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Vernon's
**TEXAS CODES
ANNOTATED**



Volume 1

ELECTION CODE

Sections 1.001 to 140

2000

Cumulative Annual Pocket Part

Replacing 1999 pocket part supplementing 1986 main volume

For Use In 1999-2000

Includes
Laws through the 1999 Regular Session
of the 76th Legislature
Court Constructions through 993 S.W.2d 897



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PREFACE

These 2000 Cumulative Annual Pocket Parts and Supplementary Pamphlets contain the text of laws of a general and permanent nature, through the 1999 Regular Session of the 76th Legislature, as well as the annotative material pertaining thereto.

The laws herein are classified to Vernon's Texas Codes Annotated. Citations following the statutes to the General and Special Laws of Texas prior to 1984 contain references to the page on which the section cited or the entire Act is found. Beginning in 1984, and for all years thereafter, the citations do not contain page references.

Under the same classification will be found the annotations from the decisions of State and Federal courts construing the laws.

The annotations close with cases published as of August 7, 1999, reported in:

South Western Reporter, Second Series	993 S.W.2d 897
Texas Reports	163 T. (discontinued)
Texas Criminal Reports	172 Cr.R. (discontinued)
Supreme Court Reporter	119 S.Ct. 2418
United States Reports	521 U.S. (part)
Lawyers' Edition, Second Series	145 L.Ed.2d (part)
Federal Reporter, Third Series	178 F.3d 1314
Federal Supplement, Second Series	47 F.Supp.2d 1102
Federal Rules Decisions	186 F.R.D. 390
Bankruptcy Reporter	235 B.R. 694
Federal Claims Reporter	43 Fed.Cl. 663
Opinions of Attorney General	Op.Atty.Gen.1998, No. DM-500
Other Standard Reports	

For subsequent judicial constructions, pending the publication of the next supplementary service, see Tables of Statutes Construed in the later permanent volumes and weekly Advance Sheets of the Reporters listed above.

Library References to pertinent Key Numbers of Digests in the American Digest System and to sections in Corpus Juris Secundum are included in the pocket parts as an additional and convenient aid to research.

Later laws and annotations will be cumulated in subsequent pamphlets and annual pocket parts. For advance copies of laws enacted at subsequent sessions of the Legislature, see the Vernon's Texas Session Law Service or TX-LEGIS database on WESTLAW.

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Elliott & Morris' Texas Tax Code Annotated

Gaba's Texas Environmental Laws Annotated

Hanby's Texas Rules of Appellate Procedure Annotated

Johanson's Texas Probate Code Annotated

Kinkeade & McColloch's Texas Penal Code Annotated

Rau & Sherman's Texas ADR & Arbitration Statutes

Roach's Texas Rules of Evidence Annotated

Sampson & Tindall's Texas Family Code Annotated

Texas Civil Practice Statutes and Rules

Texas Business Statutes

Texas State and Federal Local Court Rules

CASES

Texas Cases: Covering Southwestern 1st

Texas Cases: Covering Southwestern 2d

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Texas Jurisprudence Pleading and Practice Forms 2d

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ABBREVIATIONS

A.B.A.J.	American Bar Association Journal
A.L.R.	American Law Reports
A.L.R.2d	American Law Reports, Second Series
A.L.R.3d	American Law Reports, Third Series
A.L.R.4th	American Law Reports, Fourth Series
A.L.R.5th	American Law Reports, Fifth Series
A.L.R.Fed.	American Law Reports, Federal
App.	Appendix or Court of Appeals
App.C.C.	Decisions in Civil Causes in the Court of Appeals
art.	Article
B.R.	Bankruptcy Reporter
Baylor L.Rev.	Baylor Law Review
Bkrtcy.	United States Bankruptcy Court
C.A.	United States Court of Appeals
C.C.P.	Code of Criminal Procedure
C.J.S.	Corpus Juris Secundum
C.S.	Called Session of Legislature
ch.	Chapter of Act
Civ.App.	Court of Civil Appeals or Civil Appeals Reports
Civ.St.	Civil Statutes
cl.	Clause
Com.App.	Commission of Appeals
Cons.Fin.L.Q.Rep.	Consumer Finance Law Quarterly Report
Const.	Constitution
Corp. Counsel Rev.	Corporate Counsel Review
Cr.R.	Criminal Reports
eff.	Effective
F.	Federal Reporter
F.2d	Federal Reporter, Second Series
F.3d	Federal Reporter, Third Series
F.R.D.	Federal Rules Decisions
F.Supp.	Federal Supplement
F.Supp.2d	Federal Supplement, Second Series
Fed.Cl.	Federal Claims Reporter
G.L.	Gammel's Laws
Hous.L.Rev.	Houston Law Review
Hous.Law.	The Houston Lawyer
⇒ (Key Number)	State Digest and other units of the American Digest System
L.Ed.	Lawyers' Edition
L.Ed.2d	Lawyers' Edition, Second Series
Leg.	Legislature
No.	Number
O. & W.	Oldham and White's Digest
Op.Atty.Gen.	Opinions of the Attorney General
P.D.	Paschal's Digest
PEB	Permanent Editorial Board for the Uniform Commercial Code

ABBREVIATIONS

P.L.	Public Law
par.	Paragraph
ref. n.r.e.	Writ of error refused, no reversible error
ref. w.m.	Writ of error refused for want of merit
R.App.Proc.	Rules of Appellate Procedure
R.Crim.Evidence	Rules of Criminal Evidence
Rev.Civ.St.	Revised Civil Statutes
Rev.P.C.	Revised Penal Code
S.Ct.	Supreme Court Reporter
S.W.	Southwestern Reporter
S.W.2d	Southwestern Reporter, Second Series
Sec.	Section of the Act
SMU L.Rev.	Southern Methodist University Law Review
South Texas L.J.	South Texas Law Journal
S.Tex.L.Rev.	South Texas Law Review
Sw.L.J.	Southwestern Law Journal
St.Mary's L.J.	St. Mary's Law Journal
subd.	Subdivision
subsec.	Subsection
T.	Texas Reports
TAC	Texas Administrative Code
Tex.B.J.	Texas Bar Journal
Tex.L.Rev.	Texas Law Review
Tex.Tech L.Rev.	Texas Tech Law Review
T. Marshall L.Rev.	Thurgood Marshall Law Review
U.L.A.	Uniform Laws Annotated
U.S.	United States Reports
U.S.C.A.	United States Code Annotated
V.A.T.S.	Vernon's Annotated Texas Statutes
V.T.C.A.	Vernon's Texas Codes Annotated
Vernon's Ann.C.C.P.	Vernon's Annotated Code of Criminal Procedure
Vernon's Ann.Civ.St.	Vernon's Annotated Civil Statutes
Vernon's Ann.Rules Civ.Evidence	Vernon's Annotated Rules of Civil Evidence
Vernon's Ann.Rules Civ.Proc.	Vernon's Annotated Rules of Civil Procedure
Vernon's Ann.Rules of Evidence	Vernon's Annotated Rules of Evidence

EFFECTIVE DATES

The following table shows the date of adjournment and the effective date of ninety day bills enacted at sessions of the legislature beginning with the year 1945:

Year	Leg.	Session	Adjournment Date	Effective Date
1945	49	Regular	June 5, 1945	September 4, 1945
1947	50	Regular	June 6, 1947	September 5, 1947
1949	51	Regular	June 6, 1949	September 5, 1949
1951	52	Regular	June 8, 1951	September 7, 1951
1953	53	Regular	May 27, 1953	August 26, 1953
1954	53	1st C.S.	May 13, 1954	August 12, 1954
1955	54	Regular	June 7, 1955	September 6, 1955
1957	55	Regular	May 23, 1957	August 22, 1957
1957	55	1st C.S.	November 12, 1957	February 11, 1958
1957	55	2nd C.S.	December 3, 1957	March 4, 1958
1959	56	Regular	May 12, 1959	August 11, 1959
1959	56	1st C.S.	June 16, 1959	September 15, 1959
1959	56	2nd C.S.	July 16, 1959	October 15, 1959
1959	56	3rd C.S.	August 6, 1959	November 5, 1959
1961	57	Regular	May 29, 1961	August 28, 1961
1961	57	1st C.S.	August 8, 1961	November 7, 1961
1961	57	2nd C.S.	August 14, 1961	November 13, 1961
1962	57	3rd C.S.	February 1, 1962	May 3, 1962
1963	58	Regular	May 24, 1963	August 23, 1963
1965	59	Regular	May 31, 1965	August 30, 1965
1966	59	1st C.S.	February 23, 1966	*
1967	60	Regular	May 29, 1967	August 28, 1967
1968	60	1st C.S.	July 3, 1968	*
1969	61	Regular	June 2, 1969	September 1, 1969
1969	61	1st C.S.	August 26, 1969	*
1969	61	2nd C.S.	September 9, 1969	December 9, 1969
1971	62	Regular	May 31, 1971	August 30, 1971
1971	62	1st C.S.	June 4, 1971	September 3, 1971
1972	62	2nd C.S.	March 30, 1972	June 29, 1972
1972	62	3rd C.S.	July 7, 1972	*
1972	62	4th C.S.	October 17, 1972	January 16, 1973
1973	63	Regular	May 28, 1973	August 27, 1973
1973	63	1st C.S.	December 20, 1973	*
1975	64	Regular	June 2, 1975	September 1, 1975
1977	65	Regular	May 30, 1977	August 29, 1977
1977	65	1st C.S.	July 21, 1977	*
1978	65	2nd C.S.	August 8, 1978	November 7, 1978
1979	66	Regular	May 28, 1979	August 27, 1979
1981	67	Regular	June 1, 1981	August 31, 1981
1981	67	1st C.S.	August 11, 1981	November 10, 1981
1982	67	2nd C.S.	May 28, 1982	*
1982	67	3rd C.S.	September 9, 1982	*
1983	68	Regular	May 30, 1983	August 29, 1983
1983	68	1st C.S.	June 25, 1983	September 23, 1983

EFFECTIVE DATES

Year	Leg.	Session	Adjournment Date	Effective Date
1984	68	2nd C.S.	July 3, 1984	October 2, 1984
1985	69	Regular	May 27, 1985	August 26, 1985
1985	69	1st C.S.	May 30, 1985	August 29, 1985
1986	69	2nd C.S.	September 4, 1986	December 4, 1986
1986	69	3rd C.S.	September 30, 1986	December 30, 1986
1987	70	Regular	June 1, 1987	August 31, 1987
1987	70	1st C.S.	June 3, 1987	September 2, 1987
1987	70	2nd C.S.	July 21, 1987	October 20, 1987
1989	71	Regular	May 29, 1989	August 28, 1989
1989	71	1st C.S.	July 19, 1989	October 18, 1989
1989	71	2nd C.S.	December 12, 1989	*
1990	71	3rd C.S.	March 28, 1990	*
1990	71	4th C.S.	May 1, 1990	*
1990	71	5th C.S.	May 30, 1990	*
1990	71	6th C.S.	June 7, 1990	September 6, 1990
1991	72	Regular	May 27, 1991	August 26, 1991
1991	72	1st C.S.	August 13, 1991	November 12, 1991
1991	72	2nd C.S.	August 25, 1991	November 24, 1991
1992	72	3rd C.S.	January 8, 1992	April 8, 1992
1993	73	Regular	May 31, 1993	August 30, 1993
1995	74	Regular	May 29, 1995	August 28, 1995
1997	75	Regular	June 2, 1997	September 1, 1997
1999	76	Regular	May 31, 1999	August 30, 1999

* No legislation for which the ninety day effective date is applicable.

CITE THIS BOOK

Thus: V.T.C.A., Election Code § __

*

ELECTION CODE

DISPOSITION TABLE

TITLE 2. VOTER QUALIFICATIONS AND REGISTRATION

Chapter

20. Designation of Voter Registration Agencies

TITLE 7. EARLY VOTING

SUBTITLE B. SPECIAL FORMS OF ABSENTEE VOTING

105. Voting on Election Day by Person on Space Flight

TITLE 15. REGULATING POLITICAL FUNDS AND CAMPAIGNS

252. Campaign Treasurer

255. Regulating Political Advertising and Campaign Communications

258. Fair Campaign Practices

TITLE 1. INTRODUCTORY PROVISIONS

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CHAPTER 1. GENERAL PROVISIONS

Section		Section	
1.003.	Construction of Code.	1.009.	Time of Receipt of Mailed Document.
1.005.	Definitions.	1.011.	Signing Document by Witness.
1.007.	Delivering, Submitting, and Filing Documents.	1.012.	Public Inspection of Election Records.
		1.015.	Residence.

Cross References

Housing Cooperation Law, cooperation agreement election, applicability of this code, see V.T.C.A., Local Government Code § 393.010.

Library References

Tex.Prac., County and Special District Law, ch.

11.

§ 1.002. Applicability of Code

Notes of Decisions

1. In general

Public officials who violate contributions and expenditures report requirements of Election Code must be prosecuted under Election Code, rather than perjury provision of Penal Code; later-enact-

ed Election Code is more narrow, prohibits conduct that would otherwise be punishable as perjury, and provides for lesser range of punishment. State v. Salinas (App. 1 Dist. 1997) 982 S.W.2d 9, rehearing overruled, petition for discretionary review refused.

