

By: Duncan

S.B. No. 849

A BILL TO BE ENTITLED

# 1 AN ACT

2 relating to certain election practices and procedures.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Section 18.064, Election Code, is amended to  
5 read as follows:

6 Sec. 18.064. SANCTION FOR NONCOMPLIANCE. If a registrar  
7 fails to substantially comply with Section 15.083, 16.032,  
8 [18.042] or 18.061 or with rules adopted by the secretary of state  
9 implementing the statewide computerized voter registration list,  
10 the registrar is not entitled to receive state funds for financing  
11 voter registration in the county.

12 SECTION 2. Section 18.065(a), Election Code, is amended to  
13 read as follows:

14 (a) The secretary of state shall monitor each registrar for  
15 substantial compliance with Sections 15.083, 16.032, [18.042] and  
16 18.061 and with rules implementing the statewide computerized voter  
17 registration list.

18 SECTION 3. Subchapter C, Chapter 18, Election Code, is  
19 amended by adding Section 18.068 to read as follows:

20                   Sec. 18.068. VOTING HISTORY. Not later than the 30th day  
21 after the date of the primary, runoff primary, or general election  
22 or any special election ordered by the governor, the registrar  
23 shall electronically submit to the secretary of state the record of  
24 each voter participating in the election.

1 SECTION 4. Section 19.002(d), Election Code, is amended to  
2 read as follows:

3 (d) The comptroller may not issue a warrant if on June 1 of  
4 the year in which the warrant is to be issued the most recent notice  
5 received by the comptroller from the secretary of state under  
6 Section 18.065 indicates that the registrar is not in substantial  
7 compliance with Section 15.083, 16.032, ~~18.042,~~ or 18.065 or with  
8 rules implementing the registration service program.

9 SECTION 5. Section 31.006, Election Code, is amended to  
10 read as follows:

11 Sec. 31.006. REFERRAL OF COMPLAINT TO ATTORNEY GENERAL.  
12 (a) If, after receiving a complaint alleging criminal conduct in  
13 connection with an election, the secretary of state determines that  
14 there is reasonable cause to suspect that the alleged criminal  
15 conduct occurred, the secretary shall promptly refer the complaint  
16 to the attorney general. The secretary shall deliver to the  
17 attorney general all pertinent documents in the secretary's  
18 possession.

19 (b) The documents submitted to the attorney general under  
20 Subsection (a) are not considered public information until the  
21 attorney general has completed the investigation or has made a  
22 determination that the complaint referred does not warrant an  
23 investigation.

24 SECTION 6. Section 31.092(b), Election Code, is amended to  
25 read as follows:

26 (b) The county election officer may contract with the county  
27 executive committee of a political party holding a primary election

1 in the county to perform election services, as provided by this  
2 subchapter, in the party's general primary election or runoff  
3 primary election, or both. ~~[To be binding, a contract under this~~  
~~subsection must be approved in writing by the secretary of state,~~  
~~and the execution of a contract is not completed until written~~  
~~approval is obtained.]~~

7 SECTION 7. Section 31.093(a), Election Code, is amended to  
8 read as follows:

9 (a) If requested to do so by a political subdivision or  
10 political party, the county elections administrator shall enter  
11 into a contract to furnish the election services requested, in  
12 accordance with a cost schedule agreed on by the contracting  
13 parties. ~~[If the contracting parties are unable to reach an~~  
~~agreement, on referral by either party, the secretary of state~~  
~~shall either prescribe terms that the administrator must accept or~~  
~~instruct the administrator to decline to enter into a contract with~~  
~~the requesting party.]~~

18 SECTION 8. Section 32.002(c), Election Code, is amended to  
19 read as follows:

20 (c) The presiding judge and alternate presiding judge must  
21 be affiliated or aligned with different political parties, subject  
22 to this subsection. Before July of each year in a county to which  
23 Subsection (a)(1) applies or before August of each year in a county  
24 to which Subsection (a)(2) applies, the county chair of a political  
25 party whose candidate for governor received the highest or second  
26 highest number of votes in the county in the most recent  
27 gubernatorial general election shall submit in writing to the

