

**SUBJECT:** Modifying processes and penalties related to voting by mail

**COMMITTEE:** Elections — favorable, without amendment

**VOTE:** 4 ayes — Laubenberg, R. Anderson, Fallon, Swanson

2 nays — Israel, Reynolds

1 absent — Larson

**SENATE VOTE:** On final passage, July 26 — 21-10 (Garcia, Hinojosa, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini)

**WITNESSES:** *On House companion bill, HB 184:*

For — Aaron Harris, Direct Action Texas; Erin Swanson, Harris County Clerk's Office; Alan Vera, Harris County Republican Party Ballot Security Committee; Sandra Crenshaw, Lacpac; Kara Sands, Nueces County Clerk's Office; Chris Davis, Texas Association of Elections Administrators; Bill Fairbrother, TRCCA, RPT; Elizabeth Bingham; Laura Oakley; Colleen Vera; Matthew Walbeck; (*Registered, but did not testify*: Adam Cahn, Cahnman's Musings; Cary Roberts, County and District Clerks' Association of Texas; Jim Reaves, Texas Farm Bureau; Bill Peacock, Texas Public Policy Foundation; Donna Teeter)

Against — Yannis Banks, Texas NAACP; (*Registered, but did not testify*: Elizabeth Montgomery; Whitney Peek)

On — Glen Maxey, Texas Democratic Party; Jonathan White, Office of the Attorney General; (*Registered, but did not testify*: Cinde Weatherby, League of Women Voters of Texas; Keith Ingram, Texas Secretary of State)

**BACKGROUND:** Election Code, ch. 82 establishes eligibility for early voting and allows early voting by mail by those who are 65 years old or older, have certain disabilities, are out of the county on election day and during the time in which voters may vote early in person, and are in jail but otherwise

eligible.

**DIGEST:**

SB 5 would create a new criminal offense for election fraud, revise other offenses relating to mail ballots and increase certain penalties, adjust the process for verifying signatures on mail ballots and for retaining certain election records, and require the attorney general to be notified of rejected ballots.

**New offense for election fraud.** SB 5 would create a new crime called election fraud. The offense would be committed if a person knowingly or intentionally made any effort to:

- influence the independent vote of another in the presence of the ballot or during the voting process;
- cause a voter registration application, ballot, or vote to be obtained or cast under false pretenses; or
- cause any intentionally misleading statement, representation, or information to be provided to an election official or on an application for a mail ballot, carrier envelope, or other official election-related document.

The offense would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). Penalties would be increased to the next higher category if the offense involved a voter 65 years old or older, the person committed another such offense in the same election, or the person had a previous conviction for a crime under the Election Code.

**Offenses, penalties related to mail ballots.** SB 5 would revise penalties for several offenses that relate to applying for a mail ballot and voting by mail and would modify elements of some offenses, including the circumstances under which certain offenses do not apply.

*Information on ballot application.* SB 5 would expand the current offense of knowingly providing false information on applications for mail ballots. It would be an offense to intentionally cause false information to be provided on an application, to knowingly submit an application for a mail

ballot without the knowledge or authorization of the voter, and to knowingly alter information provided by the voter.

These ballot-by-mail offenses would be state-jail felonies (180 days to two years in a state jail and an optional fine of up to \$10,000), and the bill would remove current provisions that make it a class A misdemeanor if the person committing the crime was the applicant, related to the applicant, or registered to vote at the same address as the applicant. Penalties would be increased to the next higher category if the offense involved a voter 65 years old or older, the person committed another such offense in the same election, or the person had a previous conviction for a crime under the Election Code.

*Assisting voter with carrier envelope.* SB 5 would amend who had to provide certain identifying information when assisting a voter by depositing in the mail the carrier envelope used to send a voted ballot to election officials. It would require the same information from those who assisted a voter by obtaining a carrier envelope.

The penalties for offenses involving unlawful carrier envelope actions would be increased from a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) to a class A misdemeanor. SB 5 also would revise the criteria under which a person does not commit an offense to include someone physically living in the same place as the voter, rather than someone registered to vote at the same address.

*Returning marked ballots.* SB 5 would revise the conditions under which the current offense relating to illegally possessing an official ballot or carrier envelope do not apply. Unless a person possessed the ballot or envelope with intent to defraud, the offense would not apply to someone physically living in the same place as the voter, rather than to someone registered to vote at the same address.