§ 1.003. Construction of Code

(a) The Code Construction Act (Chapter 311, Government Code) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

(b) When a provision of this code provides that it supersedes another specifically referenced provision of this code to the extent of any conflict, no conflict is created by the failure of the superseding provision, or of related provisions, to repeat the substance of the referenced provision; rather, a conflict exists only if the substance of the superseding and any related provisions is irreconcilable with the substance of the referenced provision. If the substance of the superseding provision, together with any related provisions, and the substance of the referenced provision can each be applied to the same subject or set of circumstances, both provisions shall be given effect.

Amended by Acts 1987, 70th Leg., ch. 54, § 17, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment, to conform this section to the V.T.C.A. Government Code enacted by Acts

1985, 69th Leg., ch. 479, and Acts 1985, 69th Leg., ch. 480, rewrote the section.

Notes of Decisions

Directory provisions 3
Mandatory provisions 2

2. Mandatory provisions

Election code provisions fall into either mandatory or directory categories, and to set aside an election for violation of a mandatory provision of election code, the contestant must prove only that a violation occurred, and with few exceptions, such violations results in automatic invalidation of election, but to set aside an election for violation of a directory provision, however, contestant must prove both that a violation occurred and the irregularity affected the outcome of the election. Des Champ v. Featherston (App. 3 Dist. 1994) 886 S.W.2d 536.

Mandatory provisions are generally limited to provisions requiring elections to be held by ballot and to those setting out voter qualifications as well as the time and place of elections. Des Champ v. Featherston (App. 3 Dist. 1994) 886 S.W.2d 536.

§ 1.005. Definitions

In this code:

(1) "City secretary" includes a city clerk or, in a city that has no city secretary or clerk, the city officer who performs the duties of a city secretary.

(2) "County election precinct" means an election precinct established under Section 42.001.

3. Directory provisions

Alleged violations, which election challenger claimed should render runoff election void, implicated directory provisions of election code, where alleged violations included discrepancies in ballot tabulations of total runoff votes cast, failure to give ballot-box keys to county sheriff as required by law and placing keys in drawer near ballot box, failure of election judge for precinct to count ballots he received, and attempts by county officials to influence election outcome. Des Champ v. Featherston (App. 3 Dist. 1994) 886 S.W.2d 536.

To set aside an election for violation of directory provisions of election code, contestant must show that irregularities prevented voters from exercising freely and fairly their right to vote or from having their votes properly counted, and in the absence of such proof, such irregularities are treated as informalities that do not void the election. Des Champ v. Featherston (App. 3 Dist. 1994) 886 S.W.2d 536.

INTRODUCTORY PROVISIONS

§ 1.005

Title 1

(3) "County office" means an office of the county government that is voted on county-wide.

(4) "District office" means an office of the federal or state government that is not voted on statewide.

(5) "Final canvass" means the canvass from which the official result of an election is determined.

(6) "General election" means an election, other than a primary election, that regularly recurs at fixed dates.

(7) "General election for state and county officers" means the general election at which officers of the federal, state, and county governments are elected.

(8) "Gubernatorial general election" means the general election held every four years to elect a governor for a full term.

(9) "Independent candidate" means a candidate in a nonpartisan election or a candidate in a partisan election who is not the nominee of a political party.

(10) "Law" means a constitution, statute, city charter, or city ordinance.

(11) "Local canvass" means the canvass of the precinct election returns.

(12) "Measure" means a question or proposal submitted in an election for an expression of the voters' will.

(13) "Political subdivision" means a county, city, or school district or any other governmental entity that:

(A) embraces a geographic area with a defined boundary;

(B) exists for the purpose of discharging functions of government; and

(C) possesses authority for subordinate self-government through officers selected by it.

(14) "Primary election" means an election held by a political party under Chapter 172 to select its nominees for public office, and, unless the context indicates otherwise, the term includes a presidential primary election.

(15) "Proposition" means the wording appearing on a ballot to identify a measure.

(16) "Registered voter" means a person registered to vote in this state whose registration is effective.

(17) "Residence address" means the street address and any apartment number, or the address at which mail is received if the residence has no address, and the city, state, and zip code that correspond to a person's residence.

(18) "Special election" means an election that is not a general election or a primary election.

(19) "Statewide office" means an office of the federal or state government that is voted on statewide.

(20) "Straight-party vote" means a vote by a single mark, punch, or other action by the voter for all the nominees of one political party and for no other candidates.

(21) "Uniform election date" means an election date prescribed by Section 41.001.

(22) "Voting station" means the voting booth or other place where voters mark their ballots or otherwise indicate their votes at a polling place.

(23) "Voting year" means the 12-month period beginning January 1 of each year.

(24) "Presidential primary election" means an election held under Subchapter A, Chapter 191, at which a political party's voters are given an opportunity to express their preferences for the party's presidential candidates, or for an "uncommitted" status if provided by party rule, for the purpose of determining the allocation of the party's delegates from this state to the party's national presidential nominating convention.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 2, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 436, § 9, eff. Sept. 1, 1989; Acts 1987, 70th Leg., ch. 472, § 52, eff. Sept. 1, 1989.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in subd. (14), added “, and, unless the context indicates otherwise, the term includes a presidential primary election”, and added subd. (24).

1987 Legislation

Acts 1987, 70th Leg., ch. 436, § 9 and Acts 1987, ch. 472, § 52 both, in the definition of “voting year” substituted “January” for “March”.

Library References

Election challenges, contests, see Brooks, 35 Texas Practice § 11.23.
Conduct of elections, ordering elections, see Brooks, 35 Texas Practice § 11.10.

Party nominations, see Brooks, 35 Texas Practice § 11.21.

Notes of Decisions

Address 3

3. Address

Failure of voters to include their zip code on petition for adoption of optional county road system did not invalidate otherwise valid petition sig-

natures and, thus, writ of mandamus was warranted to compel county commissioner's court to place road system proposition on next election ballot pursuant to County Road and Bridge Act; inclusion of zip code would not help verify eligibility of those who signed petition. *Reese v. Commissioners' Court of Cherokee County* (App. 12 Dist. 1993) 861 S.W.2d 281.

§ 1.006. Effect of Weekend or Holiday

Cross References

Contests of legislative elections, filing of petitions and answers, inapplicability of this section, see V.T.C.A., Election Code §§ 241.003, 241.004.
Ineligibility deadline extended by weekend or holiday, see V.T.C.A., Election Code § 145.006.
Primary elections, authority with whom application filed, inapplicability of this section, see V.T.C.A., Election Code § 172.022.

Vacancy in legislature, local and state canvasses, inapplicability of this section, see V.T.C.A., Election Code § 203.012.

§ 1.007. Delivering, Submitting, and Filing Documents

(a) When this code provides for the delivery, submission, or filing of an application, notice, report, or other document or paper with an authority having administrative responsibility under this code, a delivery, submission, or filing with an employee of the authority at the authority's usual place for conducting official business constitutes filing with the authority.

(b) The authority to whom a delivery, submission, or filing is required by this code to be made may accept the document or paper at a place other than the authority's usual place for conducting official business.

(c) A delivery, submission, or filing of a document or paper under this code may be made by personal delivery, mail, or any other method of transmission.

(d) Any other provision of this code supersedes this section to the extent of any conflict.

Amended by Acts 1997, 75th Leg., ch. 864, § 1, eff. Sept. 1, 1997.

Historical and Statutory Notes

1997 Legislation

Section 257 of Acts 1997, 75th Leg., ch. 864 provides:

“This Act is intended only to change terminology involving gender in the Election Code to appropriate gender-neutral terminology. The reenactment

of text in this Act to effect this change in terminology does not prevail over a conflicting change in law, including a conflict in gender-neutral terminology, made by another Act of the 75th Legislature, Regular Session, 1997, and that conflicting change is given effect with the change in terminology made by this Act.”

Title 1

§ 1.009. Time of Receipt of Mailed Document

(a) When this code provides that an application, notice, or other document or paper that is delivered, submitted, or filed by mail is considered to be delivered, submitted, or filed at the time of its receipt by the appropriate authority, the time of receipt is the time at which a post office employee:

- (1) places it in the actual possession of the authority or the authority's agent; or
- (2) deposits it in the authority's mailbox or at the usual place of delivery for the authority's official mail.

(b) If the authority cannot determine the time at which a deposit under Subsection (a)(2) occurred or whether it occurred before a specified deadline, the deposit is considered to have occurred at the time the mailbox or usual place of mail delivery, as applicable, was last inspected for removal of mail.

Amended by Acts 1997, 75th Leg., ch. 864, § 2, eff. Sept. 1, 1997.

§ 1.011. Signing Document by Witness

(a) When this code requires a person to sign an application, report, or other document or paper, except as otherwise provided by this code, the document or paper may be signed for the person by a witness, as provided by this section, if the person required to sign cannot do so because of a physical disability or illiteracy.

(b) The person who cannot sign must affix the person's mark to the document or paper, which the witness must attest. If the person cannot make the mark, the witness must state that fact on the document or paper.

(c) The witness must state on the document or paper the name, in printed form, of the person who cannot sign.

(d) The witness must affix the witness's own signature to the document or paper and state the witness's own name, in printed form, near the signature. The witness must also state the witness's residence address unless the witness is an election officer, in which case the witness must state the witness's official title.

(e) The procedure prescribed by this section must be conducted in the presence of the person who cannot sign.

Amended by Acts 1997, 75th Leg., ch. 864, § 3, eff. Sept. 1, 1997.

§ 1.012. Public Inspection of Election Records

(a) Subject to Subsection (b), an election record that is public information shall be made available to the public during the regular business hours of the record's custodian.

(b) For the purpose of safeguarding the election records or economizing the custodian's time, the custodian may adopt reasonable rules limiting public access.

(c) Except as otherwise provided by this code or Chapter 552, Government Code, all election records are public information.

Amended by Acts 1993, 73rd Leg., ch. 728, § 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, § 5.95(88), eff. Sept. 1, 1995.

Library References

Conduct of elections, in general, see Brooks, 35
Texas Practice § 11.8.

§ 1.013. Destruction of Records

Library References

Conduct of elections, returns, see Brooks, 35
Texas Practice § 11.18.

§ 1.014. Election Expenses

Library References

Conduct of elections, election supplies and equipment, see Brooks, 35 Texas Practice § 11.11.

§ 1.015. Residence

(a) In this code, "residence" means domicile, that is, one's home and fixed place of habitation to which one intends to return after any temporary absence.

(b) Residence shall be determined in accordance with the common-law rules, as enunciated by the courts of this state, except as otherwise provided by this code.

(c) A person does not lose the person's residence by leaving the person's home to go to another place for temporary purposes only.

(d) A person does not acquire a residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person's home.

(e) A person who is an inmate in a penal institution or who is an involuntary inmate in a hospital or eleemosynary institution does not, while an inmate, acquire residence at the place where the institution is located.

Amended by Acts 1997, 75th Leg., ch. 864, § 4, eff. Sept. 1, 1997.

Library References

Constitutional residency requirement, see Brooks, 35 Texas Practice § 7.3.

Grounds for challenge, not a qualified voter, see Dix & Dawson, 42 Texas Practice § 35.42.

Voter eligibility, see Brooks, 35 Texas Practice § 11.7.

Notes of Decisions

Duration of residence 6.5
Factors considered 3.5
Intent 6.6

3.5. Factors considered

Factors to be considered in determining voter's residence include volition, intention and action in creating residence that is fixed and determined; election officials should focus on voter's home and fixed place of habitation, and temporary move from one place to another will neither create new residence nor lose old one. *Alvarez v. Espinoza* (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

Neither bodily presence alone nor intention alone will suffice to create "residence," as that term is used in context of voting laws, but when the two coincide residence is fixed and determined at that moment without regard to length of time bodily presence continues. *Slusher v. Streater* (App. 1 Dist. 1995) 896 S.W.2d 239, rehearing overruled.

4. House

Evidence was legally sufficient to support finding that voter was city resident and therefore legally voted in city council election, even though he also had bought a house in disrepair located in another city. *Slusher v. Streater* (App. 1 Dist. 1995) 896 S.W.2d 239, rehearing overruled.

6. Temporary absence

Evidence supported finding that voters continued to be residents of district, even though they lived part time outside precinct and part time inside precinct; voters lived with one voter's mother within precinct and received mail at mother's home, spent considerable amount of time there, and claim that home as their permanent residence. *Alvarez v. Espinoza* (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

6.5. Duration of residence

Even if voters had intended to make home or fixed place of habitation within precinct, their presence in district was too attenuated to establish residence and, thus, voters should not have been permitted to vote. *Alvarez v. Espinoza* (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

Evidence supported determination that voter who reregistered within precinct for election was not resident of precinct; voter and her family had not lived within district for several years, previously registered to vote elsewhere, claimed that her permanent address was with her husband's parents, but had lived there for only a few months several years earlier, and alleged permanent address was essentially place at which voter could receive mail. *Alvarez v. Espinoza* (App. 4 Dist.

