

NINE 2023 TEXAS ELECTION INTEGRITY BILLS REVIEWED

(S.B. 117, 166, 220 & 260, H.B. 52, 222, 397, 499 & 549)

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THE VOTER INTEGRITY PROJECT

Summaries of Bills

In 2020, faced with COVID-19, our country saw a dramatic increase in vote-by-mail ballots. Yet COVID-19 did not deter voters as approximately 155 million people voted, of which 69%, or 107 million voters, cast ballots by mail.^{1,2} This represents a significant increase from 2016, in which only 40% of voters used mail to vote. 2020 also brought about claims of massive voter and election fraud. While sensational levels of fraud seem unlikely, voter fraud indeed occurs.

Because of the hotly contested 2020 election, many states with both Republican and Democrat legislatures introduced a flurry of new bills aimed at changing election laws.

Texas Republican State Senator Lois Kolkhorst, who represents the 18th district, introduced TX S.B. 260.³ The bill relates to confirmation of a voter's residence by a voter registrar and makes it easier to remove illegitimate voters from the rolls.

Texas Republican State Senator Paul David Bettencourt and Texas Republican State Representative Valoree Swanson introduced TX S.B. 220 and H.B. 549 respectively. These identical bills come in response to what they believe are election improprieties in Harris County, and are identical to those introduced in response to the 2020 election. They relate to the investigations of election malfeasance allegations and how the state will provide injunctive and emergency relief in such cases.

Texas Democrat State Representative Terry Meza and Texas Democrat State Senator Jose Menendez introduced TX H.B. 499 and S.B. 117 respectively.^{4,5} These identical acts expand the right of voters to cast their ballot at any polling location in their county.

Texas Republican State Senator Bryan Hughes, Texas Republican State Representatives David Spiller, Bryan Slaton, and Craig Goldman introduced TX S.B. 166,⁶ TX H.B. 52,⁷ TX H.B. 222⁸ and

¹ DeSilver, D. (2021, January 28). *Turnout soared in 2020 as nearly two-thirds of eligible U.S. voters cast ballots for president*. Pew Research Center. <https://www.pewresearch.org/fact-tank/2021/01/28/turnout-soared-in-2020-as-nearly-two-thirds-of-eligible-u-s-voters-cast-ballots-for-president/>

² U.S. Census Bureau. (2021, April 29). *What Methods Did People Use to Vote in the 2020 Election?* The United States Census Bureau. <https://www.census.gov/library/stories/2021/04/what-methods-did-people-use-to-vote-in-2020-election.html>

³ <https://capitol.texas.gov/tlodocs/88R/billtext/pdf/SB00260I.pdf#navpanes=0>

⁴ <https://capitol.texas.gov/tlodocs/88R/billtext/pdf/HB00499I.pdf#navpanes=0>

⁵ <https://capitol.texas.gov/tlodocs/88R/billtext/pdf/SB00117I.pdf#navpanes=0>

⁶ <https://capitol.texas.gov/tlodocs/88R/billtext/pdf/SB00166I.pdf#navpanes=0>

⁷ <https://capitol.texas.gov/tlodocs/88R/billtext/pdf/HB00052I.pdf#navpanes=0>

⁸ <https://capitol.texas.gov/tlodocs/88R/billtext/pdf/HB00222I.pdf#navpanes=0>

TX H.B. 397⁹ respectively. TX H.B. 222 and TX H.B. 397 are identical, while TX H.B. 499 and TX S.B. 117 are extremely similar in wording to each other, and nearly identical to the other two bills. For all intents and purposes, they are the same bill. These four bills all address the same issue: increasing the penalty of an election crime in Texas, which currently is a Class A misdemeanor (a county jail sentence up to 1 year and up to \$4,000 fine) up to a felony of the second degree (a prison sentence which carries 2 – 20 years prison), unless it is only an attempt which is instead a state jail felony (a prison sentence which carries 6 months – 2 years).

In this report, Look Ahead America summarizes and analyzes each of these bills.

Summary of S.B 260

SECTION 1. Amends Section 15.051(a)¹⁰ **Confirmation Notice** of the Texas Election Code.

The following amendment requires the registrar to send written confirmation notice that the voter confirms their current residence if:

- (1) The voter’s residence address is a commercial post office box or similar location that does not correspond to a residence;
- (2) On November 30 following a general election
 - a) their name is not on the suspense list, and
 - b) has not voted in any election during the previous 25 months, or
- (3) The registrar has any other reason to believe that a voter’s current residence is different from that indicated on the registration records.

SECTION 2. States the Act takes effect September 1, 2023.

Analysis of S.B. 260

TX S.B. 260 expands the ability of a registrar to confirm the validity of voters, which opens the door to voters challenging these statuses by presenting evidence to the registrar, an activity that LAA has supported around the country. This is a tremendous improvement in the status quo but formalizing a process for a citizen to object to a voter and prompt a confirmation notice to prevent registrars from using their discretion to arbitrarily reject an objection.