The bill also would revise current provisions that make the offense not apply to someone who both possesses a carrier envelope to deposit in the mail and has followed requirements for signing the envelope. Under SB 5,

the offense would not apply to a person possessing either a ballot or carrier envelope solely to lawfully assist a voter eligible for assistance and who complied with Election Code provisions on assisting voters and signing the carrier envelope.

SB 5 also would revise penalties for offenses related to possessing ballots or carrier envelopes provided to another. Rather than penalties increasing based on the number of ballots or envelopes possessed, offenses would be class A misdemeanors, with the penalty increasing to a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the ballot or envelope was possessed without the voter's request.

The bill would increase penalties to the next higher category if the offense involved a voter 65 years old or older, the person committed another such offense in the same election, or the person had a previous conviction for a crime under the Election Code.

*Assisting voters with mail ballots.* SB 5 would authorize voters who were disabled and physically unable to mail a ballot to select someone to deposit the sealed carrier envelope in the mail.

The penalty for unlawfully assisting a voter would rise from a class A misdemeanor to a state-jail felony. Penalties would increase to the next higher category if the offense involved a voter 65 years old or older, the person committed another such offense in the same election, or the person had a previous conviction for a crime under the Election Code.

The bill would revise the conditions under which a person does not commit the current offense of illegally assisting a voter to include someone physically living in the same place as the voter, rather than to someone registered to vote at the same address as the voter.

*Illegal voting.* The bill would expand the general offense of illegal voting to include voting or attempting to vote a ballot belonging to another person. The offense involving marking another's ballot would be expanded to include marking any portion of a ballot and marking a ballot

without specific direction on how to mark it.

**Verifying signature on mail ballots.** SB 5 would expand the types of signatures that signature verification committees could use to verify that signatures on a carrier envelope and on an application for a mail ballot are of the same person. Rather than allowing only the signature on the voter registration to be used, the bill would allow the use of signatures made within the preceding six years and on file with a county clerk or voter registrar. The bill also would allow the committee to compare signatures to determine whether they were of the same person, in contrast to current law, which prohibits the committee from using application signatures to determine that signatures were not those of the same person. Early voting ballot boards also could use previous signatures on file with a county clerk or voter registrar to determine whether signatures were of the same voter.

**Notice of rejected ballots.** SB 5 would require the presiding judge of the early voting ballot board to notify the attorney general of rejected ballots. The judge would have 30 days after an election to give notification of ballots rejected because the voter was deceased, the voter already voted in person in the same election, the signatures on the carrier envelope and ballot application were not executed by the same person, the carrier envelope certificate did not have a witness signature, or the carrier envelope certificate was improperly executed by an assistant.

**Retaining precinct election records.** SB 5 would require that all precinct election records be preserved for at least 22 months after election day, rather than the current requirement under which records involving elections for federal office are preserved for 22 months and records in other elections are retained for at least six months.

**Effective date.** The bill would take effect December 1, 2017, and would apply only to offenses committed on or after that date.

SUPPORTERS  
SAY:

SB 5 would strengthen the laws governing mail-in ballots to restore and maintain the integrity of Texas elections. Vote fraud by mail is a problem in Texas, with reports of voters receiving mail ballots they did not request,

forgeries on mail ballot applications, and ballot harvesting in which someone fraudulently collects and casts others' ballots. Many of these issues have been raised in the recent allegations of irregularities and election fraud in Dallas and Tarrant counties. SB 5 would help protect the right to vote by giving authorities more tools to combat problems with voting by mail.

The bill would create a new offense for election fraud to fill a gap in current law and cover situations in which vote harvesters or others try to harm the integrity of an individual's vote. This would give those voting by mail similar protections to those voting in a polling place. The illegal actions would have to be done knowingly or intentionally to ensure that they applied only to those purposefully violating the law and did not encompass everyday situations in which no fraud was intended.

SB 5 would establish tougher penalties for many offenses related to mail voting to deter ballot fraud and to properly punish those who violate the law. Current remedies are not adequate because most offenses are punished as misdemeanors, which can amount to no more than a slap on the wrist for violations and which prosecutors can be reluctant to pursue. Individuals may repeatedly violate the law because offenses are lightly punished, and some offenses are handled through deferred adjudication, which could result in an individual having no record of election fraud. By increasing penalties to felonies or higher misdemeanors, SB 5 would put teeth into the law and give law enforcement authorities more leverage to go after ringleaders.

