



# TEXAS

---

## CIVIL RIGHTS PROJECT

**Last revised: March 30, 2021**

**Text of the 2nd Committee Substitute of SB 7 as approved by the Senate State Affairs Committee on March 26, 2021:**

<https://capitol.texas.gov/tlodocs/87R/billtext/pdf/SB00007S.pdf#navpanes=0>

**Note: this document now refers to and describes the 2nd Committee Substitute of SB 7 released by Senator Hughes on March 26, 2021 at the Senate State Affairs Committee hearing on SB 7. The Committee approved that version by a vote of 5-2 on March 26.**

There are two previous versions of SB 7:

- The original version filed on March 11, available [here](#). Our summary of that original version is available [here](#).
- The first Committee Substitute introduced at the initial Senate State Affairs Committee hearing on March 22, available [here](#). Our summary of the first Committee Substitute is available [here](#).

### **Article 1 -- Voter Registration**

- **Affirmative notification to criminal defendants upon their disenfranchisement:** Requiring the trial court in a felony criminal case to “instruct the defendant regarding how the felony conviction will impact the defendant's right to vote in this state” following conviction. [Section 1.01](#).
- **Voter registration applications must require the applicant to provide all information requested on the application.** [Section 1.02](#).
- **Requiring registrars to notify AG and SOS if an ineligible person has voted or registered to vote:** SB 7 expands the current obligation registrars have to notify the county or district attorney if an unregistered person has vote, to require them to send notification if an ineligible person has registered to vote or voted in an election, and to also notify the Attorney General and SOS. [Section 1.03](#).
- **Expanding the registrar’s current obligation to send a notice to a voter when that voter’s name appears on the list of those excused or disqualified from jury service because of citizenship status, to also include those voters who appear on the list and have “otherwise [been] determined to be ineligible to vote.”** [Section 1.04](#).



# TEXAS

---

## CIVIL RIGHTS PROJECT

- **Expanding the Secretary's authority to monitor registrars for compliance with election laws to include Section 16.0332 (which requires registrars to send notices to persons excused from jury service because of citizenship status). Section 1.05.**
- **Granting SOS authority to "correct" violations of the Election Code by registrars, and exposing registrars to new civil penalty for non-compliance with SOS:** After the secretary sends a notice to registrars that they have found the registrar to be noncompliant with certain specified sections of the election code, the SOS could "correct the violation on behalf of the registrar" if the registrar does not do so within 30 days; registrars would be exposed to a civil penalty of \$100 for each time the SOS makes such a correction, which the AG would have the authority to bring a lawsuit to recover the penalty. Section 1.05.

### **Article 2 - Vote By Mail**

- **No attempted solicitation of VBM applications by counties:** Mandating that early voting clerks "make no attempt to solicit a person to complete an application for an early voting ballot by mail, whether directly or through a third party." Section 2.01. **Similar but not identical to Section 5.05 of HB 6.**
- **Requiring those applying to vote by mail on the ground of disability to make a new affirmation on their application:** "I have a sickness or physical condition that prevents me from appearing at the polling place on election day without a likelihood of needing personal assistance or injuring my health." **(1st and 2nd Committee Substitute Version of Section 2.02)**
  - Original version of SB 7 required the oath to be: "I am physically unable to enter a polling place without needing personal assistance or injuring my health." Section 2.02.
- **Requiring that the official application form for an early voting ballot must include a certification that the voter understands that giving false information on the application is a "state jail felony," instead of the current requirement that the voter certify that they know it is a "crime." (New Section 2.03 in 1st and 2nd Committee Substitute; causes rest of Article 2's section numbers to be re-numbered).**
- **Voters must request VBM applications before government agencies can distribute them or facilitate others in distributing them:** Unless specifically authorized under a provision of the Election Code, government employees cannot distribute a VBM application "to a person who did not request an application," nor may public funds be used "to facilitate the distribution by another person of an application form for an early



# TEXAS

---

## CIVIL RIGHTS PROJECT

voting ballot to a person who did not request an application.” Section 2.04. **Similar but not identical to Section 5.05 of HB 6.**

