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## CIVIL RIGHTS PROJECT

Last revised: April 11, 2021

- **Text of the 3rd Committee Substitute, which was introduced and passed by the House Elections Committee at its April 8, 2021 hearing:**  
[https://drive.google.com/file/d/1ux6tBueW5xKnpCXwvKyH\\_mUCZFGGnNDy/view?usp=sharing](https://drive.google.com/file/d/1ux6tBueW5xKnpCXwvKyH_mUCZFGGnNDy/view?usp=sharing)

**Note: this document now refers to and describes the 3rd Committee Substitute of HB 6 that was introduced and passed at the April 8, 2021 hearing on HB 6.** This document notes where this Committee Substitute is different from the most recent prior version.

There are three previous versions of HB 6:

- The original version filed on March 12, available [here](#). Our summary of that original version is available [here](#).
- The first Committee Substitute, introduced at the HEC hearing on March 25, available [here](#). Our summary of that first Committee Substitute is available [here](#).
- The second Committee Substitute, introduced at the HEC hearing on April 1, available [here](#). Our summary of that second Committee Substitute is available [here](#).

### **Article I -- General Provisions**

- **Title and Purpose of Bill:** Titling itself “the Election Integrity Protection Act of 2021,” and stating that its purpose is to “exercise the legislature’s constitutional authority under Section 4, Article VI, Texas Constitution, to make all laws necessary to detect and punish fraud and preserve the purity of the ballot box.” Sections 1.01 and 1.02.
- **Legislative Findings:** Making a series of findings to justify the bill, including that “fraud in elections threatens the stability of a constitutional democracy by undermining public confidence in the legitimacy of public officers chosen by election,” that “reforms are needed to the election laws of this state to ensure that fraud does not undermine the public confidence in the electoral process,” and that the provisions of the bill “are enacted solely to prevent fraud in the electoral process.” Section 1.03.
- **Legislative Intent:** “It is the intent of the legislature that the application of this code and the conduct of elections shall be uniform and consistent throughout this state to reduce the likelihood of fraud in the conduct of elections.” Section 1.04
- **Strict Construction of the Election Code:** Requiring public officials to “construe the provisions of this code strictly to effect the intent of the legislature” as described in Section 1.05.



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- **Defining “public official” in the Election Code**: “Public official” means “a person elected, selected, appointed, employed, or otherwise designated as an officer, employee, or agent of this state, a government agency, a political subdivision, or any other public body established by state law.” Section 1.06.

### **Article 2 -- Registration and Conduct of Elections**

- **Expedited distribution of documents related to death, to voter registrars and SOS**: Requiring government officials to provide abstracts of death certificates, and abstracts of applications for probate, administration of a decedent's estate, or determination of heirship, to SOS and the voter registrar no later than seven days after they are prepared. Section 2.01.
- **Requiring election workers to maintain a register of spoiled ballots from a DRE unit as part of the register of spoiled ballots that currently law already requires.** Section 2.02

### **Article 3 -- Election Officers and Observers**

- **General prohibition against presiding judges removing partisan poll watchers from polling places, or requiring them to leave polling places.** Section 3.01.
  - EXCEPTION: Poll watchers can be removed by the presiding judge only if the watcher “engages in activity that would constitute an offense related to the conduct of the election, including an offense under Chapter 276.” Section 3.07.
  - Explaining that the Chapter of the Election Code on poll watchers exists “to preserve the integrity of the ballot box . . . by providing for the appointment of watchers [who] observe the conduct of an election and call to the attention of an election officer any observed or suspected irregularity or violation of law in the conduct of the election.” Section 3.02.
- **Creating a new Class B misdemeanor offense for an election officer who “intentionally or knowingly refuses to accept a watcher for service when acceptance of the watcher is required.”** Section 3.03. **Similar to Section 4.02 of the version of SB 7 passed by the Senate, except SB 7 makes it a Class A misdemeanor and requires poll watchers to swear an oath that they won't disrupt the voting process or harass voters.**
- **Explaining what it means for a poll watcher to “observe” elections under the Election Code**: “In this code, a watcher who is entitled to ‘observe’ an activity or



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procedure is entitled to sit or stand near enough to see and hear the activity or procedure.” Section 3.04.