The bill would enhance penalties in appropriate situations. Vote harvesters and others often prey on the elderly, so the bill would increase penalties when victims were at least 65 years old. Repeat offenders also would face tougher sanctions, and the bill would allow prosecutors to pursue more severe penalties when someone defrauded several voters during one election. These enhancements would help in going after those organizing and paying for organized voter fraud efforts, such as vote harvesting.

SB 5 would not reduce voter turnout or suppress the votes of those voting legally, but instead would address only those trying to commit ballot

fraud. Offenses related to mail ballots have intent requirements that keep them from being applied in innocent situations. Actions must be taken intentionally and knowingly, and provisions throughout the statute make offenses not apply to family members. Prosecutors would not use the law to target those legally and legitimately helping relatives.

SB 5 would help increase mail ballot security in numerous ways. The bill would give ballot boards and signature verification committees more options to verify signatures by allowing them to use signatures on file with election officials. The bill also would take the common-sense step of allowing the use of previous signatures to both confirm and deny that a signature was that of the voter. This would help address situations such as when a ballot is taken out of a mailbox or filled out and signed by someone other than the voter. SB 5 would give officials more time to access records when combatting potential ballot fraud by creating a uniform requirement for records in all elections to be retained for 22 months. The bill also would require that the attorney general receive notification of rejected ballots, centralizing the process of collecting and analyzing such information.

SB 5 is designed to focus on certain aspects of mail ballot fraud, and other more comprehensive changes to the process could be handled through other legislation.

**OPPONENTS  
SAY:**

Ballot fraud and other actions to defraud voters who are using mail ballots already are against the law, and current penalties appropriately punish these offenses.

The new crime of election fraud proposed under SB 5 would be too broad. The language would apply to anyone making an effort to "influence" the vote of another in the presence of the ballot or to efforts to "cause" someone to do something, which might be interpreted to encompass family members or roommates discussing an election in a room that also contained a ballot. Such broad language could have the unintended consequence of deterring family members from helping elderly or disabled relatives and could raise questions about whether an innocent

conversation in proximity of a ballot was a crime. SB 5 should include an exception for family members under election fraud, something included in other mail ballot offenses.

The penalty increases contemplated under SB 5 would be too harsh and in some cases could put mail ballot crimes on the same felony level as violent offenses, occupying resources that would be better directed to violent offenders. Raising penalties, especially to the felony level, could deter someone from legally assisting a voter who qualified for and needed assistance, which could suppress voter turnout.

A lack of resources and the complexity of proving ballot fraud cases could be more likely sources for problems in pursuing such cases than the level of the penalties or a lack of offenses. Making crimes related to ballot fraud felonies would not ensure that they received any more attention because they would have to compete with other felonies for investigation and prosecution resources.

OTHER  
OPPONENTS  
SAY:

Other, more effective and appropriate options exist to address problems with mail ballots. Revisions could be made to the application process, and mail ballot applications and envelopes could be redesigned to make them easier to read and understand. Civil or administrative penalties might be more appropriate than enhanced criminal penalties, and the bill could be amended to combat the practice of giving deceptive information to voters.

NOTES:

Rep. Goldman, the House sponsor, plans to offer an amendment to SB 5 that would make several changes to the bill, including:

- revising requirements for submitting early voting ballot applications through electronic transmission and fax and prohibiting use of electronic signatures on applications;
- allowing voters to request cancellation of an application for a mail ballot by signing an affidavit saying a mail ballot was never requested;
- changing references from "same person" to "voter" in provisions dealing with verifying signatures;
- establishing a misdemeanor penalty for intentionally accepting a

ballot or causing a ballot to be accepted if it is known that it does not meet requirements;

- requiring the early voting clerk, rather than the election judge, to notify the attorney general of rejected ballots and requiring the attorney general to be notified of ballot cancellation requests;
- revising the new offense of election fraud involving a voter who was at least 65 years old so that the enhanced penalty provisions would not apply to an actor related to or living in the same place as the voter; and
- repealing Election Code, ch. 107, which established provisions for early voting in residential care facilities and was enacted by the 85th Legislature (HB 658 by Bernal, regular session) to take effect September 1, 2017.

A companion bill, HB 184 by Goldman, was reported favorably as substituted by the House Committee on Elections on August 8.