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CIVIL RIGHTS PROJECT

Last revised: April 1, 2021

- **Text of the 2nd Committee Substitute of HB 6 that Chair Cain is expected to introduce at the House Elections Committee hearing on April 1, 2021:**
<https://drive.google.com/file/d/12D09pj3osHu02li65kbiD-IUiqzjEMVZ/view?usp=sharing>

Note: this document now refers to and describes the 2nd Committee Substitute of HB 6 that Chair Cain is expected to introduce at the April 1, 2021 hearing on HB 6. This document notes where the Committee Substitutes are different from the original version. Otherwise, all versions are the same.

There are two previous version 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](#).

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.” (New version of Section 1.04 added by the 2nd Committee Substitute).
 - The original and 1st Committee Substitute described the legislative intent differently: “To reduce the likelihood of fraud in the conduct of elections, it is the intent of the legislature that the provisions of this code shall be applied evenly, and the conduct of elections throughout this state shall be uniform and consistent.”



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- **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 1.04. (Slightly reworked version in Second Committee Substitute of Section 1.05)
 - The content of the 2nd Committee Substitute of this section is effectively the same as the original and 1st Committee Substitute versions, changing the passive voice to the active voice. The original and 1st Committee Substitute had required that the Election Code’s provisions be “strictly construed by a public official to effect the intent of the legislature” as described in Section 1.04.
- **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. (Committee Substitute Version of Section 2.01).
 - Section 2.01 of the original version of HB 6 required these documents to be provided within one day after they were prepared.
- **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.** (Committee Substitute Version of Section 2.02).
 - The original version of Section 2.02 required election officers to maintain “a record of the serial numbers of all ballots issued at that polling place and the serial numbers of any spoiled ballots, if any,” if they’re using an electronic voting system that uses paper media for recording votes cast. These logs would further be “election records subject to public inspection.”

Article 3 -- Election Officers and Observers

- **General prohibition/criminal offense against presiding judges removing partisan poll watchers from polling places, or requiring them to leave polling places.** Section 3.01.



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- 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.” (2nd Committee Substitute Version of 3.06)
 - The original and 1st Committee Substitute only allowed for poll watcher removal if they engaged in “election fraud, including an offense under Chapter 276.” The 2nd Committee Substitute expands the situation when a presiding judge can remove a watcher to include if they commit “an offense related to the conduct of the election.”
 - The 2nd Committee Substitute Version of Section 3.05 (which was 3.07 in prior versions) also does not directly impose a criminal penalty on election workers who violate this provision, though its prohibition on “obstruct[ing] the view of a watcher” would likely include removing a poll watcher from a polling place.
 - 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.” (2nd Committee Substitute Version of Section 3.02).
 - The original and 1st Committee Substitute Versions of this section (which was in Section 3.03 in those versions) used the word “purity” rather than “integrity.” Further, the 2nd Committee Substitute provides that poll watchers are to call attention to “any” irregularity -- “observed or suspected” -- instead of calling attention to “potential” irregularities.
 - Defining the word “observe” to mean that “a watcher who is entitled to ‘observe’ an activity is entitled to sit or stand near enough to see and hear the activity.” (2nd Committee Substitute Version of Section 3.02). This is a slight reworking of the definition of “observe” that was added by the 1st Committee Substitute as part of that version’s Section 3.03.
- **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 (re-numbered from the last version’s Section 3.04, otherwise the same). Similar to Section 4.02 of SB 7, except SB 7 makes it a Class A misdemeanor.
 - **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



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by the voting system equipment.” Section 3.04 (re-numbered from the last version’s Section 3.05, otherwise the same).

- **Exposing election workers to criminal liability for “taking any action to obstruct the view of a watcher or position a watcher at a distance from the activity to be observed at which observation is not reasonably possible,”** which would be a Class A misdemeanor. 2nd Committee Substitute Version of Section 3.05 (re-numbered from prior versions’ Section 3.07).
 - The prior versions criminalized removing poll watcher from polling places unless they committed “election fraud, including an offense under Chapter 276.”