- **The 3rd Committee Substitute moved this from Section 3.02 and added the word “procedure”).**
- **New right for poll watcher to observe certain voting equipment:** Granting poll watchers the right to observe “the sealing and transfer of a memory card, flash drive, hard drive, data storage device, or other medium now existing or later developed used by the voting system equipment.” Section 3.05 (re-numbered from the last version’s Section 3.04, otherwise the same).
- **Exposing election workers to criminal liability for knowingly preventing a watcher from observing a “procedure” that they are entitled to observe, and adding that such offense would include “taking any action to obstruct the view of a watcher or distance the watcher from the activity or procedure to be observed in a manner that would make observation not reasonably effective,”** which would be a Class A misdemeanor. Section 3.06.
  - **This section has been re-numbered from the prior version’s Section 3.05. It also adds the word “procedure” to the criminal offense and makes other minor word changes.**
- **Setting forth the following groups of people permitted to be in the polling place:**
  - (1) an election judge or clerk; (2) a watcher; (3) the secretary of state; (4) a staff member of the elections division of the secretary of state's office when performing an official duty accordance with this code; (5) an election official, a sheriff, or a staff member of an election official or sheriff when delivering election supplies; (6) a state inspector; (7) a person admitted to vote; (8) a child under 18 years of age who is accompanying a parent who has been admitted to vote; (9) a person providing assistance to a voter; (10) a person accompanying a disabled voter; (11) a special peace officer appointed by the presiding judge; (12) the county chair of a political party conducting a primary election; (13) a voting system technician; (14) the county’s election officer (i.e., their election administrator) as necessary to perform tasks related to the administration of the election; (15) a person whose presence has been authorized by the presiding judge and the alternate presiding judge in accordance with the Election Code. Section 3.08 (re-numbered from Section 3.07 in prior version, otherwise same).
- **Granting poll watchers the right to observe in-person delivery of marked mail ballots on election day:** Poll watchers “must be able to determine how the ballots are being delivered and how election officials are making decisions about the delivery of



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ballots, if applicable.” Poll watchers are prohibited, however, from “disrupt[ing] the process of delivering ballots.” Section 3.09 (re-numbered from Section 3.08 in prior version but otherwise the same).

- **Setting forth the following groups of people permitted to be present when the early voting ballot board meets:**
  - (1) a presiding judge or member of the board; (2) a watcher; (3) a voting system technician; (4) the county’s election officer (i.e., their election administrator) as necessary to perform tasks related to the administration of the election; or (5) a person whose presence has been authorized by the presiding judge and the alternate presiding judge in accordance with the Election Code. Section 3.10 (re-numbered from prior version’s Section 3.09, otherwise the same).
- **Setting forth the following groups of people permitted to be present in a central counting station while ballots are being counted:**
  - (1) a counting station manager, tabulation supervisor, assistant to the tabulation supervisor, presiding judge, or clerk; (2) a watcher; (3) a voting system technician; (4) the county’s election officer (i.e., their election administrator) as necessary to perform tasks related to the administration of the election; or (5) a person whose presence has been authorized by the presiding judge of the central counting station in accordance with the Election Code. Section 3.11 (re-numbered from prior version’s Section 3.10, otherwise the same).

### Article 4 -- Assistance of Voters

- **Required form for assistants to voters:** Requires people who assist voters (other than election officers) to complete a form giving their name and address, “the manner in which the person is assisting the voter,” “the reason the assistance is necessary,” and their relationship to the voter. The form must be incorporated into the VBM carrier envelope if the voter is voting by mail and receives assistance. Section 4.01. Same as Section 3.11 in the version of SB 7 that was passed by the Senate.
- **Adding “I did not pressure, encourage, coerce, or intimidate the voter into choosing me to provide assistance” to the oath that vote assistants must take, and explicitly stating that oath is being made “under penalty of perjury.”** Section 4.02.
  - The latest version added the word “encourage” to the proposed oath.
- **Making it easier to prosecute people who are assisting mail voters by increasing the technical requirements that assistants must comply with, removing a defense**