- **If a voter cancels their vote by mail application after a ballot has been sent to them, but does not return the VBM ballot to the county, must vote provisionally thereafter.** Section 2.05.
- **Proof of disability required for VBM** (Section 2.06): Requiring voters with disabilities who want to vote by mail and apply for an annual ballot by mail to provide proof of their disability, which can either be: 1) “written documentation from the United States Social Security Administration or the United States Department of Veterans Affairs evidencing that the applicant has been determined to have a disability” or 2) “a certificate of a licensed physician or chiropractor or accredited Christian Science practitioner in substantially the following form.”
  - If the voter provides a doctor’s certificate under Option 2, it must be “in substantially the following form”: “This is to certify that I personally know that \_\_\_\_\_ has a sickness or physical condition that will prevent him or her from appearing at a polling place without a likelihood of needing personal assistance or of injuring his or her health.”
- **Prohibiting the use of drop boxes for in person mail delivery.** Requiring that “delivery of a marked [mail] ballot voted . . . must be received at the time of delivery by a person,” and if it isn’t then the ballot can’t be counted, and further requiring that carrier envelopes that are “collected and stored at another location for subsequent delivery to the early voting clerk” not be counted. **(New Section 2.07 in first and second Committee Substitute; causes other sections of Article 2 to be further re-numbered).**
- **Requiring that mail ballots not returned timely must be kept “in a locked container” for the period of preserving the precinct election returns.** **(New Section 2.08 in first and second Committee Substitute; causes other sections of Article 2 to be further re-numbered)**
- **Creating an online VBM Tracker contingent on appropriations** (Sections 2.09 and 5.02): Creating an online tracker for VBM that would require updates “as soon as practicable” after: 1) receipt of the VBM application by the county; 2) acceptance or rejection of by the county of the VBM application; 3) mailing of the ballot to the voter; 4) receipt by the county of the voter’s marked ballot; 5) acceptance or rejection of the marked ballot. However, the SOS is only required to create such a tracker if the Legislature appropriates money specifically for it; otherwise, the SOS may but is not required to use “other appropriations” to create it.



# TEXAS

---

## CIVIL RIGHTS PROJECT

- (The 1st Committee Substitute exempted the tracked information (receipt of the VBM application, acceptance or rejection by the county of the VBM application, etc., from the definition of “public information” under Chapter 552, Government Code. The 2nd Committee Substitute passed by the Committee does not exempt this information from the definition of “public information.”)
- The 1st and 2nd Committee Substitute versions both make the requirement to create the tracker contingent on specific appropriations, unlike the original version.
- SOS must develop this tool and provide it to counties, and it must be available on the SOS’s website and the county’s Internet website (if the county has one)
- The tracker must require the voter to provide 1) their name, registration address, and last four digits of their social security number; and 2) either their DL number or personal ID card number. (Added in the 1st and 2nd Committee Substitute Version)
  - The original version of SB 7 required the voter to provide 1) their name and either their VR number or registration address; and 2) either their DL number, personal ID card number, or Social Security number.
- **Allowing signature verification committee and early voting ballot boards to compare the voter’s signature on the VBM carrier envelope to “any known signature” of the voter on file with the county clerk or voter registrar:** This is an expansion from current law which only allows comparison of the signature to those that are on file that were made within the preceding six years. Sections 2.10 and 2.11.
- **Requiring VBM ballots to be tabulated separately from in person ballots and reported separately on the returns.** Section 2.12.
- **Requiring separate tabulation and reporting out of: 1) ballots counted at a central counting station; 2) ballots cast at precinct polling places; and 3) mail ballots.** Section 2.13.
- **Requiring that--when the early voting clerk electronically records applications for a VBM ballot, jacket envelopes, carrier envelopes, and ballots--it must record “both sides” of the document, and that all such records must be provided to the early voting ballot board and the signature verification committee.** Section 2.14.
- **The changes in this article regarding VBM apply only to an application for VBM that is submitted on or after SB 7’s effective date.** Section 2.15.