INTRODUCTORY PROVISIONS

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1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

6.6. Intent

Plaintiff who had moved from city, and did not anticipate voting in any city elections while living at his new address, lacked standing to challenge voter redistricting plan. *Chen v. City of Houston*, S.D.Tex.1998, 9 F.Supp.2d 745.

Fact that resident of another city intended to return some day to city in which election was held was not sufficient to create "residency," and, therefore, resident of other city was not qualified to vote in city council election. *Slusher v. Streater* (App. 1 Dist. 1995) 896 S.W.2d 239, rehearing overruled.

11. Students

Voter who never lived within county, although she stayed there with her boyfriend during spring and summer breaks from college, and who was student in another county with no ties to district, was not "resident" eligible to vote. *Alvarez v. Espinoza* (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

Evidence supported determination that full-time college student continued to be resident in district and was eligible to vote there, even though he temporarily moved from district to attend college; there was evidence that student's mother lived within district and student returned home for summer and spring breaks. *Alvarez v. Espinoza* (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

College student's "residence" for election purposes was in city in which her parents lived, absent showing that she became a bona fide resident of the county in which she was a student. *Slusher v. Streater* (App. 1 Dist. 1995) 896 S.W.2d 239, rehearing overruled.

13. Evidence, generally

There was some probative evidence, consisting of witnesses' testimony and fact that voters owned restaurant in the city, that voters resided in the city and were therefore qualified to vote in city council election, even though some contrary evidence was admitted at trial. *Slusher v. Streater* (App. 1 Dist. 1995) 896 S.W.2d 239, rehearing overruled.

Evidence was legally sufficient to show that voter was resident of city at time of city council election and, therefore, voted legally; witness testified that he had known voter since voter was a child, that at time of trial voter was living in different city to which he had moved the previous week, that voter had lived in city for seven or eight months before the election, and that while he lived in the city he was with the fire department. *Slusher v. Streater* (App. 1 Dist. 1995) 896 S.W.2d 239, rehearing overruled.

Evidence that voter resided at one of two addresses within city limits and that her intention was to live in the city was legally sufficient to show that she resided in city at time of city council election, even though she spent several nights in another city as part of her job. *Slusher v. Streater* (App. 1 Dist. 1995) 896 S.W.2d 239, rehearing overruled.

CHAPTER 2. VOTE REQUIRED FOR ELECTION TO OFFICE

SUBCHAPTER A. ELECTION BY PLURALITY

Section

2.002. Tie Vote.

SUBCHAPTER B. RUNOFF ELECTION

2.025. Runoff Election Day.

2.028. Tie Vote in Runoff.

Section

SUBCHAPTER C. ELECTION OF UNOPPOSED CANDIDATE

2.051. Applicability of Subchapter.

2.052. Certification of Unopposed Status.

2.053. Action on Certification.

2.054. Coercion Against Candidacy Prohibited.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. ELECTION BY PLURALITY

§ 2.002. Tie Vote

(a) Except as provided by Subsection (f) or (g), in an election requiring a plurality vote, if two or more candidates for the same office tie for the number of votes required to be elected, a second election to fill the office shall be held.

(b) Not later than the fifth day after the date the final canvass for the first election is completed, the authority responsible for ordering the first election shall order the second election. The second election shall be held not earlier than the 20th day or later than the 30th day after the date the final canvass for the first election is completed.

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(c) The names of the tying candidates only shall be printed on the ballot for the second election. Write-in votes are not permitted. If either of the candidates is a party nominee, the title of the office shall be listed on the ballot in a vertical column with the name of each candidate listed below the office title with each candidate's political party alignment next to the name.

(d) The order of the candidates' names on the ballot shall be determined by a drawing in accordance with Section 52.094.

(e) Notice of the second election shall be given in accordance with Chapter 4 except that a notice under Section 4.003(a)(2) or (b) must be posted not later than the 15th day before election day.

(f) The tying candidates may agree to cast lots to resolve the tie. The agreement must be filed with the authority responsible for ordering the election. That authority or, if the authority is a body, the body's presiding officer, shall supervise the casting of lots.

(g) A tying candidate may resolve the tie by filing with the authority described by Subsection (f) a written statement of withdrawal signed and acknowledged by the candidate. On receipt of the statement of withdrawal, the remaining candidate is the winner, and a second election or casting of lots is not held.

(h) This section does not apply to elective offices of the executive department specified by Article IV, Section 1, of the Texas Constitution.

Amended by Acts 1997, 75th Leg., ch. 1349, § 1, eff. Sept. 1, 1997.

SUBCHAPTER B. RUNOFF ELECTION

§ 2.021. Runoff Election Required

Notes of Decisions

1. In general

Mandamus would lie on behalf of unsuccessful candidate for city council to compel runoff election between himself and candidate receiving plurality

of votes; election officer's failure to order runoff violated duty imposed by law, and no adequate remedy at law existed. *Estrada v. Adame* (App. 13 Dist. 1997) 951 S.W.2d 165, rehearing overruled.

§ 2.022. Conflicts With Other Law

Cross References

Runoff elections, see V.T.C.A., Election Code § 2.025.

§ 2.023. Runoff Candidates

Library References

Party nominations, see Brooks, 35 Texas Practice § 11.21.

§ 2.025. Runoff Election Day

(a) Except as provided by Subsection (b), a runoff election shall be held not earlier than the 20th or later than the 30th day after the date the final canvass of the main election is completed.

(b) A runoff election may be held after the period prescribed by law but not later than the 45th day after the date the final canvass of the main election is completed only to:

(1) permit a joint runoff election to be held with another political subdivision in accordance with Chapter 271; or

(2) avoid holding the runoff on:

(A) a legal state or national holiday; or

(B) a weekend day within three days of a legal state or national holiday.

INTRODUCTORY PROVISIONS

§ 2.051

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(c) Subsection (b) supersedes a law outside this subchapter to the extent of a conflict notwithstanding Section 2.022.

Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 60, § 2, eff. Oct. 20, 1987; Acts 1991, 72nd Leg., ch. 389, § 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 728, § 2, eff. Sept. 1, 1993.

Historical and Statutory Notes

1993 Legislation

Sections 1 and 2 of Acts 1993, 73rd Leg., ch. 108, provide:

"Sec. 1. (a) Each political subdivision of this state holding its general election for officers on May 1, 1993, may hold any resulting runoff election on the date ordered by the governor for the runoff in the special election to fill a vacancy in the United States Senate.

"(b) If under this section a runoff election is held on a date other than a date prescribed by other law, the schedule for performing any official act relating to the election shall be adjusted to allow the same interval in relation to the date of

the election as would be provided by application of the other law.

"(c) The period for early voting by personal appearance in the political subdivision's runoff election begins on the date that early voting by personal appearance begins for the runoff in the special election to fill a vacancy in the United States Senate.

"(d) This section supersedes other law to the extent of any conflict.

"Sec. 2. If a runoff is not required in the special election to fill a vacancy in the United States Senate, this Act has no effect."

A runoff in the special election to fill a vacancy in the United States Senate was held June 5, 1993.

§ 2.028. Tie Vote in Runoff

(a) Except as provided by Subsection (c), if the candidates in a runoff election tie, they shall cast lots to determine the winner.

(b) The presiding officer of the final canvassing authority shall supervise the casting of lots under this section.

(c) A tying candidate may resolve the tie by filing with the presiding officer of the final canvassing authority a written statement of withdrawal signed and acknowledged by the candidate. On receipt of the statement of withdrawal, the remaining candidate is the winner, and a casting of lots is not held.

Amended by Acts 1997, 75th Leg., ch. 1349, § 2, eff. Sept. 1, 1997.

Library References

Election challenges, contests, see Brooks, 35
Texas Practice § 11.23.

SUBCHAPTER C. ELECTION OF UNOPPOSED CANDIDATE

§ 2.051. Applicability of Subchapter

(a) This subchapter applies only to an election for officers of a political subdivision other than a county in which write-in votes may be counted only for names appearing on a list of write-in candidates and in which:

(1) each candidate whose name is to appear on the ballot is unopposed, except as provided by Subsection (b); and

(2) no proposition is to appear on the ballot.

(b) In the case of an election in which any members of the political subdivision's governing body are elected from single-member districts, this subchapter applies to the election in a particular single-member district if:

(1) each candidate whose name is to appear on the ballot in that district is unopposed; and

(2) the requirements prescribed by Subsection (a) are otherwise met.

Added by Acts 1995, 74th Leg., ch. 667, § 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1349, § 3, eff. Sept. 1, 1997.

Notes of Decisions

Cancellation of election 1
Certificate of election 2

1. Cancellation of election

In an election where the mayor, who is elected at large, is unopposed, but a candidate for a single-member district is opposed, statutes governing election of unopposed candidates do not apply, and the election may not be cancelled. Election Law Opinion No. AOG-1(1996).

In a city where council members are elected from single-member districts and some of the single-member districts candidates are unopposed and others are opposed, statutes governing the election of unopposed candidates do not apply, and the election may not be cancelled. Election Law Opinion No. AOG-1(1996).

In a city election where three persons file as candidates for three at-large city council positions to be filled at the city general election and no persons file declarations of write-in candidacy, those candidates are unopposed for purposes of statute governing applicability of statutes providing for election of unopposed candidates, and the general election may be cancelled. Election Law Opinion No. AOG-1(1996).

2. Certificate of election

Unopposed candidates who are declared elected by order or ordinance should not be issued a certificate of election under statute providing for such issuance until after the date the election would have taken place. Election Law Opinion No. AOG-1(1996).

§ 2.052. Certification of Unopposed Status

(a) The authority responsible for having the official ballot prepared shall certify in writing that a candidate is unopposed for election to an office if:

(1) only one candidate's name is to be placed on the ballot for that office under Section 52.003; and

(2) no candidate's name is to be placed on a list of write-in candidates for that office under applicable law.

(b) The certification shall be delivered to the governing body of the political subdivision as soon as possible after the filing deadlines for placement on the ballot and list of write-in candidates.

Added by Acts 1995, 74th Leg., ch. 667, § 1, eff. Sept. 1, 1995.

Notes of Decisions

Cancellation of election 1

1. Cancellation of election

In an election where the mayor, who is elected at large, is unopposed, but a candidate for a single-member district is opposed, statutes governing election of unopposed candidates do not apply, and the election may not be cancelled. Election Law Opinion No. AOG-1(1996).

In a city where council members are elected from single-member districts and some of the single-member districts candidates are unopposed

and others are opposed, statutes governing the election of unopposed candidates do not apply, and the election may not be cancelled. Election Law Opinion No. AOG-1(1996).

In a city election where three persons file as candidates for three at-large city council positions to be filled at the city general election and no persons file declarations of write-in candidacy, those candidates are unopposed for purposes of statute governing applicability of statutes providing for election of unopposed candidates, and the general election may be cancelled. Election Law Opinion No. AOG-1(1996).

§ 2.053. Action on Certification

(a) On receipt of the certification, the governing body of the political subdivision by order or ordinance may declare each unopposed candidate elected to the office.

(b) If a declaration is made under Subsection (a), the election is not held. A copy of the order or ordinance shall be posted on election day at each polling place that would have been used in the election.

(c) A certificate of election shall be issued to each candidate in the same manner as provided for a candidate elected at the election.

Added by Acts 1995, 74th Leg., ch. 667, § 1, eff. Sept. 1, 1995.

Notes of Decisions

**Cancellation of election 1
Certificate of election 2**

1. Cancellation of election

In an election where the mayor, who is elected at large, is unopposed, but a candidate for a single-member district is opposed, statutes governing election of unopposed candidates do not apply, and the election may not be cancelled. Election Law Opinion No. AOG-1(1996).

In a city where council members are elected from single-member districts and some of the single-member districts candidates are unopposed and others are opposed, statutes governing the election of unopposed candidates do not apply, and the election may not be cancelled. Election Law Opinion No. AOG-1(1996).

In a city election where three persons file as candidates for three at-large city council positions to be filled at the city general election and no persons file declarations of write-in candidacy, those candidates are unopposed for purposes of statute governing applicability of statutes providing for election of unopposed candidates, and the general election may be cancelled. Election Law Opinion No. AOG-1(1996).

2. Certificate of election

Unopposed candidates who are declared elected by order or ordinance should not be issued a certificate of election under statute providing for such issuance until after the date the election would have taken place. Election Law Opinion No. AOG-1(1996).

§ 2.054. Coercion Against Candidacy Prohibited

(a) A person commits an offense if by intimidation or by means of coercion the person influences or attempts to influence a person to not file an application for a place on the ballot or a declaration of write-in candidacy in an election that may be subject to this subchapter.

(b) In this section, "coercion" has the meaning assigned by Section 1.07, Penal Code.

(c) An offense under this section is a Class A misdemeanor unless the intimidation or coercion is a threat to commit a felony, in which event it is a felony of the third degree.

Added by Acts 1995, 74th Leg., ch. 667, § 1, eff. Sept. 1, 1995.

Cross References

Punishment,
Class A misdemeanor, see V.T.C.A., Penal
Code § 12.21.

Third degree felony, see V.T.C.A., Penal Code
§ 12.34.

CHAPTER 3. ORDERING ELECTION

Library References

Tex.Prac., County and Special District Law, ch.
11.

