mail on the basis of a disability.
 - Provides that anyone who is expecting to give birth within three weeks before or after election day is eligible to vote by mail.
 - Enumerates certain items that do not constitute a disability.
 - The Application for Ballot by Mail form must be modified to include the following statement: “I have a sickness or physical condition that prevents me from appearing at the polling place on election day without a likelihood of needing personal assistance or injuring my health.” The voter must affirmatively indicate that they agree with this statement on their application to vote by mail.
- Effective Date: September 1, 2021
- Statutes Affected: Election Code §§ 82.002, 84.002



WEB POSTING REQUIREMENTS



Web Posting Requirements

- **Senate Bill 1116 (Bettencourt):** Provides new web posting requirements related to election and candidate information.
 - **Candidate and Polling Place Information on County, City, and School District Websites:** Not later than the 21st day before election day, a county that holds an election or provides election services for an election must post certain information related to its upcoming elections.
 - The date of the election;
 - The location of each polling place;
 - Each candidate for an elected office on the ballot; and
 - Each measure on the ballot.
 - A city or independent school district that holds an election and maintains an Internet website must also post this same election information on its website even if the county is posting this data.
- Effective Date: September 1, 2021
- Statutes Affected: Election Code §§ 4.009, 65.016



Web Posting Requirements

- **Senate Bill 1116 (Bettencourt):** Provides new web posting requirements related to election and candidate information.
 - **Election Results Information on County, City, and School District Websites:**
 - A county that holds an election or provides election services for an election for a public entity must post certain information on their website.
 - A city or independent school district that holds an election and maintains an Internet website must also post certain information on its website related to election results even if the county is posting such information.
 - Information should be posted as soon as practicable after the election and must be accessible without having to make more than two selections or view more than two network locations after accessing the home page of the county, city or school district, whichever is applicable.
 - **Required information on websites:**
 - the results of each election;
 - the total number of votes cast;
 - the total number of votes cast for each candidate or for or against each measure;
 - the total number of votes cast by personal appearance on election day;
 - the total number of votes cast by personal appearance or mail during the early voting period; and
 - the total number of counted and uncounted provisional ballots cast.

- Effective Date: September 1, 2021
- Statutes Affected: Election Code §§ 4.009, 65.016



Early Voting Rosters

- **House Bill 1622 (Guillen):**
 - Provides that if an early voting clerk fails to post their early voting rosters in accordance with Section 87.121, a person registered to vote in the county where the early voting clerk is conducting early voting may file a complaint with the Secretary of State about the early voting clerk's noncompliance.
 - The Secretary of State by rule shall create and maintain a system for receiving and recording these complaints.
- Effective Date: September 1, 2021
- Statutes Affected: Election Code § 87.121



VOTING SYSTEMS



Voting System Vendors

- **House Bill 1397 (White):**
 - Requires all contracts for the acquisition of a voting system under Section 123.031 to identify each person or entity that has a five percent or greater ownership interest in (1) the vendor; (2) the vendor's parent company, if applicable; and (3) each subsidiary or affiliate of the vendor, if applicable.
 - This requirement applies to equipment acquired on or after September 1, 2021.
- Effective Date: September 1, 2021
- Statutes Affected: Election Code § 123.0311



Voting System Vendors

- **Senate Bill 1387 (Creighton):**

- Beginning September 1, 2021, for a voting system or voting system equipment to be approved for use in Texas elections, a voting system must be manufactured, stored, and held in the United States and sold by a company whose (1) headquarters are located in the United States; and (2) parent company's headquarters, if applicable, are located in the United States.
- A voting system is considered to be manufactured in the United States if the final assembly of the voting system or voting system equipment occurs in the United States, and all firmware and software are installed and tested in the United States.
- The Secretary of State shall conduct a study on the feasibility of requiring each voting system to have all components, including software and hardware, manufactured, stored, and held in the United States, and submit a report regarding the study to the legislature by January 1, 2023.