### Article 3 - Election Security



# TEXAS

---

## CIVIL RIGHTS PROJECT

- **Expanding rights of partisan poll watchers to observe polling places and prohibition on obstructing them (Sections 3.03 and 3.04):**
  - Currently, partisan poll watchers are entitled to be “conveniently” near election officers while observing, but this would specify that watchers may be “near enough to see and hear” the activity they’re trying to observe, except where otherwise prohibited.
  - Except for being prohibited from being present at the voting station when a voter is preparing their ballot or is being assisted, the watcher “may not be denied free movement within the location at which the watcher is serving.”
  - Explaining that “a watcher who is entitled to ‘observe’ an activity is entitled to sit or stand near enough to see and hear the activity.” (Added as part of 1st and 2nd Committee Substitute Version of Section 3.03)
  - Specifying that the Class A misdemeanor offense of “unlawfully obstructing [a] watcher” includes “an action taken to distance or obstruct the view of a watcher in a way that makes observation reasonably ineffective”
- **Altering the formula that counties must use to distribute countywide vote centers in a way that will disadvantage historically disenfranchised communities. (Added as part of 1st and 2nd Committee Substitute Version of Section 3.05)**
  - Requiring that counties with a population of less than 1 million using countywide vote centers must have an approximately equal number of polling places in each commissioners precinct, with a deviation of not more than one percent between commissioners precincts.
  - For counties with a population of 1 million or more, requiring vote centers to be distributed based on state representative districts, with each district getting the proportion of the county’s vote centers equivalent to the proportion of the county’s “voters” that live in the district, rounding up to the nearest whole number if necessary. For instance, if you have ten voters in a county that has two state rep districts, with one district having six voters and the other having four voters, then the former would have six polling places and the latter would have four polling places. “Voters” was undefined in the 1st Committee Substitute, but the 2nd Committee Substitute partially clarifies that “voter data from the most recent election shall be used,” without explaining which race in the most recent election is to be used as the baseline. [Our analysis of HB 3946](#) in 2019 (which had very similar language) showed that it would re-distribute polling places away from non-white areas in favor of white areas, because systemic disenfranchisement of non-white communities means that they are a smaller proportion of voter turnout than their proportion of the overall population.



# TEXAS

---

## CIVIL RIGHTS PROJECT

- There is also what appears to be a nonsensical provision requiring that “Election officials and voting equipment, materials, and supplies must be allocated to each polling place based on the same percentage as polling place locations are determined under” these new formulas, “with no greater than a five percent deviation in the allocation between polling place locations.” The phrase “to each polling place” doesn’t make sense in this subsection and might possibly be a drafting error. The new subsection also requires that “Each polling place location must be able to accommodate 100 percent of the equipment allocated to be operational at the same time.”
- **Equal number of voting machines at countywide polling places:** Requiring every countywide polling place in a county to have “approximately” the same number of voting machines. Section 3.05.
- **No more drive thru voting:**
  - Prohibiting polling places from being “in a tent or other temporary moveable structure or in a facility primarily designed for motor vehicles” and prohibiting voters from casting a vote “from inside a motor vehicle” unless they are a curbside voter. Section 3.06.
  - Prohibiting voting from taking place “in a tent or other temporary movable structure or a parking garage, parking lot, or similar facility designed primarily for motor vehicles.” Section 3.16.
  - Prohibiting polling places from being in a “tent or other temporary movable structure or a parking garage, parking lot, or similar facility designed primarily for motor vehicles.” Section 3.17.
- **Videotaping of voters in polling places:** Authorizes partisan poll watchers to record images and sound at a polling place, except that a watcher cannot record a voter at a voting station unless the watcher “reasonably believes” the voter is receiving unlawful assistance. Poll watchers cannot “capture or record any information on a voter’s ballot.” **(2nd Committee Substitute Version of Section 3.07)**
  - The original and 1st Committee Substitute versions appeared to allow poll watchers to record anything in a polling place other than “information on a voter’s ballot,” and further allowed anyone else to record voters in a polling place if a watcher “reasonably believes” that a voter is being given unlawful assistance. Section 3.07.
- **Specifying that election officers must maintain a register of spoiled ballots at the polling place which must include spoiled ballots from a DRE device.** Section 3.08.