1 commissioners court a list of names of persons in order of  
2 preference for each precinct who are eligible for appointment as an  
3 election judge. The county chair may supplement the list of names  
4 of persons until the 20th day before a general election or the 15th  
5 day before a special election in case an appointed election judge  
6 becomes unable to serve. The commissioners court shall appoint the  
7 first person meeting the applicable eligibility requirements from  
8 the list submitted in compliance with this subsection by the party  
9 with the highest number of votes in the precinct as the presiding  
10 judge and the first person meeting the applicable eligibility  
11 requirements from the list submitted in compliance with this  
12 subsection by the party with the second highest number of votes in  
13 the precinct as the alternate presiding judge. If the candidates  
14 for governor of two political parties received the same number of  
15 votes in the precinct, the first person meeting the applicable  
16 eligibility requirements from the list submitted by the party whose  
17 candidate for governor received the highest number of votes in the  
18 county shall be appointed as the presiding judge and the first  
19 person meeting the applicable eligibility requirements from the  
20 list submitted by the party whose candidate for governor received  
21 the second highest number of votes in the county shall be appointed  
22 as the alternate presiding judge. The commissioners court may  
23 reject the list if the persons whose names are submitted on the list  
24 are determined not to meet the applicable eligibility requirements.

25 SECTION 9. Section 33.006(b), Election Code, is amended to  
26 read as follows:

27 (b) A certificate of appointment must:

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4 (2) indicate the capacity in which the appointing  
5 authority is acting;

9 (4) identify the election and the precinct polling  
10 place or other location at which the appointee is to serve;

14 (6) contain an affidavit executed by the appointee  
15 stating that the appointee will not have possession of a device  
16 capable [any mechanical or electronic means] of recording images or  
17 sound or that the appointee will disable or deactivate the device  
18 while serving as a watcher.

19 SECTION 10. Section 33.051(c), Election Code, is amended to  
20 read as follows:

21 (c) A watcher may not be accepted for service if the watcher  
22 has possession of a device capable [~~any mechanical or electronic~~  
23 ~~means~~] of recording images or sound unless the watcher agrees to  
24 disable or deactivate the device. The presiding judge may inquire  
25 whether a watcher has possession of any prohibited recording device  
26 before accepting the watcher for service.

27 SECTION 11. Sections 85.032(b), (d), and (f), Election

1 Code, are amended to read as follows:

2 (b) The ballot box in which voters deposit their marked  
3 early voting ballots must have two locks, each with a different key,  
4 and must be designed and constructed so that the box can be sealed  
5 to detect any unauthorized opening of the box and that the ballot  
6 slot can be sealed to prevent any unauthorized deposit in the box.  
7 The seals for the boxes must be serially numbered for each election.  
8 The procedures prescribed by Sections 127.064, 127.065, 127.066,  
9 and 127.068 governing the use of sealed ballot boxes in electronic  
10 voting system elections apply to the use of sealed ballot boxes  
11 under this title to the extent those procedures can be made  
12 applicable[~~, with references to the central counting station being~~  
13 ~~applied to the early voting ballot board~~]. The secretary of state  
14 shall prescribe any procedures necessary to implement the use of  
15 sealed ballot boxes in early voting.

16 (d) Each custodian shall retain possession of the key  
17 entrusted to the custodian until it is delivered to the presiding  
18 judge of the central counting station [~~early voting ballot board~~  
19 ~~under Subchapter B, Chapter 87~~].