Conduct of elections, election notices, see
Brooks, 35 Texas Practice § 11.12.

§ 3.003. Election Ordered by Governor

Library References

Conduct of elections, ordering elections, see
Brooks, 35 Texas Practice § 11.10.

§ 3.004. Election of Political Subdivision

Library References

Conduct of elections, ordering elections, see
Brooks, 35 Texas Practice § 11.10.

§ 3.005. Time for Ordering Election

Notes of Decisions

In general 1

1. In general

Writ of mandamus to compel city council to set election on certified initiative petition from citizen

organizations was premature, where the city council still had discretion in determining response to petition and when to set election. City Council of Austin v. Save Our Springs Coalition (App. 3 Dist. 1992) 828 S.W.2d 340.

CHAPTER 4. NOTICE OF ELECTION

Section

4.003. Method of Giving Notice.

Section

4.004. Contents of Notice.
4.005. Record of Notice.

Cross References

Annexation elections, municipalities, application of this chapter, see V.T.C.A., Local Government Code § 43.023.

County civil service system, additional notice of adoption election, see V.T.C.A., Local Government Code § 158.004.

Municipalities, notice on change to type C general-law municipality, see V.T.C.A., Local Government Code § 8.022.

Type B general-law municipality, notice of election of officers, see V.T.C.A., Local Government Code § 23.023.

Library References

Tex.Prac., County and Special District Law, ch. 11.

Conduct of elections, election notices, see Brooks, 35 Texas Practice § 11.12.

Conduct of elections, ordering elections, see Brooks, 35 Texas Practice § 11.10.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

§ 4.003. Method of Giving Notice

(a) Except as provided by Subsection (c), notice of an election must be given by any one or more of the following methods:

(1) by publishing the notice at least once, not earlier than the 30th day or later than the 10th day before election day:

(A) in a newspaper published in the territory that is covered by the election and is in the jurisdiction of the authority responsible for giving the notice; or

(B) in a newspaper of general circulation in the territory if none is published in the jurisdiction of the authority responsible for giving the notice;

(2) by posting, not later than the 21st day before election day, a copy of the notice at a public place in each election precinct that is in the jurisdiction of the authority responsible for giving the notice; or

(3) by mailing, not later than the 10th day before election day, a copy of the notice to each registered voter of the territory that is covered by the election and is in the jurisdiction of the authority responsible for giving the notice.

(b) In addition to any other notice given for an election under Subsection (a), not later than the 21st day before election day, the authority responsible for giving notice of the election shall post a copy of the notice, which must include the location of each polling place, on the bulletin board used for posting notices of the meetings of the governing body of the political subdivision that the authority serves. For each precinct that is combined to form a consolidated precinct under Section 42.008, not later than the 10th day before election day,

INTRODUCTORY PROVISIONS

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the authority shall also post, at the polling place used in the preceding general election, notice of the precinct's consolidation and the location of the polling place in the consolidated precinct. A notice posted under this subsection must remain posted continuously through election day.

(c) In addition to any other notice given, notice of an election ordered by a commissioners court or by an authority of a city or school district must be given by the method prescribed by Subsection (a)(1).

(d) If other law prescribes the method of giving notice of an election, that law supersedes this section, except that Subsection (c) applies regardless of the notice requirements prescribed by other law with respect to an election covered by that subsection.

(e) The authority responsible for giving notice of the election shall deliver to the secretary of state a copy of the notice of a consolidated precinct required by Subsection (b) not later than the date of the election.

Amended by Acts 1987, 70th Leg., ch. 479, § 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 114, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in subsec. (b) inserted requirements that the notice include the location of each polling place, notice be posted relating to

consolidated precincts, and continuous posting of notice through election day.

1989 Legislation

The 1989 amendment added subsec. (e).

Cross References

Notice requirement, municipal franchise election, see V.T.C.A., Transportation Code § 311.075.

Primary elections, notice of consolidated precincts in manner prescribed by subsec. (b) of this section, see V.T.C.A., Election Code § 172.1112.

Library References

Election duties, see Brooks, 35 Texas Practice § 20.45.

§ 4.004. Contents of Notice

(a) The notice of a general or special election must state:

- (1) the nature and date of the election;
- (2) except as provided by Subsection (c), the location of each polling place;
- (3) the hours that the polls will be open; and
- (4) any other information required by other law.

(b) The notice of a special election must also state each office to be filled or the proposition stating each measure to be voted on. This subsection does not apply to an election on a proposed constitutional amendment.

(c) If notice of an election is given by posting the notice in the various election precincts, the notice posted in a precinct is not required to state the location of the polling places in other precincts.

(d) If precincts are consolidated under Section 42.008, the notice must state which precincts have been combined to form each consolidated precinct in addition to the locations of the polling places in the consolidated precincts.

Amended by Acts 1987, 70th Leg., ch. 479, § 2, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment added subsec. (d).

Cross References

Primary elections, contents of notice of consolidated precincts as provided by this section, see V.T.C.A., Election Code § 172.1112.

§ 4.005. Record of Notice

(a) If notice of an election is given by publication, the authority responsible for giving the notice shall retain a copy of the published notice that contains the name of the newspaper and the date of publication.

(b) For each notice posted under Section 4.003(a)(2) or (b), the person posting the notice shall make a record at the time of posting stating the date and place of posting. The person shall sign the record and deliver it to the authority responsible for giving the election notice after the last posting is made.

(c) If notice of an election is given under Section 4.003(a)(3), the authority responsible for giving the notice shall:

(1) retain a copy of the notice and enter on the copy the date or dates the mailing occurred; and

(2) prepare a list of the names and addresses of the persons to whom the notice was mailed.

(d) The authority responsible for giving the election notice shall preserve the records required by this section for the period for preserving the precinct election records.

(e) If other law prescribes the method of preserving the notice of an election, that law supersedes this section.

Amended by Acts 1989, 71st Leg., ch. 2, § 7.01, eff. Aug. 28, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment to conform to Acts 1987, 70th Leg., ch. 479, § 1 in subsec. (b) inserted a reference to § 4.003(b).

TITLE 2. VOTER QUALIFICATIONS AND REGISTRATION

WESTLAW Computer Assisted Legal Research

WESTLAW supplements your legal research in many ways. WESTLAW allows you to

- update your research with the most current information
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For more information on using WESTLAW to supplement your research, see the WESTLAW Electronic Research Guide, which follows the Preface.

CHAPTER 11. QUALIFICATIONS AND REQUIREMENTS FOR VOTING

Section		Section	
11.002.	Qualified Voter.	11.005.	Effect of Vote by Voter Registered in Wrong Precinct.
11.004.	Voting in Precinct of Former Residence.		

Library References

Voter registration and elections, see Brooks, 35 Texas Practice § 13.14.

§ 11.001. Eligibility to Vote

Library References

Voter eligibility, see Brooks, 35 Texas Practice § 11.7.

United States Supreme Court

Voter registration, federal preclearance requirements, preclearance of original unitary plan, revised plan for separate state and federal voter registration, see *Young v. Fordice* (U.S.Miss. 1997) 117 S.Ct. 1228, 520 U.S. 273, 146 A.L.R. Fed. 791, 137 L.Ed.2d 448.

Voting Rights Act, preclearance requirements, covered jurisdictions, election changes required by state law, state sovereignty, see *Lopez v. Monterey County*, 1999, 119 S.Ct. 693.

Notes of Decisions

Standing 6

6. Standing

Plaintiff who had moved from city, and did not anticipate voting in any city elections while living at his new address, lacked standing to challenge

voter redistricting plan. *Chen v. City of Houston*, S.D.Tex.1998, 9 F.Supp.2d 745.

Plaintiff who was not a resident of district in which he was registered to vote did not have standing to challenge Texas city's voter redistricting plan. *Chen v. City of Houston*, S.D.Tex.1998, 9 F.Supp.2d 745.

§ 11.002. Qualified Voter

In this code, "qualified voter" means a person who:

- (1) is 18 years of age or older;
- (2) is a United States citizen;
- (3) has not been determined mentally incompetent by a final judgment of a court;
- (4) has not been finally convicted of a felony or, if so convicted, has:
 - (A) fully discharged the person's sentence, including any term of incarceration, parole, or supervision, or completed a period of probation ordered by any court; or
 - (B) been pardoned or otherwise released from the resulting disability to vote;
- (5) is a resident of this state; and
- (6) is a registered voter.

Amended by Acts 1987, 70th Leg., ch. 54, § 23, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 16, § 6.01, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 916, § 27, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 850, § 1, eff. Sept. 1, 1997.

Historical and Statutory Notes

1993 Legislation

Section 28 of the 1993 amendatory act provides: "The changes in law made by this Act to Sections 11.002 and 13.001, Election Code, are intend-

ed to conform the statutes to official opinions issued by the attorney general and secretary of state."

Library References

Voter eligibility, see Brooks, 35 Texas Practice § 11.7.
Grounds for challenge, not a qualified voter, see Dix & Dawson, 42 Texas Practice § 35.42.

Dismissal of accusation, consequences for defendant, see Dix & Dawson, 42 Texas Practice § 40.116.

United States Supreme Court

Disenfranchisement of persons convicted of certain crimes, racially discriminatory impact, see

Hunter v. Underwood, 1985, 105 S.Ct. 1916, 471 U.S. 222, 85 L.Ed.2d 222.

Notes of Decisions

11. Felons

Declared election results should be upheld unless there is clear and convincing evidence of erroneous result. Simmons v. Jones (App. 8 Dist. 1992) 838 S.W.2d 298.

Defendant who has been discharged from deferred adjudication community supervision is im-

mediately eligible to serve on jury, to vote, and to be recommended for probation by jury after finding of guilty at subsequent trial. Davis v. State (Cr.App. 1998) 968 S.W.2d 368.

§ 11.004. Voting in Precinct of Former Residence

A registered voter who changes residence to another election precinct in the same county, if otherwise eligible, may vote a full ballot in the election precinct of former residence until the voter's registration becomes effective in the new precinct if the voter satisfies the residence requirements prescribed by Section 63.0011 and submits a statement of residence in accordance with that section.

Amended by Acts 1993, 73rd Leg., ch. 916, § 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 797, § 1, eff. Sept. 1, 1995.

Notes of Decisions

Full ballot 1

previous precinct so long as ballot in previous precinct contained office or proposition that was also on ballot in new precinct; voters were not limited to voting for those offices or propositions that appeared on ballot in both precincts. Alvarez v. Espinoza (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

1. Full ballot

Voters who had moved from one precinct to another within same county less than 90 days before election were eligible to vote full ballot in

§ 11.005. Effect of Vote by Voter Registered in Wrong Precinct

If a voter who is erroneously registered in an election precinct in which the voter does not reside is permitted to vote by an election officer who does not know of the erroneous registration, the votes for the offices and measures on which the voter would have been eligible to vote in the voter's precinct of residence are valid unless the voter intentionally gave false information to procure the erroneous registration.

Amended by Acts 1997, 75th Leg., ch. 864, § 5, eff. Sept. 1, 1997.

Notes of Decisions

Intent 2

ing that voter intentionally gave false information to procure an erroneous registration. Slusher v. Streater (App. 1 Dist. 1995) 896 S.W.2d 239, rehearing overruled.

2. Intent

Any technical inaccuracy on voter registration card did not affect eligibility to vote absent show-

CHAPTER 12. VOTER REGISTRAR

SUBCHAPTER A. VOTER REGISTRAR

Section

12.004. Office Hours.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Library References

Voter registration and elections, see Brooks, 35 Texas Practice § 13.14.

SUBCHAPTER A. VOTER REGISTRAR

§ 12.004. Office Hours

(a) The registrar shall conduct voter registration activities at all times during regular office hours.

(b) The registrar may keep the office open for voter registration activities at times other than regular office hours. The registrar shall post notice of the irregular days and hours the office will be open. The notice must remain posted continuously at each entrance to the registrar's office for the period beginning not later than the third day before the day the office is to be open during irregular hours and ending after the last time specified in the notice for the office to be open.

(c) The registrar's office shall remain open for voter registration activities during the hours the polls are required to be open for voting on the date of any general or primary election in which a statewide office appears on the ballot or any other election held in the county on a uniform election date.

(d) If early voting by personal appearance is required to be conducted for extended hours under Section 85.005(c) or for weekend hours under Section 85.006(e), the registrar's office shall remain open for providing voter registration information during the extended hours or weekend hours that the main early voting polling place is open for voting.

Amended by Acts 1987, 70th Leg., ch. 54, § 1(a), eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 916, § 2, eff. Sept. 1, 1993.

Historical and Statutory Notes

1987 Legislation

The 1987 amendatory act, to conform to Acts 1985, 69th Leg., ch. 941 [see italicized note, main volume], in subsec. (c) inserted "or any other elec-

tion held in the county on a uniform election date", and § 1(b) of the amendatory act repealed Acts 1985, 69th Leg., ch. 941.

Library References

Office hours, see Brooks, 35 Texas Practice § 7.24.