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**to being prosecuted for failing to comply with such technical requirements, and boosting some associated criminal penalties Sections 4.03 and 4.05.**

- Requiring that those who assist a voter in preparing a mail ballot must enter on the carrier envelope the “manner” of assistance they provided and their “relationship” to the voter, and also provide on the envelope “whether the person received or accepted any form of compensation or other benefit from a candidate, campaign, or political committee in exchange for providing assistance.”
- Currently, it is a crime for a person who assists a mail voter to knowingly fail to sign the written assistant oath on the carrier envelope or to knowingly fail to provide their signature, printed name, and residence address on the carrier envelope--unless they are a family member of the voter or someone living in the same dwelling as the voter. HB 6 retains the current exemption for family members/someone living in the same dwelling as the voter to the criminal offense of knowingly failing to sign the assistant oath. But it makes the exemption for knowingly failing to provide signature, printed name, and residence apply only to assistants who are family members, taking it away from assistants living in the same dwelling as the voter.
- Raising from a state jail felony to a third degree felony the offense level for an assistant who knowingly fails to provide their signature, printed name, residence, manner of assistance, and relationship to the voter on the carrier envelope when assisting a mail voter, if the assistance by the person was itself also unlawful.
- The net effects of the these preceding bullet points are that:
  - Someone living in the same dwelling as the voter would now be criminally liable when assisting a mail voter if they knowingly fail to provide the following elements on the carrier envelope: their signature, printed name, residence, manner of assistance, relationship to the voter, and whether they received or accepted any form of compensation or benefit from a candidate, campaign, or political committee in exchange for providing assistance;
  - Any assistant other than a family member would also now be criminally liable when assisting a mail voter if they knowingly fail to provide either the manner of their assistance or their relationship to the voter on the carrier envelope or whether they received or accepted any form of compensation or benefit from a candidate, campaign, or political committee in exchange for providing assistance (they are already criminally liable for knowingly failing to provide either their signature, printed name, or residence on the carrier envelope); and
  - Those assistants (other than family members) who knowingly fail to provide either their signature, printed name, residence, manner of



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assistance, relationship to the voter, or whether they received or accepted any form of compensation or benefit from a candidate, campaign, or political committee in exchange for providing assistance on the carrier envelope will be liable for a third degree felony (not the lower level offense of a state jail felony) if the person also unlawfully provided assistance to the same voter in connection with the same ballot.

- **Making it easier to prosecute those who pay or who are paid for depositing mail ballots or assisting voters while voting by mail, by eliminating some of the elements prosecutors must prove, while also raising the punishment for such offenses Sections 4.04**
  - Changes the current criminal prohibitions from ones that prohibit compensating another person for depositing a VBM ballot or assisting VBM voters as part of a performance-based compensation scheme. It would now be a flat prohibition on compensating or even offering to compensate another person for depositing a VBM ballot or assisting VBM voters, even if not part of a performance-based compensation scheme.
  - Changing the current criminal offense against accepting such compensation when the person accepting it knows it is illegal. It would now be a flat prohibition on soliciting, receiving, or accepting such compensation even when the person did not know it was illegal.
  - Deletes the current prohibition against making a person's compensation or employment status dependent on the number of mail ballots deposited or VBM voters assisted
  - Including in the definition of prohibited compensation "political favors, beneficial or favorable discretionary official acts," in the current list.
  - HB 6 boosts the penalty of the providing assistance offenses to a state jail felony in all cases.
    - The version of these offenses in current law is a misdemeanor unless the person has been previously convicted at least twice before of that offense, in which case it is a state jail felony.

### **Article 5 -- Fraud and Unlawful Practices**

- **Creating a new state jail felony offense against election judges who enter false information on a form for an affidavit required by Section 63.001 (which creates the reasonable impediment declaration and substantially similar name affidavit).** This section of HB 6 refers specifically to "an affidavit," suggesting it is meant to apply only to substantially similar name affidavits, but it may be that this section was also meant to cover reasonable impediment declarations. Section 5.01.



