

Voting Rights in the 88th Legislative Session

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Four Buckets

1. Further Criminalization of Voting
2. Secretary of State Control of Election Processes and/or Investigations
3. Attorney General Authority Expansion
4. Increased Hurdles

First Up: Further Criminalization of Voting



- Background
- SB 2
- Intent
- Penalty Increase

Background

- In 2021, the 87th Legislature lowered the penalty in the anti-voter omnibus bill SB 1 from a second-degree felony to a Class A misdemeanor.
- This reduction happened as an amendment.
- Increasing the penalty is now one of Lieutenant Governor Patrick's legislative priorities this Session.

SB 2 by Hughes

- According to the bill analysis, and the author's remarks during the hearing, seems to be a response to the Crystal Mason case.
- The changes are two-fold:
 - First, it would change the intent requirement from knowing that the person was ineligible to vote when they voted or attempted to vote, to knowing of "a particular circumstance" that makes them ineligible to vote.
 - Second, increasing the penalty from a Class A misdemeanor to a second-degree felony and providing that the penalty for an attempt is a state jail felony.

SB 2 - Particular Circumstance

- To be eligible to vote in Texas, according to the Secretary of State, a voter must be:
 - A U.S. citizen.
 - A resident of the county in which they intend to vote.
 - At least 18 years old. (People may register at 17 years and 10 months.)
 - Not convicted of a felony (unless their sentence is completed, including any probation or parole).
 - Not declared mentally incompetent by a court of law.
 - Registered 30 days before the election in which they plan to vote.



SB 2 - Particular Circumstance

- Other concerns:
 - Fundamentally incompatible with provisional ballots.
 - The language is broad (what is an attempt?)
 - Creates a strict liability standard for illegal voting.
 - Makes voting scarier than it already is and may deter people from even trying to vote.

SB 2 - Penalty Increase

- Increases the penalty from a Class A misdemeanor to a second degree felony.
 - Class A misdemeanor is the most serious misdemeanor offense (\$4,000 fine and/or up to 1 year in jail).
 - Second-degree felony carries a penalty of 2 - 20 years in jail and potentially up to a \$10,000 fine.
 - Examples of existing second-degree felonies: indecency with a child, robbery, and manslaughter.
 - State jail felony penalty is 180 days - 2 years in jail and potentially up to a \$10,000 fine.
 - Example of an existing state jail felony: criminally negligent homicide.

SB 2 - Penalty Increase

- [HB 52](#), [HB 222](#), [HB 397](#), [HB 1243](#), [HB 1735](#) and [SB 166](#), also increase the penalty, but without the intent redefinition.



Next: Secretary of State Control



- Election Marshals
- Replacing Election Administrators

Election Marshals

- [SB 220](#)/[HB 549](#) & [HB 1877](#) - creates a police force ("election marshals") under SOS that is charged with investigating election offenses.
- Requires election marshals to investigate alleged Election Code offenses submitted to them and based on at least one affidavit or unsworn declaration.
- No term limits beyond 90-day appointment, or guardrails.

Election Administrators

- [HB 2020/SB 823](#) - Authorizes SOS to suspend a county election administrator's employment at any time if someone:
 - Files an administrative election complaint with SOS; and
 - SOS has "good cause to believe" that there is a "recurring pattern of problems with election administration" in the EA's county.
- Created to target Harris County.

Election Administrators

- Examples of "problems" include:
 - "malfunction of voting system equipment;
 - unfair distribution of election supplies;
 - errors in tabulation of results;
 - delays in reporting election returns; and
 - discovery of voted ballots after the polls close."

Next: Attorney General Authority Expansion



- Background
- Bills to Watch

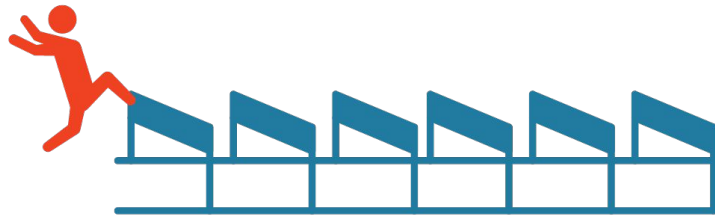
Background

- The Texas Court of Criminal Appeals found that the Attorney General did not have unilateral authority to prosecute election offenses.
- In Texas, this power belongs to local district attorneys and/or county attorneys who have discretion on whether or when to prosecute election offenses.
- Several bills have been filed to get around that decision.

Bills to Watch

- [HB 125](#) - Prohibits a “prosecuting attorney” from adopting or enforcing any formal or informal policy or from demonstrating a pattern or practice that limits or prevents enforcement of any Election Code criminal offense. Authorizes OAG to sue the prosecuting attorney for injunctive relief and litigation costs. Imposes a civil penalty on the prosecuting attorney.
- [HB 678](#) - Removes investigations into reports of criminal activity in elections from SOS to OAG and allows the AG to appoint a county attorney or DA as a special prosecutor in the case.

Finally: Increased Hurdles

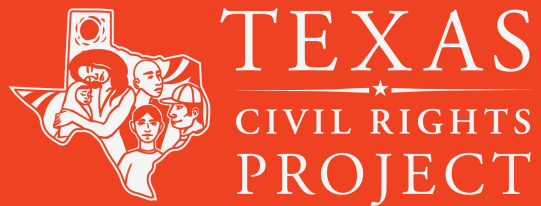


Bills to Watch

- [SB 512](#) - prohibits the use of ballot marking devices and electronic poll lists in elections.
- [HB 1448](#) - adds thumbprint and signature requirements for ballots voted by mail.
- [HB 2123](#) - requires voters to present documentation that they are a U.S. citizen to register to vote, requires volunteer deputy registrars (VDR) to verify the voter's citizenship, and makes it a state jail felony for any VDR to not verify citizenship or to submit an application filled out by a noncitizen.

Want more info?

- Go here to sign up for our bill tracking: bit.ly/TCRPLege
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