- Effective Date: Immediately
- Statutes Affected: Election Code § 122.032



Requirement for Use of Auditable Voting Systems

- **Senate Bill 598 (Kolkhorst):** Provides for auditable voting systems in Texas, funding to retrofit DRE voting systems purchased since September 2014, and creates a risk-limiting audit program.
 - **Beginning September 1, 2026, DRE voting systems may not be used if they do not contain a paper audit trail.**
 - **Auditable Voting Systems:** An auditable voting system is defined as a voting system that uses, creates, or displays a paper record that may be read by the voter, and is not capable of being connected to the Internet or any other computer network or electronic device.
 - **Risk-Limiting Audits:** Requires the SOS to create a risk-limiting audit program.

Effective Date: September 1, 2021

Statutes Affected: Election Code §§ 127.301-304, 129.003, 129.054



CANDIDACY



Candidate Application Requirements

- **House Bill 4555 (Guillen):** Modifies the eligibility requirements related to a candidate's final felony conviction status and what must be included on the official candidate application form.
 - A candidate must provide an indication on their candidate application that the candidate has either not been finally convicted of a felony or if so convicted has been pardoned or otherwise released from the resulting disabilities.
 - A candidate shall include in the application proof that the person has been pardoned or otherwise released from the resulting disabilities. The application form must include a statement informing candidates of the requirement to submit this information.
 - The application form must be modified to include a statement informing candidates that knowingly providing false information on their application related to their final felony conviction status is a Class B Misdemeanor.
 - **NOTE:** This bill applies to candidate applications filed on or after September 1, 2021. Candidate application forms were updated to reflect these changes that went into effect September 1, 2021.
- Effective Date: September 1, 2021
- Statutes Affected: Election Code §§ 141.031, 141.039



HOUSE BILL 3107



HB 3107

- **House Bill 3107 (Clardy):** Provides for a number of non-substantive and minor substantive changes in the Texas Election Code.
 - **Election Records under the Texas Election Code**
 - Unless otherwise specified by the Texas Election Code, a delivery, submission or filing of a document may be made by personal delivery, mail, fax and email. (1.007)
 - Provisional voting records do not become public information until the first business day after the provisional ballots and other voting records have been delivered back to the custodian of election records. (65.0581)
 - **Contracting and Joint Elections:** Allows a county that has contracted with a city to be the custodian of voted ballots for a city election. (31.096)



HB 3107

- **House Bill 3107 (Clardy):** Provides for a number of non-substantive and minor substantive changes in the Texas Election Code.
 - **Elections with a Tie Vote**
 - A second election resulting from a tie-vote must be held not earlier than the 20th day or later than the 45th day after election day. (2.002)
 - If a recount does not resolve a tie, the tied candidates may (1) cast lots not later than the day before the date the authority must order the second election; or (2) withdraw from the election not later than 5 p.m. of the date after the date the automatic recount is held. (2.002)
 - In a tie-vote in a runoff election, if a candidate withdraws before the automatic recount is conducted, the remaining candidate is the winner and the automatic recount does not need to occur. If a withdrawal is received by 5 p.m. the day after the date of the automatic recount is conducted, the remaining candidate is the winner. (2.028)



HB 3107

- **House Bill 3107 (Clardy):** Provides for a number of non-substantive and minor substantive changes in the Texas Election Code.
 - **Election Notices**
 - An election notice must include the Internet website of the authority conducting the election. (4.004)
 - The election order and election notice must state the early voting clerk's mailing address, street address at which the clerk can receive mail, phone number, e-mail address that can receive correspondence from the public, and website. (83.010)
 - The election order and election notice must designate which location is the main early voting location. (85.004)



HB 3107

- **House Bill 3107 (Clardy):** Provides for a number of non-substantive and minor substantive changes in the Texas Election Code.
 - **Early Voting by Personal Appearance**
 - Allows temporary branch locations for counties with a population of less than 100,000. Voting at temporary branch locations must be conducted on at least two consecutive business days and for at least eight consecutive hours on each of those days. (85.064, 85.065)