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- **Adding a new form of the already existing “illegal voting” criminal offense:** HB 6 amends the current list of offenses that qualify as criminal “illegal voting” found in Section 64.012, by adding “knowingly votes or attempts to vote in an election in this state after voting in another state in an election in which a federal office appears on the ballot and the election day for both states is the same day.” If any form of illegal voting listed in Section 64.012 also constitutes an offense under a separate statute, a defendant may be charged with either offense, or both. Section 5.02.
- **Expanding what qualifies as the criminal offense of “election fraud” and boosting penalties for all forms of “election fraud.”** Adding to the current list of actions that qualify as criminal “election fraud” the following (Section 5.03):
  - Knowingly or intentionally making any effort to “count invalid votes or alter a report to include invalid votes” (similar to Section 4.07 of the version of SB 7 that passed the Senate)
  - Knowingly or intentionally making any effort to “fail to count valid votes or alter a report to exclude valid votes” (similar to Section 4.07 of the version of SB 7 that passed the Senate)
  - Knowingly “altering the ballot of another or by otherwise causing a ballot to not reflect the intent of the voter”
  - For all versions of the offense, which is described in Section 276.013, baseline crime would now be a state jail felony instead of the current Class A misdemeanor.
- **Creating a new “paid harvesting” criminal offense.** Section 5.04 (similar to Section 4.08 of the version of SB 7 that passed the Senate)
  - The following constitute criminal “paid harvesting,” a third degree felony, if a person knowingly does one of the following:
    - Providing or offering “vote harvesting services in exchange for compensation or other benefit.” This provision is identical to its analogue in the version of SB 7 that passed the Senate, except that SB 7 defines “compensation or other benefit” to include “benefits to a party whose welfare is of interest to the person.”
    - Providing or offering “compensation or other benefit to a person in exchange for vote harvesting services.” This provision is identical to its analogue in the version of SB 7 that passed the Senate, except that SB 7 also prohibits providing a compensation or other benefit to a person or “to another party whose welfare is of interest to the person.”
    - Collecting or possessing “a ballot voted by mail or official carrier envelope from a voter in connection with vote harvesting services.” This provision is



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identical to its analogue in the version of SB 7 that was approved by the Senate.

- For these offenses, a benefit means “anything reasonably regarded as a gain or advantage, including: a promise or offer of employment, a political favor, or a favorable discretionary official act; and a benefit to any other person in whose welfare the beneficiary has an interest.” The version of SB 7 that was approved by the Senate does not contain a definition of “benefit.”
    - Vote harvesting services means “direct interaction with one or more voters in connection with an official ballot, a ballot voted by mail, or an application for ballot by mail, intended to deliver votes for a specific candidate or measure.” This definition of “vote harvesting services” is identical to its analogue in the version of SB 7 that was approved by the Senate.
  - Excluding from “paid harvesting” conduct that is “political speech or other acts merely promoting a candidate or measure that do not involve direct interaction with: (1) an application for ballot by mail, in the presence of the voter; or (2) a voter’s official ballot, ballot voted by mail, or carrier envelope.” This is nearly identical to its analogue in the version of SB 7 that was approved by the Senate, except that SB 7 does not refer to “political speech” here.
  - The compensation/benefit element is inferred “if a person who performed the vote harvesting services for a candidate or campaign solicits, receives, or is offered compensation from the candidate or campaign, directly or through a third party, for services other than the vote harvesting services provided.” This is nearly identical to its analogue in the version of SB 7 that was approved by the Senate, except that SB 7 refers just to “compensation,” not to “compensation or other benefit” being inferred.
  - If any form of “paid harvesting” also constitutes an offense under a separate statute, a defendant may be charged with either offense, or both. This section is identical to its analogue in the most recent version of SB 7 that was approved by the Senate.
- **Prohibition on unsolicited distribution of vote by mail applications by public officials** Section 5.04
    - Public officials cannot knowingly do one of the following while “acting in an official capacity”:
      - “solicit[] the submission of an application to vote by mail from a person who did not request an application” (similar but not identical to Section 2.01 of the version of SB 7 that was approved by the Senate)
      - “distribute[] an application to vote by mail to a person who did not request the application unless the distribution is expressly authorized” by the