CHAPTER 13. APPLICATION FOR REGISTRATION; INITIAL REGISTRATION

SUBCHAPTER A. ELIGIBILITY; MANNER OF APPLYING FOR REGISTRATION

Section

- 13.001. Eligibility for Registration.
- 13.002. Application Required.
- 13.003. Application by Agent.
- 13.004. Recording of Telephone Number or Social Security Number by Registrar.
- 13.006. Purportedly Acting as Agent.
- 13.007. False Statement on Application.

Section

SUBCHAPTER C. ACTION ON APPLICATION BY REGISTRAR

- 13.072. Action on Application.

SUBCHAPTER D. APPLICATION FILES

- 13.104. Optional Storage Method.

SUBCHAPTER B. VOLUNTEER DEPUTY REGISTRARS; HIGH SCHOOL DEPUTY REGISTRARS

- 13.033. Certificate of Appointment.
- 13.036. Termination of Appointment.
- 13.037. Compensation; Bond.
- 13.038. Powers Generally.
- 13.042. Delivery of Application to Registrar.
- 13.046. High School Deputy Registrars.

SUBCHAPTER E. OFFICIAL APPLICATION FORMS

- 13.121. Official Form for Registration by Mail.
- 13.122. Additional Elements on Official Form.

SUBCHAPTER B-1. VOTER REGISTRATION ASSISTANCE BY CERTAIN STATE AGENCIES [REPEALED]

SUBCHAPTER F. INITIAL REGISTRATION

- 13.051. Repealed.

- 13.142. Initial Registration Certificate.
- 13.143. Effective Date of Registration; Period of Effectiveness.
- 13.146. Confirmation Notice on Return of Initial Certificate.

Library References

Tex.Prac., County and Special District Law, ch. 11.

Voter registration and elections, see Brooks, 35 Texas Practice § 13.14.

SUBCHAPTER A. ELIGIBILITY; MANNER OF APPLYING FOR REGISTRATION

Library References

Voter eligibility, see Brooks, 35 Texas Practice § 11.7.

§ 13.001. Eligibility for Registration

(a) To be eligible for registration as a voter in this state, a person must:

- (1) be 18 years of age or older;

Title 2

- (2) be a United States citizen;
- (3) not have been determined mentally incompetent by a final judgment of a court;
- (4) not have been finally convicted of a felony or, if so convicted, must have:
 - (A) fully discharged the person's sentence, including any term of incarceration, parole, or supervision, or completed a period of probation ordered by any court; or
 - (B) been pardoned or otherwise released from the resulting disability to vote; and
- (5) be a resident of the county in which application for registration is made.

(b) To be eligible to apply for registration, a person must, on the date the registration application is submitted to the registrar, be at least 17 years and 10 months of age and satisfy the requirements of Subsection (a) except for age.

Amended by Acts 1987, 70th Leg., ch. 54, § 23, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 16, § 6.02, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 916, § 27, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 850, § 2, eff. Sept. 1, 1997.

Historical and Statutory Notes

<p>1993 Legislation Section 23 of the 1993 amendatory act provides: "The changes in law made by this Act to Sections 11.002 and 13.001, Election Code, are intend-</p>	<p>ed to conform the statutes to official opinions issued by the attorney general and secretary of state."</p>
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§ 13.002. Application Required

(a) A person desiring to register to vote must submit an application to the registrar of the county in which the person resides. An application must be submitted by personal delivery or by mail.

- (b) A registration application must be in writing and signed by the applicant.
- (c) A registration application must include:

- (1) the applicant's first name, middle name, if any, last name, and former name, if any;
- (2) the month, day, and year of the applicant's birth;
- (3) a statement that the applicant is a United States citizen;
- (4) a statement that the applicant is a resident of the county;
- (5) a statement that the applicant has not been determined mentally incompetent by a final judgment of a court;
- (6) a statement that the applicant has not been finally convicted of a felony or that the applicant is a felon eligible for registration under Section 13.001;
- (7) the applicant's residence address or, if the residence has no address, the address at which the applicant receives mail and a concise description of the location of the applicant's residence;

- (8) if the application is made by an agent, a statement of the agent's relationship to the applicant; and
- (9) the city and county in which the applicant formerly resided.

(d) The omission of the applicant's middle or former name under Subsection (c)(1) or the applicant's zip code under Subsection (c)(7) does not affect the validity of a registration application, and the registrar may not reject the application because of that omission.

Amended by Acts 1987, 70th Leg., ch. 436, § 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 472, § 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 920, § 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 2, § 7.02, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 916, § 30(c), eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 390, § 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 797, § 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 454, § 1, eff. Sept. 1, 1997.

Historical and Statutory Notes

<p>1987 Legislation Acts 1987, 70th Leg., ch. 436, § 1, in subsec. (d) inserted the provision relating to the applicant's zip code.</p>	<p>Acts 1987, 70th Leg., ch. 472, § 1, in subsec. (c) deleted the former provision under subd. (7) and redesignated former subds. (8) to (11) as subds. (7) to (10).</p>
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§ 13.002

VOTER QUALIFICATIONS & REGISTRATION

Title 2

Section 61 of Acts 1987, 70th Leg., ch. 472 provides:

"An objection to any provision of this Act interposed by the United States Department of Justice under the federal Voting Rights Act (42 U.S.C. Secs. 1971, 1973 et seq.) does not affect the validity of the remainder of this Act."

Acts 1987, 70th Leg., ch. 920, § 1 added subsec. (c)(12).

1989 Legislation

The 1989 amendment to make technical corrections redesignated subd. (c)(12) as subd. (c)(11); and in subsec. (d) substituted "Subsection (c)(8) or (9)" for "Subsection (c)(9) or (10)".

1991 Legislation

Section 3 of Acts 1991, 72nd Leg., ch. 559 provides:

"(a) The secretary of state shall prescribe an official voter registration application form that complies with Sections 13.002(c) and 13.122, Election Code, as amended by this Act, and shall furnish the forms as provided by Section 13.121, Election Code, not later than December 1, 1991.

"(b) The secretary of state shall omit the term 'permanent' preceding the term 'residence address' on an official voter registration application form that is prescribed on or after the effective date of this Act.

"(c) An officially prescribed voter registration application form that complies with the law as it existed on August 31, 1991, remains valid. On receipt of forms prescribed under Subsection (a) of this section, a voter registrar shall destroy any forms in the registrar's possession that do not comply with Sections 13.002(c) and 13.122, Election Code, as amended by this Act."

Library References

Grounds for challenge, not a qualified voter, see
Dix & Dawson, 42 Texas Practice § 35.42.

§ 13.003. Application by Agent

(a) An applicant may appoint, either orally or in writing, an agent to perform one or more of the following acts for the applicant:

- (1) complete and sign a registration application;
- (2) submit an application;
- (3) act on the applicant's behalf in the process of approving the application, including a challenge of the applicant;
- (4) receive a registration certificate in person; and
- (5) submit a notice or other applicable document for correcting registration information.

(b) To be eligible for appointment as an agent, a person must:

- (1) be the applicant's spouse, parent, or child; and
- (2) be a qualified voter of the county or have submitted a registration application and be otherwise eligible to vote.

Amended by Acts 1987, 70th Leg., ch. 436, § 2, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment added subd. (5) in subsec. (a).

Notes of Decisions

Validity $\frac{1}{2}$

$\frac{1}{2}$. Validity

Subdivisions 3 and 5 of former V.A.T.S. Election Code, art. 5.13a (see, now, V.T.C.A. Election Code §§ 13.003, 13.006) which proscribed application for voter registration for another person, did not un-

constitutionally provide that same conduct could result in either misdemeanor or felony under different sections of statute; former subd. 5 pertained to those who applied without any claim of agency status, while former subd. 3 governed those who attempted to act as applicant's agent. *Sepulveda v. State* (App. 13 Dist. 1987) 729 S.W.2d 954, petition for discretionary review refused.

§ 13.004. Recording of Telephone Number or Social Security Number by Registrar

(a) The registrar may not transcribe, copy, or otherwise record a telephone number furnished on a registration application.

(b) The registrar may transcribe, copy, or otherwise record a social security number furnished on a registration application only in maintaining the accuracy of the registration records.

Amended by Acts 1997, 75th Leg., ch. 454, § 2, eff. Sept. 1, 1997.

§ 13.006. Purportedly Acting as Agent

(a) A person commits an offense if the person purports to act as an agent in applying for registration or in signing a registration application at a time when the person:

(1) is not an agent of the applicant under Section 13.003(a); and

(2) is not eligible for appointment under Section 13.003(b) as the agent of the person for whom the person purports to act.

(b) An offense under this section is a felony of the third degree.

Amended by Acts 1997, 75th Leg., ch. 864, § 6, eff. Sept. 1, 1997.

Library References

Other election remedies, election offenses, see
Brooks, 35 Texas Practice § 11.26.

Notes of Decisions

Validity 1

729 S.W.2d 954, petition for discretionary review refused.

1. Validity

Former V.A.T.S. Election Code, art. 5.13a, subd. 5 (see, now, this section), which proscribed application for voter registration of another, without agency status, was not void for vagueness by its failure to define word "applied," where evidence revealed that defendant clearly "applied" for voter registration when she turned in application purporting to be that of another to county voter registrar. *Sepulveda v. State* (App. 13 Dist. 1987)

Subdivisions 3 and 5 of former V.A.T.S. Election Code, art. 5.13a (see, now, V.T.C.A. Election Code §§ 13.003, 13.006) which proscribed application for voter registration for another person, did not unconstitutionally provide that same conduct could result in either misdemeanor or felony under different sections of statute; former subd. 5 pertained to those who applied without any claim of agency status, while former subd. 3 governed those who attempted to act as applicant's agent. *Sepulveda v. State* (App. 13 Dist. 1987) 729 S.W.2d 954, petition for discretionary review refused.

§ 13.007. False Statement on Application

(a) A person commits an offense if the person knowingly makes a false statement or requests, commands, or attempts to induce another person to make a false statement on a registration application.

(b) An offense under this section is a Class B misdemeanor.

(c) For purposes of this code, an offense under this section is considered to be perjury, but may be prosecuted only under this section.

Amended by Acts 1987, 70th Leg., ch. 436, § 3, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 797, § 3, eff. Sept. 1, 1995.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment, in the section heading, preceding "False" deleted "Solicitation of"; in sub-

sec. (a) inserted "knowingly makes a false statement or"; and in subsec. (b) substituted "Class B misdemeanor" for "felony of the third degree".

Cross References

Punishment,
Class B misdemeanor, see V.T.C.A., Penal
Code § 12.22.

Notes of Decisions

In general 1

false statement on a voter registration application
commits an offense under this section. Op.Atty.
Gen.1986, No. JM-611.

1. In general

A person who requests, commands, or attempts
to induce a person unqualified to vote to make a

**SUBCHAPTER B. VOLUNTEER DEPUTY REGISTRARS;
HIGH SCHOOL DEPUTY REGISTRARS**

Library References

Voter eligibility, see Brooks, 35 Texas Practice
§ 11.7.

§ 13.033. Certificate of Appointment

(a) A person desiring to serve as a volunteer deputy registrar must request appointment
by the registrar in person or by mail.

(b) If a person is to be appointed, the registrar shall prepare a certificate of appointment in
duplicate containing:

- (1) the date of appointment;
- (2) the statement: "I, _____, Voter Registrar for _____ County, do
hereby appoint _____ as a volunteer deputy registrar for _____ County.;"
- (3) the person's residence address;
- (4) the person's voter registration number, if any;
- (5) a statement that the term of the appointment expires December 31 of an even-
numbered year; and
- (6) a statement that the appointment terminates on the person's final conviction for an
offense for failure to deliver a registration application and may terminate on the registrar's
determination that the person failed to adequately review a registration application.

(c) The registrar shall sign the certificate and issue the original to the appointee, who shall
sign it on receipt.

(d) A volunteer deputy shall present the certificate as identification to an applicant for
registration, on request, when receiving the application for delivery to the registrar.

Amended by Acts 1993, 73rd Leg., ch. 916, § 3, eff. Sept. 1, 1993.

§ 13.036. Termination of Appointment

(a) An appointment as a volunteer deputy registrar is terminated on:

- (1) the expiration of the volunteer deputy's term of appointment; or
- (2) the final conviction of the volunteer deputy for an offense prescribed by Section
13.043.

(b) The registrar may terminate the appointment of a volunteer deputy registrar on a
determination by the registrar that the volunteer deputy failed to adequately review a
registration application as required by Section 13.039.

(c) Immediately on the termination of an appointment, the registrar shall deliver written
notice of the termination to the volunteer deputy, directing the deputy:

- (1) to stop activity as a volunteer deputy registrar immediately; and

(2) to deliver the certificate of appointment, receipt forms, and registration applications and receipts in the volunteer deputy's possession to the registrar not later than the second day after the date the deputy receives the termination notice.

(d) The registrar shall reject all registration applications received by a person purporting to act as a volunteer deputy registrar after the person's appointment is terminated.

(e) The registrar may not reappoint a person whose appointment as a volunteer deputy registrar is terminated under Subsection (a)(2).

Amended by Acts 1993, 73rd Leg., ch. 916, § 4, eff. Sept. 1, 1993.

