



TEXAS LEGISLATIVE STUDY GROUP

An Official Caucus of the Texas House of Representatives

Representative:

Desk:

Conference Committee Report Analysis for Senate Bill 7

Eligible for Consideration at 4:50 PM

Author: Sen. Bryan Hughes; SP: Rep. Briscoe Cain

Recommendation: Unfavorable

CCR SB 7 evaluated by: Joy Fairchild

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Summary

The likely passage of SB 7 will garner national attention alongside Georgia and Florida for enacting one of the most restrictive voter suppression laws in recent history. Yesterday, President Joe Biden stated that "It's part of an assault on democracy that we've seen far too often this year -- and often disproportionately targeting Black and Brown Americans. He went on to say that "It's wrong and un-American," and that "In the 21st century, we should be making it easier, not harder, for every eligible voter to vote."

Documented voter fraud in Texas is rare, but SB 7 is a 67 page ode to voter suppression steeped in racism and the baseless Big Lie touted by former President Trump and his anti-democracy followers. Since 2018, only 45 people have been arrested and only half were prosecuted for some kind of vote fraud in Texas. This bill creates sweeping changes to the Texas election code that will deprive many citizens of the right to vote granted to them by the United States constitution. If SB 7 passes, Texas voting law will have been debated in late night committee hearings and floor debate that went on until the early hours of the morning, only to be drastically rewritten in closed door meetings. The final bill reported from the conference committee includes many provisions that were never debated in floor debate and strips many provisions put forward by members of color that were adopted during House debate.

The fiscal note states that over \$35 million would be necessary to implement the changes in SB 7 in the next fiscal year and nearly \$700,000 each year after. The bill mandates a 24 hour surveillance system of county election activities in all areas where ballots are located, a provision that would involve funding for additional equipment and staff that is not included in the CCR fiscal note, costs that pale in comparison to the costs of litigation and the economic harm this legislation will do to when major employers and special events look for a more voter friendly environment.

Although, the bill no longer limits the number of polling places and voting machines in large Texas counties and no longer permits poll watchers to make recordings of voters receiving assistance if they believed they were witnessing "unlawful activity," the largely republican conferees created a bill that is more harmful to Texans of color than those passed by the House and the Senate. Instead of enacting systemic changes that would actually provide its stated intent of increased election security and access, the bill will create "gotcha" law that will criminalize honest mistakes and decrease access to the ballot box for many Texans of color, the elderly, those in need of assistance due to disability or and limited English language proficiency. In short, SB7 is the next step in the war on democracy perpetuated by fact-free election fraud claims.

The CCR for SB 7 goes outside the bounds and will need a resolution to be passed in the House before debate on the floor. The LSG recommends a NAY vote on both the resolution and the CCR.

The conference committee report of SB 7 stripped approved amendments that would have provided positive measures:

- To allow caregiver assistance to voters
- Create a statewide mail in ballot tracking system
- Cure voter registration and vote by mail mistakes
- Expand compliance with high school voter registration regulations
- Require the Secretary of State to post early voting information
- Ban poll watchers from photographing private information, a ballot, or marking of the ballot

Voter Registration

- If a voter registrar believes that a piece of information supplied by the voter makes them ineligible to vote, the registrar must submit an affidavit to the Attorney General, the Secretary of State, and district attorney. The CCR does not provide a cure process to notify a voter of possible criminal conduct or a missing signature with the opportunity to provide a correction or explanation.

Early Voting by Mail

- Severely restricts campaigns or parties from conducting vote by mail outreach by defining vote harvesting as an in-person interaction with more than one voter involving an application to vote by mail, vote by mail ballot, or official ballot with the intention of delivering votes for a specific measure or candidate.
- Adds I.D requirement to ballots voted early by mail, despite voters being already registered to vote who often have applied to vote by mail for all elections in a given year.
- Requires mail ballots to be stored and counted separately
- Ballots voted by mail can be invalidated “in bulk” to overturn an election, without counting individual ballots
- Only a fresh ink signature may be used on an application to vote by mail; An electronic signature or photocopied signature will be cause for a rejected application.
- Invalidates ballots voted by mail where a mistake was made on the assistance form, such as leaving a blank space on the form, using a pencil, or not returning the form in the official envelope
- Limits early voting hours on Sundays to not begin till 1 p.m. , which would negatively impact “souls to the polls” initiatives largely put on by Black voters, and Monday- Saturday between 6 am and 9 pm. These restrictions do not allow flexibility based on unique population needs such as faith based GOTV or voting access for shift workers.

