Representative: Desk:

Conference Committee Report SB 1

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Recommendation: <u>Unfavorable</u>

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Committee: Constitutional Rights & Remedies   Vote: 9 Ayes, 5 Nays, 0 PNV, 1 Absent

Caption: Relating to election integrity and security, including by preventing fraud in the conduct of elections in this state; increasing criminal penalties; creating criminal offenses.

Analysis

During the regular session, the SB7 Conference Committee Report (CCR) included egregious provisions leading to the first quorum break that killed the bill. These provisions restricted "souls to the polls," gave judges the ability to overturn an election without evidence that allegations of voter fraud changed the outcome, and essentially gave untrained poll watchers the ability to disrupt voting at the polling place.

The conference committee eliminated some provisions that were originally passed by the House after bipartisan negotiations and replaced them with the aforementioned extreme provisions that were mysteriously added by the conference committee at the last minute, and no one has taken responsibility for how they got there. The subsequent special session version of the voter suppression bill did NOT include the most egregious provisions from the SB7 CCR, but there were still numerous provisions that threatened the right to vote and led to the second quorum break.

The SB1 CCR is closer to the House version of the bill. The CCR contains all of the amendments adopted by the House except amendment number 58 by Rep. Cain, which aimed to clarify the intent to prevent convictions for voters who mistakenly attempted to vote when they were not eligible. HR 123, which will be voted on before the SB1 CCR, states that it is the belief of the House that a person should not be prosecuted for illegal voting if they did not know they were ineligible to do so.

It is important to note that the SB1 CCR was not signed by any Democrats on the Conference Committee, just like in the regular session, because the bill still has significant negative impacts, especially on the rights of people of color, the disabled, and the elderly.

The supplemental appropriations bill (HB5) has contingency appropriations for SB 1. $4.3 million from General Revenue will reimburse the Secretary of State (SOS) for the retrofitting of auditable voting machines, replacement of certain systems that cannot be upgraded, and development of secure tracking systems for mail ballots.

Although this bill is unfavorable, Democrats worked to get provisions in the bill to mitigate some of the worst provisions. These include:
- Provide notification for how felony convictions impact right to vote for adults and juveniles.
- Make it easier to remove bad poll watchers from the polling location by removing the need to give a warning before the removal of a poll watcher.
- Require individuals wishing to serve as poll watchers to complete an online training course developed by the SOS. The course would provide the watcher with a certificate of completion. The watcher must present a certificate of completion and a certificate of appointment prior to serving at a polling location.
- Extend Early Voting hours from 9 pm in the Senate bill to 10 pm in the House bill and CCR.
- Removal of burdensome video surveillance of vote counting from counties with a population less than 100,000
- Increase the number of voters one person can drive to the polls from 3 to 7 without having to fill out burdensome paperwork.
- Require the SOS to conduct a study regarding the implementation of educational programs to help voters with disabilities understand how to use voting systems.
- Protect voters with disabilities from any prohibition or limitation on their ability to request a reasonable accommodation or modification of election procedure to which they are entitled under federal or state law. The CCR also removes "physical disability" from the vote assistance oath.

- Allow digital correction of voter registration information for all voters. Existing law limits this to voters who remain in the same county.
- Establish that a person may not be convicted of illegal voting solely because they signed a provisional ballot affidavit unless corroborated by other evidence that they knowingly committed the offense.
- Expand the type of voting systems a county that provides voting for every registered voter at every polling place may use.
- Allow voters to correct ID number errors on the online ballot tracking system passed during the regular session.
- Require the early voting clerk to notify a voter within two business days of the rejection of a mail ballot application. The notice must include information regarding the ability of the voter to correct a missing or non-matching ID number using the online tracking tool. If the voter corrects an ID number using the online tool, the clerk will issue a ballot.
- Create a process for early voting ballot boards and signature verification committees can use to determine that a mail ballot has a missing or mismatched voter signature, missing or mismatched ID number, missing statement of residence, or missing witness information to notify voters of the issue and provide them an opportunity to correct the issue.
- Lowers the population threshold for mandatory extended early voting hours during the last five days of early voting and mandatory weekend early voting hours. The bill would lower the threshold from counties with a population of at least 100,000 to counties with a population of at least 55,000.

SB1 CCR Unfavorable Provisions
Election Subversion
SB1 establishes a framework that could harvest complaints from poll watchers who have no grasp of election law. Such complaints could result in unsubstantiated fraud claims as a basis for legal action designed to subvert and overturn an election. In fact, SB1 allows partisan poll watchers to take election officials to court if they believe an election official restricted their activities. With bogus post-election "audits" still casting doubt on 2020 election results despite scores of judicial decisions that found no pattern of fraud, there are serious concerns that individuals with bad intent could use the provisions below in SB1 – and bills filed in state after state – to make it easier to change the outcome of elections.

SB1 CCR Audits, Voting Purges and Video Surveillance
- Requires new procedures for purging lists of registered voters and threatening local officials with loss of employment and civil penalties for failing to maintain voter lists to the satisfaction of the SOS.
- Require audits disproportionately targeting more populous counties that are duplicative of audits required by legislation passed during the regular session.
- Require all counties with a population over 100,000 to implement a video surveillance system that retains a record of all areas containing voted ballots.

Voter Suppression
The following is a summary of just a few of the more serious vote suppression elements of SB1.