§ 13.037. Compensation; Bond

(a) A person may not receive compensation from the county for service as a volunteer deputy registrar unless compensation is authorized by the commissioners court.

(b) An unpaid volunteer deputy is not required to give a bond in connection with the deputy's service.

Amended by Acts 1993, 73rd Leg., ch. 916, § 5, eff. Sept. 1, 1993.

§ 13.038. Powers Generally

A volunteer deputy registrar may distribute voter registration application forms throughout the county and receive registration applications submitted to the deputy in person.

Amended by Acts 1997, 75th Leg., ch. 864, § 7, eff. Sept. 1, 1997.

Notes of Decisions

In general 1

1. In general

Deputy registrar's failure to receive registration applications in person and to review them for completeness in presence of applicants, as required by Election Code, did not warrant setting aside votes cast by applicants who had submitted voter

registration forms to proper authorities in good faith, assuming that they would be properly registered to vote; although registrar should have reviewed applications for completeness in applicant's presence, there was no indication that any application had been incomplete. *Alvarez v. Espinoza* (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

§ 13.039. Review of Application

Notes of Decisions

Review of application 1

1. Review of application

Deputy registrar's failure to receive registration applications in person and to review them for completeness in presence of applicants, as required by Election Code, did not warrant setting aside votes cast by applicants who had submitted voter

registration forms to proper authorities in good faith, assuming that they would be properly registered to vote; although registrar should have reviewed applications for completeness in applicant's presence, there was no indication that any application had been incomplete. *Alvarez v. Espinoza* (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

§ 13.042. Delivery of Application to Registrar

(a) A volunteer deputy registrar shall deliver in person, or by personal delivery through another designated volunteer deputy, to the registrar each completed voter registration application submitted to the deputy, as provided by this section. The secretary of state shall prescribe any procedures necessary to ensure the proper and timely delivery of completed applications that are not delivered in person by the volunteer deputy who receives them.

(b) Except as provided by Subsection (c), an application shall be delivered to the registrar not later than 5 p.m. of the fifth day after the date the application is submitted to the volunteer deputy registrar.

(c) An application submitted after the 34th day and before the 29th day before the date of an election in which any qualified voter of the county is eligible to vote shall be delivered not later than 5 p.m. of the 29th day before election day.

Amended by Acts 1987, 70th Leg., ch. 472, § 2, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in subsec. (a) permitted personal delivery through another designated vol-

unteer deputy and required the secretary of state to prescribe procedures relating to such delivery.

§ 13.046. High School Deputy Registrars

(a) Each principal of a public or private high school or the principal's designee shall serve as a deputy registrar for the county in which the school is located.

(b) In this code, "high school deputy registrar" means a deputy registrar serving under this section.

(c) A high school deputy registrar may distribute registration application forms to and receive registration applications submitted to the deputy in person from students and employees of the school only.

(d) At least twice each school year, a high school deputy registrar shall distribute an officially prescribed registration application form to each student who is or will be 18 years of age or older during that year, subject to rules prescribed by the secretary of state.

(e) Each application form distributed under this section must be accompanied by a notice informing the student or employee that the application may be submitted in person or by mail to the voter registrar of the county in which the applicant resides or in person to a high school deputy registrar or volunteer deputy registrar for delivery to the voter registrar of the county in which the applicant resides.

(f) Except as provided by this subsection, Sections 13.039, 13.041, and 13.042 apply to the submission and delivery of registration applications under this section, and for that purpose, "volunteer deputy registrar" in those sections includes a high school deputy registrar. A high school deputy registrar may review an application for completeness out of the applicant's presence. A deputy may deliver a group of applications to the registrar by mail in an envelope or package, and, for the purpose of determining compliance with the delivery deadline, an application delivered by mail is considered to be delivered at the time of its receipt by the registrar.

(g) A high school deputy registrar commits an offense if the deputy fails to comply with Section 13.042. An offense under this subsection is a Class C misdemeanor unless the deputy's failure to comply is intentional, in which case the offense is a Class A misdemeanor.

(h) The secretary of state shall prescribe any additional procedures necessary to implement this section.

Amended by Acts 1991, 72nd Leg., ch. 279, § 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 797, § 4, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 864, § 8, eff. Sept. 1, 1997.

SUBCHAPTER B-1. VOTER REGISTRATION ASSISTANCE
BY CERTAIN STATE AGENCIES [REPEALED]

§ 13.051. Repealed by Acts 1995, 74th Leg., ch. 797, § 44, eff. Sept. 1, 1995

Historical and Statutory Notes

The repealed section, which related to voter registration assistance by the Department of Public Safety, was derived from Vernon's Ann.Civ.St.

art. 6687b(6)(d) to (i) and Acts 1993, 73rd Leg., ch. 107, § 3A.01.

SUBCHAPTER C. ACTION ON APPLICATION BY REGISTRAR

§ 13.072. Action on Application

(a) If the registrar determines that an application complies with Section 13.002 and indicates that the applicant is eligible for registration, the registrar shall approve the application unless the registrar challenges the applicant.

(b) After approval of an application by an applicant who was registered in another county at the time of application, the registrar shall deliver written notice of the applicant's change of

residence to the other county's registrar and include in the notice the applicant's name, former residence address, and former registration number, if known.

(c) Except as provided by Subsection (d) or (e), if the registrar determines that an application does not comply with Section 13.002 or does not indicate that the applicant is eligible for registration, the registrar shall reject the application.

(d) If an application clearly indicates that the applicant resides in another county, the registrar shall forward the application to the other county's registrar not later than the second day after the date the application is received and, if the other county is not contiguous, shall deliver written notice of that action to the applicant not later than the seventh day after the date the application is received. The date of submission of a completed application to the wrong registrar is considered to be the date of submission to the proper registrar for purposes of determining the effective date of the registration.

(e) If the registrar determines that an application is incomplete, the registrar shall notify the applicant of that fact. If the applicant submits the required information not later than the third day after the date notice is received under this subsection, the registrar shall proceed with the review of the application.

Amended by Acts 1989, 71st Leg., ch. 415, § 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 559, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1349, § 4, eff. Sept. 1, 1997.

§ 13.074. Challenge of Applicant

Notes of Decisions

Exclusivity 1

applicant's qualifications. Op.Atty.Gen.1986, No. JM-611.

1. Exclusivity

V.T.C.A., Election Code §§ 13.074-13.080 provide the exclusive procedure for challenging a voter

SUBCHAPTER D. APPLICATION FILES

Library References

Voter eligibility, see Brooks, 35 Texas Practice § 11.7.

§ 13.104. Optional Storage Method

(a) Instead of keeping the original registration applications and supporting documentation as required by this title, the registrar may record the applications and documentation on an optical disk or other computer storage medium approved by the secretary of state.

(b) The storage medium must allow for the creation of a copy of an application or supporting documentation.

(c) The secretary of state shall prescribe any procedures necessary to implement this section.

Added by Acts 1995, 74th Leg., ch. 797, § 5, eff. Sept. 1, 1995.

SUBCHAPTER E. OFFICIAL APPLICATION FORMS

§ 13.121. Official Form for Registration by Mail

(a) The officially prescribed application form for registration by mail must be in the form of a business reply postcard, unless another form or system is used under Subsection (b), with postage paid by the state. The form may not be larger than the form in use immediately prior to January 1, 1986. The secretary of state shall design the form to enhance the legibility of its contents.

(b) The secretary of state shall obtain a permit from the United States Postal Service for use of the postage-paid application form and shall arrange for payment of the postal charges with warrants issued by the comptroller of public accounts. The secretary may use any other

form or system made available by the United States Postal Service if the form or system is less costly than the business reply system.

(c) The secretary of state shall have the official application forms for registration by mail printed and shall furnish the forms without charge to each registrar in a quantity the secretary determines sufficient for the proper conduct of voter registration.

(d) The secretary of state shall prescribe the procedures necessary to implement this section.

Amended by Acts 1987, 70th Leg., ch. 472, § 3, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in subsec. (a) inserted the provision relating to the size of the form.

1991 Legislation

Section 3 of Acts 1991, 72nd Leg., ch. 559 provides:

“(a) The secretary of state shall prescribe an official voter registration application form that complies with Sections 13.002(c) and 13.122, Election Code, as amended by this Act, and shall furnish the forms as provided by Section 13.121, Election Code, not later than December 1, 1991.

“(b) The secretary of state shall omit the term ‘permanent’ preceding the term ‘residence address’ on an official voter registration application form that is prescribed on or after the effective date of this Act.

“(c) An officially prescribed voter registration application form that complies with the law as it existed on August 31, 1991, remains valid. On receipt of forms prescribed under Subsection (a) of this section, a voter registrar shall destroy any forms in the registrar’s possession that do not comply with Sections 13.002(c) and 13.122, Election Code, as amended by this Act.”

§ 13.122. Additional Elements on Official Form

(a) In addition to the other statements and spaces for entering information that appear on an officially prescribed registration application form, each official form must include:

- (1) the statement: “I understand that giving false information to procure a voter registration is perjury and a crime under state and federal law.”;
- (2) a space for the applicant’s registration number;
- (3) a space for the applicant’s Texas driver’s license number or number of a personal identification card issued by the Department of Public Safety;
- (4) a space for the applicant’s telephone number;
- (5) a space for the applicant’s social security number;
- (6) a space for the applicant’s sex;
- (7) a statement indicating that the furnishing of the applicant’s driver’s license number, personal identification card number, telephone number, social security number, and sex is optional;
- (8) a space or box for indicating whether the applicant or voter is submitting new registration information or a change in current registration information;
- (9) a statement instructing a voter who is using the form to make a change in current registration information to enter the voter’s name and the changed information in the appropriate spaces on the form;
- (10) a statement that if the applicant declines to register to vote, that fact will remain confidential and will be used only for voter registration purposes;
- (11) a statement that if the applicant does register to vote, information regarding the agency or office to which the application is submitted will remain confidential and will be used only for voter registration purposes; and
- (12) any other voter registration information required by federal law or considered appropriate and required by the secretary of state.

(b) The term “residence address” may not be modified on an official registration application form by terms other than those comprising the specific elements of a residence address.

(c) If it becomes permissible under federal law to require an applicant for registration who has a social security number to furnish the number, the secretary of state may implement that requirement.

Amended by Acts 1991, 72nd Leg., ch. 16, § 6.03, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 442, § 7, eff. Jan. 1, 1992; Acts 1991, 72nd Leg., ch. 559, § 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 631, § 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 916, § 30(b), eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 797, § 6, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 454, § 3, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

Section 9 of Acts 1991, 72nd Leg., ch. 442, provides:

“(a) In addition to the substantive changes made by this Act, this Act conforms Section 13.122(a), Election Code, to Section 3, Chapter 436, Acts of the 70th Legislature, Regular Session, 1987.

“(b) To the extent of any conflict, this Act prevails over another Act of the 72nd Legislature, Regular Session, 1991, relating to nonsubstantive additions to and corrections in enacted codes.”

Section 3 of Acts 1991, 72nd Leg., ch. 559 provides:

“(a) The secretary of state shall prescribe an official voter registration application form that complies with Sections 13.002(c) and 13.122, Election Code, as amended by this Act, and shall furnish the forms as provided by Section 13.121, Election Code, not later than December 1, 1991.

“(b) The secretary of state shall omit the term ‘permanent’ preceding the term ‘residence address’ on an official voter registration application form that is prescribed on or after the effective date of this Act.

“(c) An officially prescribed voter registration application form that complies with the law as it existed on August 31, 1991, remains valid. On receipt of forms prescribed under Subsection (a) of this section, a voter registrar shall destroy any forms in the registrar’s possession that do not

comply with Sections 13.002(c) and 13.122, Election Code, as amended by this Act.”

Section 2 of Acts 1991, 72nd Leg., ch. 631, provides:

“(a) The secretary of state shall prescribe an official voter registration application form that complies with Section 13.122, Election Code, as amended by this Act, and shall furnish the forms as provided by Section 13.121, Election Code, not later than December 1, 1991.

“(b) The secretary of state shall omit the term ‘permanent’ preceding the term ‘residence address’ on an official voter registration application form that is prescribed on or after the effective date of this Act.

“(c) An officially prescribed voter registration application form that complies with the law as it existed on August 31, 1991, remains valid but may not be reproduced.”

1993 Legislation

Section 30(a) of the 1993 amendatory act provides:

“This section is intended only to clarify legislative intent regarding the content of a voter registration application as evidenced by Section 7, Chapter 442, Sections 2 and 3, Chapter 559, and Sections 1 and 2, Chapter 631, Acts of the 72nd Legislature, Regular Session, 1991.”

SUBCHAPTER F. INITIAL REGISTRATION

§ 13.142. Initial Registration Certificate

(a) After approval of a registration application, the registrar shall:

(1) prepare a voter registration certificate in duplicate and issue the original certificate to the applicant; and

(2) enter the applicant’s county election precinct number and registration number on the applicant’s registration application.

(b) In this code, “initial certificate” means a registration certificate issued under this section.

(c) An initial certificate takes effect on the effective date of the registration and expires the following January 1 of an even-numbered year.