- **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. 2nd Committee Substitute version of Section 3.07 (re-numbered from Section 3.08 in prior versions).
 - The 2nd Committee Substitute allows a staff member of the SOS Elections Division to be present when they are performing an official duty “in accordance with” the Election Code, which could be read as an expansion from the prior versions that said they may be in the polling place when performing a duty “authorized” under the Election Code.
 - The 2nd Committee Substitute also expanded the fifth category to include “an election official” and “sheriff” instead of just their staffs as in the original and 1st Committee Substitute.
 - The 2nd Committee Substitute limits the ability of elections administrators to be in polling places to when it is “necessary to perform tasks related to the administration of the election,” an apparent expansion from prior versions of the bill that only allowed elections administrators to be in the polling place “when performing an official duty authorized by this code”



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- **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 ballots, if applicable.” Poll watchers are prohibited, however, from “disrupt[ing] the process of delivering ballots.” Section 3.08 (re-numbered from Section 3.09 in prior versions 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. 2nd Committee Substitute Version of Section 3.09 (re-numbered from prior versions’ Section 3.10).
 - The 2nd Committee Substitute limits the ability of elections administrators to be present when the early voting ballot board meets to when it is “necessary to perform tasks related to the administration of the election,” an apparent expansion from prior versions of the bill that only allowed elections administrators to be present when the early voting ballot meets “when performing an official duty authorized by this code”
- **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. 2nd Committee Substitute Version of Section 3.10 (re-numbered from prior versions’ Section 3.11).
 - The 2nd Committee Substitute limits the ability of elections administrators to be present at a central counting station while ballots are being counted when it is “necessary to perform tasks related to the administration of the election,” an apparent expansion from prior versions of the bill that only allowed elections administrators to be present at a central counting



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station while ballots are being counted “when performing an official duty authorized by this code”

- In the original version of HB 6, the fifth listed was a person whose presence was authorized by “the counting station manager,” now changed in the Committee Substitute to “the presiding judge of the central counting station.”

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. **2nd Committee Substitute Version of Section 4.01. Same as Section 3.10 in SB 7.**
 - The 2nd Committee Substitute removed the prior versions’ requirement that assistants must also present a form of voter ID. **Section 4.01.**
- **Adding “I did not pressure, 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.” Committee Substitute Version of Section 4.02.**
 - The original version did not have the “under penalty of perjury” language.
 - The original version of the oath did not have the word “coerce” in it.
- **Making it easier to prosecute people who are assisting mail voters by increasing the technical requirements that assistants must comply with, removing a defense to being prosecuted for failing to comply with such technical requirements, and boosting some associated criminal penalties (Committee Substitute Version of 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. **The 2nd Committee Substitute adds a further requirement that the assistant 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



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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 (highlighted language new to 2nd Committee Sub, as it is in the next two bullet points)**;
 - 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 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.



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- **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 (2nd Committee Substitute Version of 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. (New version in the Second Committee Substitute)
 - Prior versions had added "political favor" or "official act of discretion" in the definition of prohibited compensation.
 - 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.
- **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



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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. (2nd Committee Substitute Version of Section 5.02)

- The prior versions would have added an offense with somewhat different wording: “knowingly votes or attempts to vote in an election in this state after voting in an election in another state that is held on the same day.”
 - The 2nd Committee Substitute adds the alternate charges language that a person can be prosecuted under multiple statutes for this offense.
- **Expanding what qualifies as the criminal offense of “election fraud” and boosting penalties for all forms of “election fraud” (2nd Committee Substitute Version of Section 5.03, which had been Section 5.04 in prior version):** Adding to the current list of actions that qualify as criminal “election fraud” the following:
 - Knowingly or intentionally making any effort to “count invalid votes or alter a report to include invalid votes”
 - Knowingly or intentionally making any effort to “fail to count valid votes or alter a report to exclude valid votes”
 - Knowingly “altering the ballot of another or by otherwise causing a ballot to not reflect the intent of the voter” (added by the 2nd Committee Substitute)
 - 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.
 - Prior versions had raised this to a second degree felony rather than state jail felony.
- **Creating a new “paid harvesting” criminal offense. (Newly created Section 5.04 by the 2nd Committee Substitute)**
 - 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”
 - Providing or offering “compensation or other benefit to a person in exchange for vote harvesting services.”
 - Collecting or possessing “a ballot voted by mail or official carrier envelope from a voter in connection with vote harvesting services.”
 - 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