# TEXAS

---

## CIVIL RIGHTS PROJECT

- **Required form by those who provide transportation to three or more curbside voters, removal of non-curbside voters from vehicles during voting, and partisan poll watchers during curbside voting:** Mandating that only the curbside voter is allowed to be in a vehicle while they are voting unless they would otherwise be entitled to accompany the voter into the polling place (e.g., assisters). Requiring a person “providing” three or more voters “with transportation to the polling place” to complete and sign a form containing the person’s name and address and whether the person is also serving as an assistant to the voter; this form must be delivered to and kept by SOS for the same amount of time as they are required to preserve precinct election records, and must make the form available to the AG for inspection upon request.. Authorizing partisan poll watchers to observe curbside voting. **2nd Committee Substitute Version of Section 3.09.**
  - **The original and 1st Committee Substitute required that a person providing any curbside voter (whether one, two, three, or more voters) with transportation to the polls to fill out a form. It also required the transportation provider to “affirm that the voter is physically unable to enter the polling place without personal assistance or likelihood of injuring the voter’s health,” which has been removed from the 2nd Committee Substitute. The 2nd Committee Substitute added the requirement that the driver form be delivered to SOS and made available to the AG for inspection.**
- **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 assisted the voter,” “the reason the assistance was 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 3.10. Same as Section 4.01 in HB 6, although assistants in HB 6 must also present a form of voter ID.**
- **Expanded requirements for preservation of certain election records.**
  - Requiring presiding judges or their designees to “keep records of each person that has custody of a precinct election record until the records are delivered.” **Section 3.11.**
  - Currently, voted ballots are required to be preserved for at least 60 days after the election, but this would expand that requirement to the later of 60 days after an election or until any election contest is resolved. Further requiring that “[a]n electronic device used to store records may not be altered in any manner as to delete or overwrite the records during the preservation period.” **(2nd Committee Substitute Version of Section 3.12)**
    - **The original and 1st Committee Substitute had required that electronic records not be deleted or overwritten during this period.**



# TEXAS

---

## CIVIL RIGHTS PROJECT

- **Restrictions on expanded early voting hours, including prohibiting overnight voting (Sections 3.13):** Generally requiring early voting to take place after 6am and before 9pm:
  - For elections other than those ordered by a city, early voting at the main early voting polling place (and permanent branch polling places) must be conducted on each weekday that is not a state holiday for at least nine hours, and take place only within the hours of 6am and 9pm.
  - Further, elections in counties with a population of over 30,000 must have early voting at the main early voting polling place (and permanent branch polling places) for 12 hours on each weekday of the last week of early voting, which must take place within the hours of 6am and 9pm.
  - In city elections, early voting must be conducted at the main early voting polling place at least nine (rather than the current 8) hours each weekday.
    - But if the territory has fewer than 1,000 registered voters, voting must be conducted at least 4 (rather than the current three) hours each day.
    - Further, HB 6 deletes the current requirement that early voting in elections ordered by cities must be conducted for at least 12 hours on 1-2 weekdays (depending on the election).
  - These provisions in the 1st and 2nd Committee Substitute are different than the restrictions in early voting hours in the original version of SB 7, including that the new restrictions on early voting hours do not appear to apply to temporary branch polling places.
  - Similar in spirit to SB 1115, one of the “Bettencourt Seven,” which sets a statewide uniform early voting hours as follows, and prohibiting any deviation without a court order: weekdays of the first week of early voting, 8am-5pm; Saturday, 7am-7pm; Sunday, 1pm-6pm; weekdays of the last week, 7am-7pm
- **Tightening ban on straight ticket voting:** Prohibiting voting systems from arranging ballots in a manner that would allow a political party’s candidates “to be selected in one motion or gesture.” Section 3.18.
- **Requiring that voting devices allow a voter to cast a ballot without voting on all items if the voter affirmatively chooses to do so.** Section 3.19.
- **Tracking of inputs and activity on electronic devices in counting stations:** Requiring counting station managers and presiding judges of counting stations to develop a protocol under which “any electronic device inside a central counting station that is necessary to count votes is equipped with software that tracks all input and activity on the electronic device,” with such information required to be printed and





# TEXAS

---

## CIVIL RIGHTS PROJECT

delivered to the SOS no later than the 5th day after vote counting is complete. (2nd Committee Substitute Version of Section 3.20)

- The original version of SB 7 required the protocol to apply to “any electronic device inside a central counting station,” and the 1st Committee Substitute limited the requirement of such a protocol to electronic devices that are “necessary to count votes.” The original and 1st Committee Substitute required data to be “automatically delivered” to SOS, but the 2nd Committee Substitute limited the delivery requirement to mandating delivery by the 5th day after vote counting is complete.
- **Video recording and live streaming of ballots at central counting stations, and police escort:** Allowing for the creation of a video surveillance system, and dissemination of the video to the public via a livestream, of “all areas containing voted ballots from the time the voted ballots are delivered to the central counting station until the canvass of precinct election returns,” and requiring that a licensed peace officer (instead of just a “guard” as under current law) be posted near ballot boxes containing voted ballots “throughout the period of tabulation at the central counting station.” Section 3.21.