Amended by Acts 1987, 70th Leg., ch. 436, § 10, eff. Sept. 1, 1989; Acts 1987, 70th Leg., ch. 472, § 53, eff. Sept. 1, 1989.

Historical and Statutory Notes

1987 Legislation

Acts 1987, 70th Leg., ch. 436, § 10 and Acts 1987, 70th Leg., ch. 472, 53 in subsec. (c), both substituted "January" for "March".

§ 13.143. Effective Date of Registration; Period of Effectiveness

(a) Except as provided by Subsections (b) and (e), if an applicant's registration application is approved, the registration becomes effective on the 30th day after the date the application is submitted to the registrar or on the date the applicant becomes 18 years of age, whichever is later.

(b) A registration is effective for purposes of early voting if it will be effective on election day.

(c) A registration is effective until canceled under this code.

(d) For purposes of determining the effective date of a registration, an application submitted by mail is considered to be submitted to the registrar on the date it is placed with postage prepaid and properly addressed in the United States mail. The date indicated by the post office cancellation mark is considered to be the date the application was placed in the mail unless proven otherwise.

(e) If the 30th day before the date of an election is a Saturday, Sunday, or legal state or national holiday, an application is considered to be timely if it is submitted to the registrar on or before the next regular business day.

Amended by Acts 1989, 71st Leg., ch. 416, § 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 203, § 2.31; Acts 1991, 72nd Leg., ch. 554, § 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 916, § 6, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 454, § 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1349, § 5, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

Notes of Decisions

In general 1 _____ er v. Streater (App. 1 Dist. 1995) 896 S.W.2d 239, rehearing overruled.

1. In general
Voter whose registration was not effective was not qualified to vote in city council election. Slush-

§ 13.146. Confirmation Notice on Return of Initial Certificate

(a) If an initial certificate delivered to the applicant by mail is returned to the registrar undelivered, the registrar shall promptly deliver to the applicant a confirmation notice in accordance with Section 15.051.

(b) If the applicant fails to submit a response to the registrar in accordance with Section 15.053, the registrar shall enter the applicant's name on the suspense list.

Added by Acts 1995, 74th Leg., ch. 797, § 7, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 62, § 5.01, eff. Sept. 1, 1999.

CHAPTER 14. RENEWAL OF REGISTRATION

SUBCHAPTER A. ISSUANCE OF RENEWAL CERTIFICATE

Section SUBCHAPTER B. RETURN OF RENEWAL CERTIFICATE

Section 14.001. Renewal Registration Certificate.

14.021. Disposition of Returned Renewal Certificate.

VOTER QUALIFICATIONS & REGISTRATION

§ 14.001

Title 2

Section

14.022. Erroneous Return of Renewal Certificate.

Section

14.023. Confirmation Notice After Return of Renewal Certificate.
14.024 to 14.027. Repealed.

SUBCHAPTER C. VOTING ON AFFIDAVIT OF RESIDENCE [REPEALED]

14.051 to 14.053. Repealed.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Library References

Voter registration and elections, see Brooks, 35 Texas Practice § 13.14.

SUBCHAPTER A. ISSUANCE OF RENEWAL CERTIFICATE

§ 14.001. Renewal Registration Certificate

(a) On or after November 15 but before December 6 of each odd-numbered year, the registrar shall issue a voter registration certificate to each voter in the county whose registration is effective on the preceding November 14 and whose name does not appear on the suspense list.

(b) In this code, "renewal certificate" means a registration certificate issued under this section.

(c) A renewal certificate is valid for two years beginning on January 1 following its issuance.

(d) At the time the registrar issues an initial certificate for a voter whose registration will be effective after November 14 of an odd-numbered year and before January 1 of the following year, the registrar shall also issue the voter a renewal certificate.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 3, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 436, § 11, eff. Sept. 1, 1989; Acts 1987, 70th Leg., ch. 472, § 54, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 797, § 8, eff. Sept. 1, 1995.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in subsec. (a), substituted "On or after November 15 but before December 6 of each odd-numbered year" for "During the first 15 days of each even-numbered year", in subsec. (c) substituted "following its issuance" for "of the year in which it is issued", and, in subsec. (d), substituted "November 14" for "December 31".

1987 Legislation

Acts 1987, 70th Leg., ch. 436, § 11 and Acts 1987, 70th Leg., ch. 472, § 54 in subsecs. (c) and (d) both substituted "January" for "March".

Section 17 of Acts 1987, 70th Leg., ch. 436 provides:

"Each renewal registration certificate issued in 1987 in accordance with Section 14.001, Election Code, must indicate that it is valid from March 1, 1988, through December 31, 1989."

Section 62 of Acts 1987, 70th Leg., ch. 472 provides:

"Each renewal registration certificate issued in 1987 in accordance with Section 14.001, Election Code, must indicate that it is valid from March 1, 1988, through December 31, 1989."

§ 14.002. Delivery of Renewal Certificate to Voter

Notes of Decisions

Undelivered certificates 1

1. Undelivered certificates

Evidence supported findings that voters whose renewal certificates were returned to registrar as

undelivered had, in fact, signed affidavits of residents and were eligible to vote, even though affidavits had not been produced at trial in election contest. *Alvarez v. Espinoza* (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

SUBCHAPTER B. RETURN OF RENEWAL CERTIFICATE

§ 14.021. Disposition of Returned Renewal Certificate

On the return to the registrar of an undelivered renewal certificate that was mailed to a voter, the registrar shall file the certificate with the voter's registration application and, not later than January 2 following the mailing of certificates, enter the voter's name on the suspense list.

Renumbered from V.T.C.A., Election Code § 14.022 and amended by Acts 1995, 74th Leg., ch. 797, § 9, eff. Sept. 1, 1995.

Historical and Statutory Notes

1995 Legislation
A former § 14.021, which related to the list of undelivered certificates and was amended by Acts

1986, 69th Leg., ch. 14, § 4, was deleted by Acts 1995, 74th Leg., ch. 797, § 9.

§ 14.022. Erroneous Return of Renewal Certificate

If the registrar determines that a voter's renewal certificate was returned undelivered solely because of postal service error, address reclassification, or the registrar's clerical error, the registrar shall delete the voter's name from the suspense list, make any other appropriate corrections in the registration records, and deliver the certificate to the voter.

Renumbered from V.T.C.A., Election Code § 14.023 and amended by Acts 1995, 74th Leg., ch. 797, § 9, eff. Sept. 1, 1995.

Historical and Statutory Notes

1995 Legislation
A former § 14.022, which related to the disposition of returned renewal certificates, was renum-

bered as V.T.C.A., Election Code § 14.021 by Acts 1995, 74th Leg., ch. 797, § 9.

§ 14.023. Confirmation Notice After Return of Renewal Certificate

(a) After January 1 but not later than March 1 of each even-numbered year, the registrar shall deliver a confirmation notice in accordance with Section 15.051 to each voter whose name appears on the suspense list under this subchapter.

(b) If the voter fails to submit a response to the registrar in accordance with Section 15.053, the voter's name remains on the suspense list.

Added by Acts 1995, 74th Leg., ch. 797, § 9, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 62, § 5.02, eff. Sept. 1, 1999.

Historical and Statutory Notes

1995 Legislation
A former § 14.023, which related to the erroneous return of renewal certificates, was renumbered

as V.T.C.A., Election Code § 14.022 by Acts 1995, 74th Leg., ch. 797, § 9.

§§ 14.024 to 14.027. Repealed by Acts 1995, 74th Leg., ch. 797, § 44, eff. Sept. 1, 1995

Historical and Statutory Notes

VOTER QUALIFICATIONS & REGISTRATION
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§§ 14.051 to 14.053
Repealed

Prior to repeal, § 14.025, which related to the delivery of the list of certificates to the Secretary of State, was amended by Acts 1986, 69th Leg., 3rd

C.S., ch. 14, § 5; Acts 1987, 70th Leg., ch. 436, § 12; Acts 1987, 70th Leg., ch. 472, § 55; and Acts 1993, 73rd Leg., ch. 916, § 7.

SUBCHAPTER C. VOTING ON AFFIDAVIT OF RESIDENCE [REPEALED]

§§ 14.051 to 14.053. Repealed by Acts 1995, 74th Leg., ch. 797, § 44, eff. Sept. 1, 1995

Historical and Statutory Notes

Prior to repeal, § 14.051 was amended by Acts 1987, 70th Leg., ch. 436, § 4.

Prior to repeal, § 14.053 was amended by Acts 1987, 70th Leg., ch. 54, § 12(b).

Prior to repeal, § 14.052 was amended by Acts 1987, 70th Leg., ch. 436, § 13 and Acts 1987, 70th Leg., ch. 472, § 56.

CHAPTER 15. GENERAL ADMINISTRATION OF REGISTRATION

**SUBCHAPTER A. FORM AND CONTENTS
OF REGISTRATION CERTIFICATE;
REPLACEMENT OF CERTIFICATE**

Section
15.053. Response to Confirmation Notice.
15.054. Renumbered.
[Sections 15.054 to 15.080 reserved for expansion]

Section
15.001. Required Contents.
15.002. Optional Contents.

SUBCHAPTER D. SUSPENSE LIST

**SUBCHAPTER B. CORRECTION OF
REGISTRATION INFORMATION**

15.081. Suspense List.
15.082. Availability of Registrar's List.
15.083. Delivery of List to Secretary of State.
15.084. Availability of Secretary of State's List.
15.085. Unlawful Use of Information on Suspense Lists.
[Sections 15.086 to 15.110 reserved for expansion]

15.021. Notice of Change in Registration Information by Voter.
15.022. Correction of Registration Records.
15.023. Time for Certain Deletions From Suspense List.
15.025. Effective Date of Registration in Precinct of New Residence.
15.027. Notice to Voter of Precinct Boundary Change.
15.028. Notice of Unlawful Voting to Prosecutor.

**SUBCHAPTER E. VOTING ON STATEMENT
OF RESIDENCE**

15.111. Notation on List of Registered Voters.
15.112. Authorization to Vote on Statement.
[Sections 15.113 to 15.140 reserved for expansion]

**SUBCHAPTER C. CONFIRMATION
OF RESIDENCE**

15.051. Confirmation Notice.
15.052. Official Confirmation Notice and Confirmation Notice Response Forms.

SUBCHAPTER F. CERTIFICATE FILES

15.141. Active Certificate File.
15.142. Inactive Certificate File.
15.143. Maintenance of Files as Electronic Data-Processing Information.
15.144. Place for Keeping Files; Security.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Library References

Voter registration and elections, see Brooks, 35 Texas Practice § 13.14.

SUBCHAPTER A. FORM AND CONTENTS OF REGISTRATION
CERTIFICATE; REPLACEMENT OF CERTIFICATE

§ 15.001. Required Contents

(a) Each voter registration certificate issued must contain:

- (1) the voter's name in the form indicated by the voter, subject to applicable requirements prescribed by Section 13.002 and by rule of the secretary of state;
- (2) the voter's residence address or, if the residence has no address, the address at which the voter receives mail and a concise description of the location of the voter's residence;
- (3) the month, day, and year of the voter's birth;
- (4) the number of the county election precinct in which the voter resides;
- (5) the voter's effective date of registration if an initial certificate;
- (6) the voter's registration number;
- (7) an indication of the period for which the certificate is issued;
- (8) a statement explaining the circumstances under which the voter will receive a new certificate;
- (9) a space for stamping the voter's political party affiliation;
- (10) a statement that voting with the certificate by a person other than the person in whose name the certificate is issued is a felony;
- (11) a space for the voter's signature;
- (12) a statement that the voter must sign the certificate personally, if able to sign, immediately on receipt;
- (13) a space for the voter to correct the information on the certificate followed by a signature line;
- (14) the statement: "If any information on this certificate changes or is incorrect, correct the information in the space provided, sign below, and return this certificate to the voter registrar."; and
- (15) the registrar's mailing address and telephone number.

(b) A certificate may not contain:

- (1) the voter's telephone number;
- (2) the voter's social security number; or
- (3) except as provided by Section 15.002, any other information not specified by Subsection (a).

Amended by Acts 1987, 70th Leg., ch. 436, § 5, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 390, § 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 797, § 10, eff. Sept. 1, 1995.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment, in subsec. (a)(2) required the certificate to contain a concise description of the location of the voter's residence.

§ 15.002. Optional Contents

(a) A voter registration certificate may contain an explanation of the voter's rights or duties under this code, including:

- (1) the procedure by which the voter will receive a renewal certificate;
- (2) the necessity of notifying the registrar if the voter changes residence;
- (3) the necessity of applying for a new registration if the voter changes residence to another county;
- (4) the period during which the voter may vote a limited ballot after changing residence to another county;
- (5) the procedure for voting without a certificate; and

(6) the procedure for obtaining a replacement for a lost or destroyed certificate.

(b) An explanation authorized by Subsection (a) may appear on a separate sheet accompanying the certificate when it is delivered.

(c) A voter registration certificate may contain a jurisdictional or distinguishing number for any territorial unit in which the voter resides, including a congressional district, state senatorial district, state representative district, commissioners precinct, justice precinct, city election precinct, or school district election precinct.

(d) A voter registration certificate may contain the voter's sex.