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favorable discretionary official act; and a benefit to any other person in whose welfare the beneficiary has an interest.”

- 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.”
 - 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.”
 - 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.”
 - If any form of “paid harvesting” also constitutes an offense under a separate statute, a defendant may be charged with either offense, or both.
- **Prohibition on unsolicited distribution of vote by mail applications by public officials (1st and 2nd Committee Substitute Version of Section 5.04).**
 - Public officials cannot knowingly do one of the following while “acting in an official capacity” (the Committee Substitute added this “official capacity” language):
 - “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 SB 7)
 - “distribute[] an application to vote by mail to a person who did not request the application unless the distribution is expressly authorized” by the Election Code (similar but not identical to Section 2.04 of SB 7)
 - “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 SB 7)
 - “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.



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- 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.
 - This is a slightly different version in the 2nd Committee Substitute from prior versions, which prohibited knowing mailing or distribution “to a person other than the applicant who submitted the application”

- **Creating a new perjury criminal offense for false assistant oaths** (Committee Substitute Version of 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.”
 - Prior versions made the perjury offense a Class A misdemeanor in some cases, but the 2nd Committee Substitute makes it a state jail felony in all cases.
 - The original version required prosecutors to prove that the defendant committed the offense “with intent to deceive and with knowledge of the statement’s meaning,” but this intent requirement has been removed in the Committee Substitute.

- **Prohibiting the alteration, waiver, or suspension of election procedures** (Committee Substitute Version of Section 5.05):
 - The Committee Substitute 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.
 - The original version of this Section made this a state jail felony criminal offense, but the Committee Substitute changes it merely to a prohibition without an apparent penalty attached. The original version also prohibited the “knowing[]” alteration or suspension of an election standard, practice, or procedure, but the Committee Substitute prohibits alterations, waiver, or suspensions regardless of whether they are “knowing.”
 - In the original version of HB 6, there was an exception to the criminal offense if the public official 1) “first requested approval of the proposed alteration from the secretary of state by submitting a written request for approval to the secretary of state” and 2) “the secretary of state by written order approved the proposed alteration.” The only exception to the non-criminal prohibition in the Committee Substitute is if “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



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and on the VBM carrier envelope must be the voter's signature (unless signed by a witness)

Article 6 -- Enforcement

- **REMOVED FROM THE COMMITTEE SUBSTITUTE:** The original version of HB 6 created a new expedited process for investigating criminal election conduct just before an election after complaints are made by two or more registered voters, **but this section has been removed from the Committee Substitute** (Section 6.01):
 - **REMOVED FROM THE COMMITTEE SUBSTITUTE:** Currently, the county/district attorney or the Attorney General must begin an investigation if at least two registered voters submit affidavits alleging criminal conduct regarding an election. HB 6 would require a county/district attorney who receives such affidavits within 60 days before an election to determine if they can be investigated “expeditiously” by their office “so that a presentation of an information or indictment may be made in time to prevent ongoing or deter future criminal activity.” The county/district attorney must make that determination within 48 hours of receiving such affidavits.
 - **REMOVED FROM THE COMMITTEE SUBSTITUTE:** If the county/district attorney determines they cannot be investigated expeditiously by their office, they must notify the presiding judge of the court of criminal appeals within 24 hours. A three-judge panel must then be appointed, which must then appoint a different county/district attorney to investigate the affidavits.
- **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** (Slight changes in wording in 2nd Committee Substitute Version of 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.”



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- 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)
- Setting the effective date as September 1, 2021