**[Skipping over Sections 3.22 and 3.23 regarding auditable voting systems and public tests of logic and accuracy]**

- **Requiring an automatic recount in a precinct if the results show that the number of votes cast there exceeds the number of registered voters in the precinct.** Section 3.24.
- **Only small private donations to counties to help with elections allowed unless SOS, Governor, the Lieutenant Governor, and the Speaker of the House agree:** Prohibiting commissioners courts from accepting a donation of over \$1,000 for use in administering elections unless the SOS consents in writing. SOS can only grant such consent if SOS consults with the Governor, the Lieutenant Governor, and the Speaker of the House, and they unanimously agree to the donation. **2nd Committee Substitute Version of Section 3.25.**
  - The original and 1st Committee Substitute did not SOS to consult with or obtain the approval of the Governor, Lieutenant Governor, or the Speaker of the House.

### **Article 4 -- Enforcement**



# TEXAS

---

## CIVIL RIGHTS PROJECT

- **Prohibiting “election officials” from serving if they had previously been finally convicted of the offense of unlawfully obstructing a poll watcher.** **2nd Committee Substitute Version of Section 4.01.**
  - Election official is defined as: (1) a county clerk; (2) a permanent or temporary deputy county clerk; (3) an elections administrator; (4) a permanent or temporary employee of an elections administrator; (5) an election judge; (6) an alternate election judge; (7) an early voting clerk; (8) a deputy early voting clerk; (9) an election clerk; (10) the presiding judge of an early voting ballot board; (11) the alternate presiding judge of an early voting ballot board; (12) a member of an early voting ballot board; (13) the chair of a signature verification committee; (14) the vice chair of a signature verification committee; (15) a member of a signature verification committee; (16) the presiding judge of a central counting station; (17) the alternate presiding judge of a central counting station; (18) a central counting station manager; (19) a central counting station clerk; (20) a tabulation supervisor; and (21) an assistant to a tabulation supervisor.
    - The 2nd Committee Substitute added the tabulation supervisor and assistant to tabulation supervisor categories.
- **Civil penalty and loss of employment benefits for election officials who violate Election Code:** Making election officials liable to the state for a civil penalty for violating the Election Code, which may include termination of the person’s employment “and loss of the person’s employment benefits.” Section 4.01.
- **Exposing election officers to new criminal offense for not accepting a poll watcher:** Making it a Class A misdemeanor for an election officer who “knowingly refuses to accept a watcher for service whose acceptance is required by this code.” Section 4.02. **Similar to Section 3.04 of HB 6, except HB 6 makes it a Class B misdemeanor.**
- **Allowing watchers to seek injunctive relief to enforce provisions affecting them.** Section 4.03.
- **Requiring early voting clerks to send to the AG within 30 days of election day copies of the carrier envelope and ballot application of any rejected mail ballot when “any form of voter fraud was committed.”** Section 4.04.
- **New venue for election contests for statewide office** (Section 4.05): Granting venue of an election contest for a statewide office in either Travis County (as required under current law) or “any county where a contestee resided at the time of the election”
  - Residence is defined under Section 411.0257, Government Code



# TEXAS

---

## CIVIL RIGHTS PROJECT

- **New candidate contest process for “election fraud” (Section 4.06):** Creating a new contest process when a candidate alleges “that an opposing candidate, an agent of the opposing candidate, or a person acting on behalf of the opposing candidate with the candidate's knowledge committed election fraud” under the following sections
  - 13.007 (false statement on VR applications)
  - 64.012 (“illegal voting” felony offense)
  - 64.036 (unlawful assistance)
  - 84.003 (witnessing/assisting vote by mail applications)
  - 84.0041 (fraudulent use of application for VBM)
  - 86.0051 (unlawful witnessing of carrier envelope, depositing of VBM ballot for a voter)
  - 86.006 (returning marked VBM ballot)
  - 86.010 (unlawful assistance to person voting by mail)
  - 276.013 (“election fraud”)
- **Setting the standard of proof in contests as “preponderance of the evidence.”** Section 4.06.
- **Civil penalty for election fraud contests:** For any violation found in a contest, civil penalty set at \$1,000 for each violation, and attorney’s fees may be awarded to the prevailing party. Section 4.06.

### Article 5 - Repealer and Effective Date

- **Repealing Section 85.062(e), which grants county clerks the authority to set up temporary branch polling places in movable structures. (New Section 5.01 added in the 1st and 2nd Committee Substitute).**
- **Act takes effect September 1, 2021. Section 5.03**