Disability

- Bans voting in temporary polling locations like tents, mobile structures, or drive through voting. This measure is in direct response to popular expansion of voting methods in the 2020 elections.
- Limits the eligibility of early voting by mail so that only voters who are “not capable” of appearing at a polling place on election day without needing assistance or risk of injuring their health because of illness, injury, a mental or physical disability, or medical confinement ordered by a healthcare professional
- A voter applying to vote early by mail must indicate which specific grounds on which they are eligible to vote by mail, which violates voter privacy.
- Adds a perjury charge carrying a Class A misdemeanor to the voter assistant’s oath, stating that they did not encourage a voter to assist them and that they were not provided any compensation. An assistant would be required to provide their name, address, and relationship to the voter, unless the assistant is related to the voter.

Voter Intimidation

- The bill does not prevent private information from being recorded, kept, or released. Poll watchers would be able to file complaints to the SoS targeting specific voters, which is especially alarming knowing that poll watchers are being recruited and trained by right wing groups targeting minority precincts.
- Members of the early voting ballot board and signature verification committee may keep any notes consider relevant. The bill does not address voters’ personal security created by this broad language regarding poll watchers’ notes. .
- The bill does not include any election procedure training for poll watchers despite their having unfettered access to voters and ballots.
- Creates a non enforceable oath for poll watchers stating that they will not harass or disrupt procedures
- Allows poll watchers the ability to be anywhere that ballots are located.
- Creates a Class B misdemeanor offense for an election judge who knowingly or intentionally denies a poll watcher from serving.
- Creates a Class A misdemeanor offense for knowingly or intentionally obstructing a watcher from being near enough to see or hear election activities.
- Poll watchers are entitled to follow the transfer of ballots between the polling place and central counting station.

Secretary of State

- Maintain a formula to determine whether a county has as many or more registered voters than voting age population. This bill does not note that voters may be on a suspense but are counted as registered voters. Additionally, it does not account for fluctuations in population or voters who may have requested an absentee ballot.
 - If the Secretary of State deems that more voters are registered than are eligible are on the voter rolls, a county would then be required to submit to an audit, make a plan, and show “overt actions” to comply with a voter purge as described by the SoS within 14 days of notice. The SoS could enact \$1,000 per day civil penalties and withhold state voter registration funds to counties.
 - The bill requires a county election office that has been audited by the SoS to post a notice that they are under audit and require a county election official to attend a training.
- Would make complaints public information after they have been resolved.
- Does not include audit procedures related to the paper auditable voting receipts.

Judicial Per view

- The burden of proof in voter fraud cases is “clear and convincing evidence,” but the bill would reduce that standard to “preponderance of the evidence,” which could lead to improper convictions given the number of untrained poll watchers and others who would have access to voters and ballots under the provisions of this bill.
- This bill creates excessively punitive remedies for offenses, including state jail felonies, Class A and B misdemeanors, and civil liabilities, which will threaten election workers, voter outreach volunteers, and counties' ability to recruit election staff. Penalties would apply to:
 - Compensating any kind of in person assistance,
 - An election judge mistakenly prepopulating a provisional ballot, even if it is not intentional.
 - Perjury charges for voter assistants and election officials
- The bill creates a civil liability for a person who has been shown through a preponderance of evidence the intent to deliver votes for a specific candidate or measure and that the person opposes the measure or candidate. The penalty includes a \$35,000 fine, payment of various court fees, and fair market value of the “vote harvest service.”
- Expedited appeal process on election cases and creates charges for speaking with a district clerk “with the intent” to influence the makeup of a three judge panel
- Allows a runoff candidate to petition election results for alleged election misconduct and the prevailing party to collect attorney fees.
 - Allows damages of \$1,000 per violation to be paid if there were offenses
 - Court can overturn an election if the number of “illegal” votes could have been enough to change the outcome without attempting to determine how individuals voted.