Summary of S.B. 220 & H.B. 549

SECTION 1. Amends Section 31.005 of the Texas Election Code.

⁹ <https://capitol.texas.gov/tlodocs/88R/billtext/pdf/HB003971.pdf#navpanes=0>

¹⁰ <https://statutes.capitol.texas.gov/Docs/EL/htm/EL.15.htm#15.051>

Section 31.005 is amended to give the Secretary of State more authority to enforce the code.

- a) The Secretary of State may take appropriate action to protect against violations of this code by authorities administering the state's electoral process.
- b) The Secretary of State may order the offending person to correct the conduct offending this code. If the person fails to comply, then the secretary may seek enforcement of the order by a temporary restraining order or a writ of injunction of mandamus obtained through the Attorney General.

SECTION 2. Amends the heading to Chapter 34 of the Texas Election Code to "CHAPTER 34. STATE INSPECTORS AND ELECTION MARSHALS".

SECTION 3. Amends Chapter 34 by adding Sections 34.006 and 34.007:

Sec. 34.006 - Creates Election Marshals and delineates their appoints

- a) The Secretary of State shall appoint a State Election Marshal, who will report to the Secretary of State.
- b) The State Election Marshal shall appoint Election Marshals for each Department of Public Safety region such that there is one Election Marshal for every 1,000,000 people who reside in that region. Appointments must be made no later than the 60th day before early voting is scheduled to begin (primary or in November). This appointment lasts 90 days although may be extended by the State Election Marshal if an Election Marshal is investigating.
- c) The State Election Marshal shall designate an Election Marshal to be the Chief Election Marshal for that region. The Chief Election Marshal will assign election marshals to each alleged violation of this code in their respective region.
- d) The State Election Marshal and Election Marshal must be a licensed peace officer by the Texas Commission on Law Enforcement, be commissioned by the Department of Public Safety, and have had training in election law from the Secretary of State.
- e) The Election Marshal has the powers and duties of a state inspector under this chapter and other powers and duties assigned by law.
- f) The name, county of residence, and business contact information is publicly available information.

Sec.34. 007 - Describes the responsibilities of Election Marshals and State Inspectors in an investigation for violation of this code.

- a) Provides definitions for the positions articulated in Sec. 34.006.
- b) A State Inspector or Election Marshal shall promptly investigate an alleged violation of this code supported by an affidavit or unsworn declaration and submitted to the Chief Election Marshal who is assigned to the Election Marshal.
- c) If an Election Marshal investigates an alleged violation of this code and finds

probable cause that a violation is occurring or likely to occur, then;

- i) The Election Marshal shall exercise all lawful means to prevent the violation from continuing or occurring.
- ii) The Election Marshal may seek such orders, processes, or warrants from a court to prevent violations from continuing or occurring.
- iii) The Election Marshal may also file appropriate criminal charges.

d) This section does not affect the right of any candidate or political party to file civil action under another law.

SECTION 4. Amends Section 273.001(a) of Election Code.

a) Amended to include Election Marshals to present affidavits alleging criminal conduct in connection with the election to the county or district attorney having jurisdiction in that territory. The county or district attorney shall investigate the allegations. It also removes language that directs voters to present the affidavits to the Attorney General.

SECTION 5. Amends the heading to Section 273.003 of the Election Code to include “AND EQUIPMENT” to read as “Sec. 273.003 IMPOUNDING ELECTION RECORDS AND EQUIPMENT.”

SECTION 6. Amends 273.003 (a) of the Election Code.

a) Empowers the Secretary of State and Election Marshals to have election returns, voted ballots, signature roster, and other elections records or equipment impounded in relation to an investigation of an election.

SECTION 7. Amends the heading of subchapter E chapter 273 of the election code to read as “INJUNCTIVE RELIEF AND EMERGENCY REVIEW”.

SECTION 8. Amends 273.081 of the Election Code.

- a) Ensures that political candidates, a political party, or a state county or precinct chair of a political party have injunctive relief to prevent a violation of this code.
- b) In connection with an action for injunctive relief, a court may issue subpoenas of persons or property and order the inspection or impoundment of election records or equipment.

SECTION 9. Adds subchapter E, subsections 082 and 083 to Chapter 273 of the election code. Section 273.082 - Establishes the criteria and procedure for the disqualification of a judge.

a) The judge of a district or county court with jurisdiction over any geographic area served by an election official who is a party in a proceeding for injunctive

relief under this subchapter is disqualified to preside over the proceeding, unless the election official serves statewide.

b) If a petition is filed in a proceeding in which a judge may be disqualified, the clerk of the court shall promptly call the filing to the attention of the judge. The judge will determine whether he or she is disqualified under subsection (a), and the judge will promptly request the presiding judge of the administrative judicial region to assign an alternate judge to preside over the proceeding.

c) The alternate judge has to be eligible under subsection (a).

d) In a proceeding in which a judge is disqualified, the presiding judge of the administrative judicial region may take any action in the proceeding otherwise authorized by law including the issuance of temporary relief.