20 (f) The secretary of state shall prescribe procedures  
21 providing for the security of the voted early voting ballots from  
22 the last day of voting by personal appearance at a polling place  
23 until the day the ballots are counted. [~~The procedures must include~~  
24 ~~security measures covering the transfer of the ballots between the~~  
25 ~~early voting clerk and the early voting ballot board.~~]

26 SECTION 12. Section 87.021, Election Code, is amended to  
27 read as follows:

1 Sec. 87.021. BALLOTS AND OTHER MATERIALS DELIVERED TO  
2 BOARD. The early voting clerk shall deliver to the early voting  
3 ballot board:

4 (1) ~~[each ballot box, in accordance with Section 85.032(b), containing the early voting ballots voted by personal appearance and the clerk's key to each box,~~

5 ~~[+2]~~ the jacket envelopes containing the early voting  
6 ballots voted by mail;

7 (2) ~~[+3]~~ the poll lists prepared in connection with  
8 early voting by personal appearance;

9 (3) ~~[+4]~~ the list of registered voters used in  
10 conducting early voting; and

11 (4) ~~[+5]~~ a ballot transmittal form that includes a  
12 statement of the number of early voting ballots voted by mail that  
13 are delivered to the early voting ballot board ~~[and the number of names appearing on the poll lists prepared in connection with early voting by personal appearance]~~.

14 SECTION 13. Section 87.022, Election Code, is amended to  
15 read as follows:

16 Sec. 87.022. TIME OF DELIVERY: GENERAL RULE. Except as  
17 provided by Section ~~[87.0221,]~~ 87.0222~~[, 87.023]~~ or 87.024, the  
18 materials shall be delivered to the early voting ballot board under  
19 this subchapter during the time the polls are open on election day,  
20 or as soon after the polls close as practicable, at the time or  
21 times specified by the presiding judge of the board.

22 SECTION 14. Section 112.002(a), Election Code, is amended  
23 to read as follows:

1                   (a) After changing residence to another county, a person is  
2 eligible to vote a limited ballot by personal appearance during the  
3 early voting period or by mail if:

4                   (1) the person would have been eligible to vote in the  
5 county of former residence on election day if still residing in that  
6 county;

7                   (2) the person is registered to vote in the county of  
8 former residence at the time the person:

9                   (A) offers to vote in the county of new  
10 residence; or

11                   (B) submitted a voter registration application  
12 in the county of new residence; and

13                   (3) a voter registration for the person in the county  
14 of new residence is not effective on or before election day.

15                   SECTION 15. Section 127.007, Election Code, is amended to  
16 read as follows:

17                   Sec. 127.007. PLAN FOR COUNTING STATION OPERATION. (a) The  
18 manager shall establish and implement a written plan for the  
19 orderly operation of the central counting station.

20                   (b) The plan required under this section must address the  
21 process for comparing the number of voters who signed the  
22 combination form with the number of votes cast for the entire  
23 election.

24                   SECTION 16. Section 141.040, Election Code, is amended to  
25 read as follows:

26                   Sec. 141.040. NOTICE OF DEADLINES. (a) The authority with  
27 whom [Not later than the 30th day before the first day on which a

1 ~~candidate may file~~] an application for a place on the ballot under  
2 this subchapter [~~, the authority with whom the application~~] must be  
3 filed shall post notice of the dates of the filing period in a  
4 public place in a building in which the authority has an office not  
5 later than the 30th day before:

6                   (1) the first day on which a candidate may file the  
7 application; or

8                   (2) the last day on which a candidate may file the  
9 application, if this code does not designate a first day on which  
10 the candidate may file the application.

11               (b) This section does not apply to an office filled at the  
12 general election for state and county officers.

13               SECTION 17. Section 145.001, Election Code, is amended by  
14 amending Subsection (b) and by adding Subsection (d-1) to read as  
15 follows:

16               (b) A ~~[To be effective, a]~~ withdrawal request must:

17               (1) be in writing and be signed and acknowledged by the  
18 candidate; and

19               (2) be timely filed with the appropriate authority or  
20 an agent of an authority only as expressly provided by this code.