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Election Code (similar but not identical to Section 2.04 of the version of SB 7 that was approved by the Senate, for instance SB 7 does not include the exemption for posting an application form online)

- EXCEPTION to this one: it is ok for a public official to “provid[e] access to an application to vote by mail from a publicly accessible Internet website” (added by the Third Committee Substitute passed in Committee on April 8)
- “authorize[] or approve[] the expenditure of public funds to facilitate third-party distribution of an application to vote by mail to a person who did not request the application” (similar but not identical to Section 2.04 of the version of SB 7 that was approved by the Senate)
- “complete[] any portion of an application to vote by mail and distributes the application to an applicant”
  - EXCEPTION to this last one: Public officials would not be liable for this last bullet point if they were lawfully assisting the applicant in applying to vote by mail.
  - Committing any one of these offenses would be a state jail felony.
- Election officials cannot “knowingly mail[] or otherwise provide[] an early voting ballot by mail or other early voting by mail ballot materials to a person who did not submit an application for a ballot to be voted by mail”
  - This offense would be a state jail felony.
- **Creating a new perjury criminal offense for false assistant oaths (Section 5.05).** HB 6 creates a new state jail felony offense for making a false statement when taking the oath required to provide assistance to voters, or “swears to the truth of a false statement previously made when making the oath.”
- **Prohibiting the alteration, waiver, or suspension of election procedures (Section 5.04).** It prohibits public officials from “alter[ing], waiv[ing], or suspend[ing] an election standard, practice, or procedure mandated by law or rule unless the alteration, waiver, or suspension is expressly authorized by” the Election Code.
  - Similar to SB 1112, one of the “Bettencourt Seven,” which more narrowly prohibits “suspending the requirement” that the signature on a VBM application and on the VBM carrier envelope must be the voter’s signature (unless signed by a witness)

### **Article 6 -- Enforcement**



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- **Creating a new expedited process for the Texas Supreme Court, the Texas Court of Appeals, and Texas trial courts to hear requests for injunctive relief just before an election Sections 6.01-04.**
  - Starting on the 60th day before an election, the Court must “prioritize over any other proceeding pending or filed” a request for injunctive relief arising from the list of election offenses in Chapter 276 (such as “organized election fraud” and “election fraud”).
  - The court must grant oral argument upon request by a party and begin the hearing no later than 24 hours after the time the last brief for the proceeding is due if before the Supreme Court or Court of Appeals (or 24 hours after the hearing request if in a trial court)
  - Oral argument may be in person or “through electronic means”
  - Creating a new state jail felony offense for “communicat[ing] with a clerk of the court in an attempt to influence the assignment of or withhold the assignment of a justice identified by name or political party to a panel hearing an appeal.”
  - When such cases are before a trial court, the clerk must “docket the proceeding and if more than one district court in the county has jurisdiction over the proceeding, randomly assign the proceeding to a district court using an automated assignment system”
    - “The clerk of a county court or statutory county court in which [such a proceeding] is filed shall docket the proceeding and if more than one court in the county has jurisdiction over the proceeding, randomly assign the proceeding to a court using an automated assignment system.”
    - Creating a new state jail felony offense for “communicat[ing] with a county or district clerk with the intention of influencing or attempting to influence the court or judge assigned to a proceeding under this section.” Similar offense created with regard to cases before the Court of Appeals.

### **Article 7 -- Repealer; Transition; Effective Date**

- Repealing Section 86.0052(b) (which creates a misdemeanor offense for compensating people for depositing mail ballots in certain circumstances)
- Repealing Section 86.0105 (which creates a misdemeanor offense for compensating people for assisting voters as part of a compensation scheme, but retaining the state jail felony version of the offense, see description of Section 4.04 of HB 6 above)
- Severability clause allowing the rest of the bill to survive if any part is struck down in litigation (added by Third Committee Substitute passed by HEC on April 8).
- Setting the effective date as September 1, 2021