HB 3107

- **House Bill 3107 (Clardy):** Provides for a number of non-substantive and minor substantive changes in the Texas Election Code.
 - **Candidacy**
 - Candidate applications, other than those that must be accompanied by a filing fee, may be filed via email. The application must be a scanned copy of the candidate application and must be sent to the filing authority's designated email address for accepting applications. (143.004, 144.003)
 - A candidate application cannot be challenged for "Form, Content, and Procedure" defects after the 50th day before the date of the election for which the application is made. (141.034)
 - A filing authority shall designate an email address by which candidate applications may be accepted. This notice must be listed in the candidate filing notice. (141.040)
 - For candidate petitions, a signer's residence address and registration address are not required to be the same if the voter's address is one in which a voter would still be able to vote for the candidate under Section 11.004 or 112.004. (141.063)



HB 3107

- **House Bill 3107 (Clardy):** Provides for a number of non-substantive and minor substantive changes in the Texas Election Code.
 - **Bilingual Election Clerks:** To be eligible to serve as a bilingual election clerk, a person must be a qualified voter of the state and satisfy any additional eligibility requirements prescribed by written order of the commissioners court or meet the eligibility requirements of a student clerk under Section 32.0511. (272.009)
 - **Petitions Prescribed by Law Outside of the Election Code**
 - A signer’s residence address and registration address are not required to be the same if the voter’s address is one in which a voter would still be able to vote for the candidate under Section 11.004 or 112.002. (277.002)
 - The petition signature of a voter who is on suspense or listed as an “S” list voter is valid if the voter is otherwise eligible to vote in the territory and provides a residence address located in the territory. (277.0024)
- **Effective Date:** September 1, 2021



CALLED SESSION BILLS



Election Bill Passed During the 2nd Called Session

- **SB 1**– Omnibus election bill with a variety of provisions to enhance availability of voting while also inhibiting voter fraud.



SB 1

- Defines “election official” and includes party chairs conducting a primary election.
- Allows voters with disabilities to request reasonable accommodations or modifications.



SB 1 and the Conduct of Elections

- **Modifies days and hours of early voting. Expands the longer minimum hours requirement to all counties over 55K in population.**
- **Provides that early voting can only occur between the hours of 6 a.m. and 10 p.m.**
- **Adds an alternate judge to the EVBB.**



SB1 and the Conduct of Elections

- Adds security provisions for central counting stations.
- Limits outside electronic devices at central counting stations.
- **Requires the presence of a licensed peace officer at central count.**
- **Requires counties over 100K in population to stream video of the voted ballots throughout the period before and after the election and retain the video until the end of the calendar year.**
- Directs SOS to conduct an audit of four counties at random (two over 300K in population and two under 300K), covering previous two years of elections in those counties.



SB 1 and Voting Systems

- **Communications with voting system vendors are public information, with certain exceptions.**
- **Voting systems will be required to use write-once media by September 2026.**
- **There must be a written reconciliation of votes and voters.**
- **At the logic and accuracy test, the voting system software must be validated.**



SB 1 and Voting by Mail

- **Public officials cannot distribute unsolicited ABBMs.**
- A voter who cancels their BBM must vote provisionally unless they surrender their mail ballot.
- Carrier envelope must include DL or SS. If it doesn't ID the voter, the EVBB or SVC must notify voter of the defect.
- Voter can use the mail ballot tracker to correct the defect.



SB 1 and Voter Fraud

- Numerous provisions in Art. 7 of the bill, such as defining vote harvesting and adding more actions under the definition of voter fraud.
- **Specifically prohibits the alteration of election laws and procedures by election officials.**
- Creates a particular perjury offense for election documents.



SB 1 and Enforcement

- **Prohibits working as an election official if previously convicted of an election crime.**
- **Creates a civil penalty for election officials who violate a provision of the Election Code.**
- Provides for a lawsuit by candidates challenging improper election procedures.
- Provides for court priority of election proceedings.



Questions?

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