21               (d-1) A withdrawal that is not filed in compliance with  
22 Subsection (b) has no legal effect and is not considered filed.

23               SECTION 18. Section 145.005, Election Code, is amended to  
24 read as follows:

25               Sec. 145.005. EFFECT OF VOTES CAST FOR DECEASED, WITHDRAWN,  
26 OR INELIGIBLE CANDIDATE. (a) If the name of a deceased, withdrawn,  
27 or ineligible candidate appears on the ballot under this chapter,

1 the votes cast for the candidate shall be counted and entered on the  
2 official election returns in the same manner as for the other  
3 candidates.

4 (b) If the deceased, withdrawn, or ineligible candidate  
5 receives the vote required for election, the resulting vacancy  
6 shall be filled in the regular manner.

7 (c) If the deceased, withdrawn, or ineligible candidate and  
8 another candidate tie for the most votes in an election in which a  
9 plurality vote is sufficient for election, the other candidate is  
10 considered to be elected. If more than one other candidate is tied  
11 with the deceased, withdrawn, or ineligible candidate, the winner  
12 of the election shall be determined by resolving the tie between the  
13 other candidates in the regular manner for resolving a tie vote in  
14 the election.

15 (d) In a race in which a runoff is required, if the deceased, withdrawn,  
16 or ineligible candidate received the vote that would  
17 entitle the candidate to a place on the runoff election ballot or  
18 tied for that number of votes, the candidates in the runoff shall be  
19 determined in the regular manner but without regard to the votes  
20 received by the deceased, withdrawn, or ineligible candidate.

21 SECTION 19. Sections 145.092(a) and (d), Election Code, are  
22 amended to read as follows:

23 (a) Except as otherwise provided by this section, a  
24 candidate may not withdraw from an election after 5 p.m. of the  
25 third day after the deadline for filing the candidate's application  
26 for a place on the ballot [second day before the beginning of early  
27 voting by personal appearance].

1                   (d) A candidate in a runoff election [~~following a main~~  
2 ~~election subject to Subsection (b)~~] may not withdraw from the  
3 election after 5 p.m. of the third day after the date of the main  
4 election.

5                   SECTION 20. Section 145.094(a), Election Code, is amended  
6 to read as follows:

7                   (a) The name of a candidate shall be omitted from the ballot  
8 if the candidate:

9                   (1) dies before the second day before the date of the  
10 deadline for filing the candidate's application for a place on the  
11 ballot;

12                   (2) withdraws or is declared ineligible within the  
13 time prescribed by Section 145.092(a) [~~before 5 p.m. of the second~~  
14 ~~day before the beginning of early voting by personal appearance~~],  
15 in an election subject to that section [~~Section 145.092(a)~~];

16                   (3) withdraws or is declared ineligible within the  
17 time prescribed by Section 145.092(b) [~~before 5 p.m. of the 53rd day~~  
18 ~~before election day~~], in an election subject to that section  
19 [~~Section 145.092(b)~~]; or

20                   (4) withdraws or is declared ineligible within the  
21 time prescribed by Section 145.092(f) [~~before 5 p.m. of the 67th day~~  
22 ~~before election day~~], in an election subject to that section  
23 [~~Section 145.092(f)~~].

24                   SECTION 21. Section 172.052(a), Election Code, is amended  
25 to read as follows:

26                   (a) A candidate for nomination may not withdraw from the  
27 general primary election after the first day after the deadline for

1 1 filing the candidate's application for a place on the general  
2 primary election ballot [62nd day before general primary election  
3 day].

4 SECTION 22. Section 172.057, Election Code, is amended to  
5 read as follows:

6 Sec. 172.057. WITHDRAWN, DECEASED, OR INELIGIBLE  
7 CANDIDATE'S NAME OMITTED FROM GENERAL PRIMARY BALLOT. A  
8 candidate's name shall be omitted from the general primary election  
9 ballot if the candidate withdraws, dies, or is declared ineligible  
10 within the time prescribed by Section 172.052(a) [or or before the  
11 62nd day before general primary election day].