In-Person Voting
- Prohibits drive-through voting, 24-hour voting, and temporary early vote locations that are not located inside a building.
- Limits the hours that early voting will be available. The bill would require early voting locations in most counties to offer early voting for at least nine hours per day on weekdays during the early voting period. Voting hours are limited to between 6AM and 10PM and 9AM- 10PM on Sundays. Counties with fewer than 1,000 registered voters must offer early voting for only four hours per day on weekdays. Those counties must provide early voting for at least 12 hours per day on the last five days of early voting, early voting on Saturday for at least 12 hours and early voting on Sunday for at least six hours.

Voter Assistance
- Strictly limits the type of assistance a person -- even a family member -- may provide a voter when casting their ballots.
- Requires persons assisting voters to fill out a detailed form regarding their relationship to the voter, involvement with any campaign, etc., which would lead to long lines and discourage helping those in need of assistance.
- Threatens community groups and individuals with felony prosecution for providing needed assistance to voters at polling locations and with mail ballots.
- Make failure to complete the oath or form when assisting a voter voting by mail a state jail felony unless the assistant is related to the voter within the second degree by affinity or the third degree by consanguinity.

- Requires additional information from voters, or those who assist voters who are over 65 or disabled, when requesting and cast a ballot by mail. These provisions would discourage assisting voters by making it a state jail felony "if the person makes a false statement" when making the assistor oath.

Mail Ballots
- Require the early voting clerk to report determinations of any voter's Election Code violation made by the early voting ballot board or signature verification committee to the Attorney General for criminal investigation.
- Require all mail ballot applications to be in writing with a wet (ink on paper) signature which is difficult for many people who are disabled.
- Requires voters using mail ballots to include the exact ID number used when they registered to vote. The ID number must match the ID number on file when applying for or returning mail ballots.
- Makes it a state jail felony for a public official to distribute an application to vote by mail if the voter did not request an application.
- Requires vote by mail ballot applications to include the voter's driver's license number, state ID card number, last four digits of their social security number, or a statement that the applicant does not have such ID, for the clerk to match the ID information application to the voter's registration application or to reject the application.
- Requires voters for whom records indicate they applied for a mail ballot to cast a provisional ballot in person unless the voter returns the unvoted ballot. Existing law allows voters to sign a statement and vote a regular ballot if the ballot was never delivered or the voter did not apply for a mail ballot.
- Prohibits nonpartisan community organizations from providing online access to mail ballot applications.

Curbside Voting
- Requires any person transporting seven or more curbside voters to complete a form attesting to whether the person is merely providing transportation or is providing assistance with voting. The form is not required if the driver is related to each voter within the second degree by affinity or the third degree by consanguinity. This could negatively impact churches or other community organizations that give rides to voters.
- Prohibits a voter from voting from inside a vehicle unless the voter qualifies for curbside voting.

Poll Watchers
- Makes it a Class A misdemeanor for the election officer to prevent a watcher from observing an activity or procedure or taking an action that would restrict a poll watchers' efforts "not reasonably effective."
- Limits the ability of election judges to remove disruptive or intimidating partisan poll watchers. This provision could make it easier for poll watchers to disrupt the polling place and intimidate voters by roaming the polling place "near enough to see and hear" the observed activity. The section also states a watcher "may not be denied free movement where election activity is occurring." Although poll watchers are not allowed to talk to voters, they could talk to the election worker in a loud enough voice that it would essentially challenge a voter.
- Allows poll watchers would to observe the closing of the polling place and follow the ballot materials to a vote counting station.
- Allows poll watchers to observe curbside voting, including entering the vehicle while the voter completes their ballot.
- Makes an election officer's failure to accept a poll watcher authorized by a political party or candidate a Class A misdemeanor.
- Makes obstructing the view of a watcher or distancing a watcher to make observation not reasonably effective a Class A misdemeanor.
- Allows poll watchers to sit or stand close enough to see and hear election officers conduct observed activity, except as otherwise prohibited by law. Watchers may not be denied free movement where election activity is occurring.
- Allows poll watchers to observe all election activities related to polling place closure, including the sealing and transfer of a data storage device. A watcher may follow the transfer of election materials from the polling place to a regional tabulating center or central counting location.
- Prohibits a presiding election judge from removing a watcher for a violation of law unless the violation is observed by an election judge or clerk after the watcher has been previously warned that their conduct violated the law.

- Allows a poll watcher's appointing authority to obtain injunctive relief, a writ of mandamus, or any other remedy available at law if the authority believes the watcher has been obstructed. The SOS may obtain injunctive relief, a writ of mandamus, or any other remedy available at law if the Secretary believes a state inspector has been obstructed.

Criminal Provisions and Judicial Proceedings
In addition to criminal provisions mentioned in the sections above SB1:
- Creates a civil cause of action for petitions alleging a violation of various sections of the Election Code related to voter registration, voter assistance, mail voting, or election fraud. Losing parties will be liable for $1000 damages for each violation.
- Makes voting in an election in Texas after voting in an election in another state in which a federal office appears on the ballot and the Election Day for both states is the same day punishable as "illegal voting."
- Creates a state jail felony for offering, soliciting, receiving, or accepting compensation to coerce or induce another person to make a false statement on a registration application.
- The bill would also raise the severity of the offense of election fraud from a class A misdemeanor to a state jail felony if committed by an election officer in their official capacity.
- An early voting clerk is subject to a state jail felony for soliciting the submission of an application by a person who did not request one, distributing an application to a person who did not request one unless otherwise authorized by law, authorizing the expenditure of public funds to facilitate third party distribution of an application to a person who did not request one, or completing any portion of an application to vote by mail and distribute the application with intent that the applicant will return the application to the early voting clerk.
- Prohibit an early voting clerk or other election official from distributing mail ballots or balloting materials to anyone who did not first apply for them. A violation of the prohibition would be a class A misdemeanor.