Section 273.082 - Establishes procedures for the emergency review of election activity.

a) No later than the 60th day before the date of a regular or special election, the presiding judge of each administrative judicial region shall appoint a sufficient number of visiting judges to serve as emergency election review judges to preside in actions under this section in accordance with Chapter 74 of the Government Code.

b) Judges appointed to serve as an emergency election review judge shall receive training specified by the secretary of state at least once a year.

c) An action filed by political candidates, a political party, or a state county or precinct chair of a political party that alleges a violation of this code in that election and requests emergency injunctive relief shall be assigned to an emergency election review judge. An election review judge may not review an action that occurs in a district or county where the judge currently serves.

d) A request for a hearing shall be delivered to the assigned judge who shall promptly conduct a hearing by electronic or otherwise means. It will begin:

i) No later than 3 hours after the judge receives a written hearing request filed no earlier than the 45th day before the date of the election and not later than the last day of in-person early voting, or

ii) No later than 1 hour after the judge receives a written hearing request filed not earlier than the last day of in-person early voting and not later than the final canvass of an election.

e) These hearings must be transcribed or recorded and are subject to appellate review.

SECTION 10. The act takes effect September 1, 2023.

Analysis of S.B. 220 & H.B. 549

These bills create a new task force trained and dedicated to election security for the duration of the election and shortly after. The bill also clearly establishes the responsibilities of this task force in receiving allegations of fraud. This is a step in the right direction as the task force

resolves Election Day issues or possibly issues surrounding early voting and ballot boxes, although a permanent dedicated voter fraud investigation division would be ideal.

The Attorney General's office currently has an office of Election Integrity, but only by the discretion of the Attorney General. A further improvement would make this office permanent.

Summary of H.B. 499 & S.B. 117

The act repeals Section 43.007(i), which states: "(i) The secretary of state may only select to participate in the program six counties with a population of 100,000 or more and four counties with a population of less than 100,000."

The program to which it refers is a countywide polling place program, which implements a program to allow each commissioner's court participating in the program to eliminate county election precinct polling places and establish countywide polling places. In other words, where a person votes within the county does not matter in terms of any specific precinct(s), and this would make such a program accessible to all counties, not only ten as described in the clause.

The act takes effect immediately if two-thirds of each house vote on it. Otherwise, the act takes effect September 1, 2023.

Analysis H.B. 499 & S.B. 117

This legislation would give rural voters the same rights as urban voters to cast ballots wherever it is most convenient, and boosting turnout among these rural voters is a core mission of LAA.

However, this does increase the complexity of conducting elections since each polling place would be required to generate a custom ballot for each voter and could lead to the same complications that occurred in the 2022 General Election in Maricopa County, Arizona. A way to avoid this would be to provide funding to these rural, often poorer counties, so they can afford the technology necessary to meet the requirements in the bill.

Summary of TX S.B. 166, H.B. 52, H.B. 222 and H.B. 397

The act amends Section 64.012(b), Election Code, to remove "Class A misdemeanor" and replaces it with "under this section is a felony of the second degree unless the person is convicted of an attempt. In that case, the offense is a state jail felony." It undoes the change in S.B. 1 that reduced election fraud crimes to misdemeanors.¹¹

¹¹ https://laabackup.wpenginepowered.com/wp-content/uploads/LAA_TX_SB1_Analysis.pdf

The bill is not retroactive, meaning that it would only apply to elections taking place on or after September 1, 2023; any person who committed offenses before that date would have the Class A misdemeanor applicable to them if convicted.

Analysis TX S.B. 166, H.B. 52, H.B. 222 and H.B. 397

Without a strong disincentive from committing or attempting to commit election fraud, it will continue. This shows that Texas means business.

Look Ahead America’s Six Election Integrity Public Policy Objectives

1. Thumbprint Authentication of Absentee Ballots.
2. Mandated and Public Voter List Hygiene.
3. Ban on the Use of “Black Box” Voting Equipment.
4. Appointment of a Citizens Elections Supervisory Committee.
5. Creation and Funding of a Dedicated Voter Fraud Investigation Division within the State’s Attorney General’s Office.
6. Equitable Distribution of Private Contributions to Election Operations.

These objectives inform our analysis of these bills and other election integrity reform efforts.

You can find additional information at <https://LookAheadAmerica.org/integrity>.

Acknowledgements

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How to Help

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Join our Guided community server at <https://guilded.gg/Look-Ahead-America> and learn how to use Guided at <https://LookAheadAmerica.org/Guided>.