12 SECTION 23. Section 213.013(i), Election Code, is amended  
13 to read as follows:

14 (i) No device capable [mechanical or electronic means] of  
15 recording images or sound is [are] allowed inside the room in which  
16 the recount is conducted, or in any hallway or corridor in the  
17 building in which the recount is conducted within 30 feet of the  
18 entrance to the room, while the recount is in progress unless the  
19 person entitled to be present at the recount agrees to disable or  
20 deactivate the device. However, on request of a person entitled to  
21 appoint watchers to serve at the recount, the recount committee  
22 chair shall permit the person to photocopy under the chair's  
23 supervision any ballot, including any supporting materials,  
24 challenged by the person or person's watcher. The person must pay a  
25 reasonable charge for making the copies and, if no photocopying  
26 equipment is available, may supply that equipment at the person's  
27 expense. The person shall provide a copy on request to another

1 person entitled to appoint watchers to serve at the recount.

2 SECTION 24. Section 216.002, Election Code, is amended to  
3 read as follows:

4 Sec. 216.002. CONDUCT OF AUTOMATIC RECOUNT GENERALLY.  
5 Except as otherwise provided by this chapter, this title, including  
6 the notice requirement of Section 213.009, applies to a recount  
7 conducted under this chapter with appropriate modifications as  
8 prescribed by the secretary of state.

9 SECTION 25. Section 232.008(c), Election Code, is amended  
10 to read as follows:

11 (c) A contestant must file the petition not later than the  
12 10th day after the date the official result is determined in a  
13 contest of:

14 (1) a primary or runoff primary election; or  
15 (2) a general or special election for which a runoff is  
16 necessary according to the official result or will be necessary if  
17 the contestant prevails.

18 SECTION 26. Section 253.167, Election Code, is amended to  
19 read as follows:

20 Sec. 253.167. CERTIFICATION OF POPULATION; NOTICE OF  
21 CONTRIBUTION AND EXPENDITURE LIMITS. (a) For purposes of this  
22 subchapter only, not later than June 1 of each odd-numbered year,  
23 the commission [~~secretary of state~~] shall:

24 (1) make [~~deliver to the commission~~] a written  
25 certification of the population of each judicial district for which  
26 a candidate for judge or justice must file a campaign treasurer  
27 appointment with the commission; and

1 (2) deliver to the county clerk of each county a  
2 written certification of the county's population, if the county:

5 (B) has a statutory county court or statutory  
6 probate court, other than a multicounty statutory county court  
7 created under Subchapter D, Chapter 25, Government Code.

13 SECTION 27. Section 501.001, Election Code, is amended by  
14 adding Subdivision (4) to read as follows:

17 SECTION 28. Section 501.023(a), Election Code, is amended  
18 to read as follows:

1 alcoholic contents shall be prohibited or legalized in the  
2 political subdivision. The notice must include:

3                   (1) the individual or entity that is applying for the  
4 petition to gather signatures for a local option liquor election;

5                   (2) the type of local option liquor election;

6                   (3) the name of the political subdivision in which the  
7 petition will be circulated; and

8                   (4) the name and title of the person with whom the  
9 application will be filed.

10                 SECTION 29. Section 501.108(a), Election Code, is amended  
11 to read as follows:

12                 (a) If a county is not required to pay the initial expense,  
13 regardless of any authority to receive reimbursement, of a local  
14 option election under Section 501.107, the county clerk shall  
15 require the applicants for a petition for a local option election to  
16 make a deposit before the issuance of the petition.

17                 SECTION 30. Sections 18.041, 18.042, 87.0221, 87.023, and  
18 145.092(c), Election Code, are repealed.

19                 SECTION 31. This Act takes effect September 1, 2011.