Amended by Acts 1993, 73rd Leg., ch. 916, § 8, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 797, § 11, eff. Sept. 1, 1995.

SUBCHAPTER B. CORRECTION OF REGISTRATION INFORMATION

§ 15.021. Notice of Change in Registration Information by Voter

(a) If a voter discovers incorrect information on the voter's registration certificate or if any of the information becomes incorrect because of a change in circumstances, the voter shall promptly submit to the registrar a written, signed notice of the incorrect information and the corresponding correction.

(b) The voter shall use the registration certificate or a registration application form as the notice, indicating the correct information in the appropriate space on the certificate or application form unless the voter does not have possession of the certificate or an application form at the time of giving the notice.

(c) The registrar shall retain the notice on file with the voter's registration application. If the correction is a change of the voter's name, the registrar shall file the application under the new name.

Amended by Acts 1997, 75th Leg., ch. 454, § 5, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, § 5.03, eff. Sept. 1, 1999.

§ 15.022. Correction of Registration Records

(a) The registrar shall make the appropriate corrections in the registration records, including, if necessary, deleting a voter's name from the suspense list:

(1) after receipt of a notice of a change in registration information under Section 15.021;

(2) after receipt of a voter's reply to a notice of investigation given under Section 16.033;

(3) after receipt of a registration omissions list and any affidavits executed under Section 63.007, following an election;

(4) after receipt of a voter's statement of residence executed under Section 63.0011;

(5) before the effective date of the abolishment of a county election precinct or a change in its boundary;

(6) after receipt of United States Postal Service information indicating an address reclassification;

(7) after receipt of a voter's response under Section 15.053; or

(8) after receipt of a registration application or change of address under Chapter 20.

(b) At least monthly, the registrar shall request from the United States Postal Service any available information indicating address reclassifications affecting the registered voters of the county.

Amended by Acts 1987, 70th Leg., ch. 54, § 12(b), eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 916, § 9, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 797, § 12, eff. Sept. 1, 1995.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment, to conform this section to Acts 1985, 69th Leg., ch. 966 [see italicized note under § 14.053, main volume], inserted in subsec.

(a)(3) the reference to affidavits executed under § 63.007, and repealed acts 1985, 69th Leg., ch. 966.

§ 15.023

VOTER QUALIFICATIONS & REGISTRATION

Title 2

§ 15.023. Time for Certain Deletions From Suspense List

If the name of a voter whose residence is changed on the registration records to another county election precinct in the same county appears on the suspense list, the voter's name shall be deleted from the list on the date the voter's registration in the precinct of new residence becomes effective.

Amended by Acts 1995, 74th Leg., ch. 797, § 13, eff. Sept. 1, 1995.

§ 15.025. Effective Date of Registration in Precinct of New Residence

The registration of a voter whose residence is changed on the registration records to another county election precinct in the same county becomes effective in the precinct of new residence on the 30th day after:

(1) the date the registrar receives a notice of a change in registration information under Section 15.021 or a voter's response under Section 15.053, indicating the change of residence; or

(2) the date the voter submits a statement of residence to an election officer under Section 63.0011 or a registration application or change of address to an agency employee under Chapter 20, indicating the change of residence.

Amended by Acts 1993, 73rd Leg., ch. 916, § 10, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 797, § 14, eff. Sept. 1, 1995.

§ 15.027. Notice to Voter of Precinct Boundary Change

(a) Before the effective date of the abolishment of a county election precinct or a change in its boundary, the registrar shall deliver written notice of that action to each affected registered voter.

(b) If the voter is not issued a corrected registration certificate, the notice shall inform the voter of the new precinct number and direct the voter to correct the precinct number on the voter's registration certificate and to retain the certificate for continued use.

Amended by Acts 1997, 75th Leg., ch. 864, § 9, eff. Sept. 1, 1997.

§ 15.028. Notice of Unlawful Voting to Prosecutor

(a) If the registrar determines that a person who is not a registered voter voted in an election, the registrar shall execute and deliver to the county or district attorney having jurisdiction in the territory covered by the election an affidavit stating the relevant facts.

(b) If the election covers territory in more than one county, the registrar shall also deliver an affidavit to the attorney general.

Amended by Acts 1993, 73rd Leg., ch. 916, § 11, eff. Sept. 1, 1993.

SUBCHAPTER C. CONFIRMATION OF RESIDENCE

A former Subchapter C, consisting of §§ 15.051 to 15.054, was redesignated as Subchapter F by Acts 1995, 74th Leg., ch. 797, § 15.

§ 15.051. Confirmation Notice

(a) If the registrar has reason to believe that a voter's current residence is different from that indicated on the registration records, the registrar shall deliver to the voter a written confirmation notice requesting confirmation of the voter's current residence.

(b) The registrar shall include an official confirmation notice response form with each confirmation notice delivered to a voter.

(c) The confirmation notice shall be delivered by forwardable mail to the voter's last known address.

(d) The registrar shall maintain a list of the confirmation notices mailed to voters, which for each notice must include the voter's name and the date the notice is mailed. The registrar shall maintain and retain the list in accordance with rules prescribed by the secretary of state.

Added by Acts 1995, 74th Leg., ch. 797, § 15, eff. Sept. 1, 1995.

Historical and Statutory Notes

1995 Legislation

A former § 15.051, which related to the active certificate file, was renumbered as § 15.141 by Acts 1995, 74th Leg., ch. 797, § 15.

§ 15.052. Official Confirmation Notice and Confirmation Notice Response Forms

(a) The officially prescribed form for a confirmation notice must include:

(1) a statement that, if the voter fails to submit to the registrar a written, signed response confirming the voter's current residence on or before the 30th day after the date the confirmation notice is mailed:

(A) the voter is subject to submission of a statement of residence before the voter may be accepted for voting in an election held after that deadline; or

(B) for a notice delivered under Section 14.023, the voter will remain subject to submission of a statement of residence before the voter may be accepted for voting in an election; and

(2) a warning that the voter's registration is subject to cancellation if the voter fails to confirm the voter's current residence either by notifying the registrar in writing or voting on a statement of residence before November 30 following the second general election for state and county officers that occurs after the date the confirmation notice is mailed.

(b) The official confirmation notice response form must be postage prepaid and preaddressed for delivery to the registrar.

(c) The registrar may prescribe a different design from that prescribed by the secretary of state for an official form, if approved by the secretary.

Added by Acts 1995, 74th Leg., ch. 797, § 15, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 62, § 5.04, eff. Sept. 1, 1999.

Historical and Statutory Notes

1995 Legislation

A former § 15.052, which related to the inactive certificate file, was renumbered as § 15.142 by Acts 1995, 74th Leg., ch. 797, § 15.

§ 15.053. Response to Confirmation Notice

(a) Not later than the 30th day after the date a confirmation notice is mailed, the voter shall submit to the registrar a written, signed response to the notice that confirms the voter's current residence.

(b) The voter shall use an official confirmation notice response form for the response unless the voter does not have possession of the official form at the time of making the response.

(c) The registrar shall retain the response on file with the voter's registration application.

Added by Acts 1995, 74th Leg., ch. 797, § 15, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 62, § 5.05, eff. Sept. 1, 1999.

Historical and Statutory Notes

1995 Legislation

A former § 15.053, which related to the maintenance of the certificate files as electronic data-

processing information, was renumbered as § 15.143 by Acts 1995, 74th Leg., ch. 797, § 15.

§ 15.054. Renumbered as V.T.C.A., Election Code § 15.144 by Acts 1995, 74th Leg., ch. 797, § 15, eff. Sept. 1, 1995

[Sections 15.054 to 15.080 reserved for expansion]

SUBCHAPTER D. SUSPENSE LIST

§ 15.081. Suspense List

(a) The registrar shall maintain a suspense list containing the name of each voter who fails to submit a response to the registrar in accordance with Section 15.053 or whose renewal certificate is returned to the registrar in accordance with Subchapter B, Chapter 14.¹

(b) The list shall be arranged alphabetically by voter name and for each voter must contain the voter's name, residence address, date of birth, registration number, and date the name is entered on the list. The names shall be grouped according to county election precincts.

(c) The secretary of state may prescribe an alternative form or procedure for maintaining the list.

Added by Acts 1995, 74th Leg., ch. 797, § 15, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 62, § 5.06, eff. Sept. 1, 1999.

¹ V.T.C.A., Election Code § 14.021 et seq.

§ 15.082. Availability of Registrar's List

(a) The registrar shall furnish a copy of the suspense list to any person requesting it or shall furnish that portion of the list requested.

(b) The fee for each list or portion of a list furnished under this section may not exceed the actual expense incurred in reproducing the list or portion for the person requesting it and shall be uniform for each type of copy furnished. The registrar shall make reasonable efforts to minimize the reproduction expenses.

(c) If the list is recorded on magnetic tape, the copy shall be furnished in the form of a tape or a printout, as requested.

(d) The registrar shall use fees collected under this section to defray expenses incurred in the preparation of the copy.

Added by Acts 1995, 74th Leg., ch. 797, § 15, eff. Sept. 1, 1995.

§ 15.083. Delivery of List to Secretary of State

(a) The secretary of state may require the registrar to deliver a copy of the suspense list to the secretary in the form prescribed by the secretary.

(b) The registrar shall deliver the list within the period prescribed by the secretary of state.

Added by Acts 1995, 74th Leg., ch. 797, § 15, eff. Sept. 1, 1995.

§ 15.084. Availability of Secretary of State's List

(a) The secretary of state shall furnish a copy of a suspense list delivered under Section 15.083 to any person requesting it or shall furnish that portion of the list requested.

(b) The fee for each list or portion of a list furnished under this section may not exceed the actual expense incurred in reproducing the list or portion for the person requesting it and shall be uniform for each type of copy furnished.

(c) The copy shall be furnished in the form in which the list is stored or, if practicable, in any other form requested.

(d) The secretary of state shall use fees collected under this section to defray expenses incurred in the preparation of the copy.

Added by Acts 1995, 74th Leg., ch. 797, § 15, eff. Sept. 1, 1995.

§ 15.085. Unlawful Use of Information on Suspense Lists

(a) A person commits an offense if the person uses information in connection with advertising or promoting commercial products or services that the person knows was obtained under Section 15.082 or 15.084.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1995, 74th Leg., ch. 797, § 15, eff. Sept. 1, 1995.

Cross References

Punishment, Class A misdemeanor, see
V.T.C.A., Penal Code § 12.21.

[Sections 15.086 to 15.110 reserved for expansion]

SUBCHAPTER E. VOTING ON STATEMENT OF RESIDENCE

§ 15.111. Notation on List of Registered Voters

(a) The registrar shall enter the notation "S", or a similar notation approved by the secretary of state, on the list of registered voters beside each voter's name that also appears on the suspense list.

(b) The registrar shall delete the notation from the list if the voter's name is deleted from the suspense list.

Added by Acts 1995, 74th Leg., ch. 797, § 15, eff. Sept. 1, 1995.

§ 15.112. Authorization to Vote on Statement

In an election held on or after the date the voter's name is entered on the suspense list and before November 30 following the second general election for state and county officers that occurs after the beginning of the period, a voter whose name appears on a precinct list of registered voters with the notation "S", or a similar notation, may vote in the election precinct in which the list is used if the voter satisfies the residence requirements prescribed by Section 63.0011 and submits a statement of residence in accordance with that section.

Added by Acts 1995, 74th Leg., ch. 797, § 15, eff. Sept. 1, 1995.

[Sections 15.113 to 15.140 reserved for expansion]

SUBCHAPTER F. CERTIFICATE FILES

Subchapter F was redesignated from Subchapter C by Acts 1995, 74th Leg., ch. 797, § 15.

§ 15.141. Active Certificate File

(a) The registrar shall maintain a file containing the duplicate initial registration certificates of voters whose registrations are effective.

(b) The registrar shall maintain the file in numerical order by registration number on a countywide basis.

(c) Each certificate shall be retained on file during the time the registration is effective.

Acts 1985, 69th Leg., ch. 211, § 1, eff. Jan. 1, 1986. Renumbered from V.T.C.A., Election Code § 15.051 by Acts 1995, 74th Leg., ch. 797, § 15, eff. Sept. 1, 1995.

§ 15.142. Inactive Certificate File

(a) The registrar shall maintain a file containing the duplicate initial registration certificates of voters whose registrations have been canceled.

(b) The registrar shall maintain the file in numerical order by registration number on a countywide basis for each voting year.

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(c) Each certificate shall be retained on file for two years after the date of cancellation.

Acts 1985, 69th Leg., ch. 211, § 1, eff. Jan. 1, 1986. Renumbered from V.T.C.A., Election Code § 15.052 by Acts 1995, 74th Leg., ch. 797, § 15, eff. Sept. 1, 1995.

§ 15.143. Maintenance of Files as Electronic Data-Processing Information

The registrar may maintain the active or inactive certificate file as information stored in a form suitable for use with electronic data-processing equipment. After the appropriate information is stored, the registrar may destroy or otherwise dispose of a duplicate certificate.

Acts 1985, 69th Leg., ch. 211, § 1, eff. Jan. 1, 1986. Renumbered from V.T.C.A., Election Code § 15.053 by Acts 1995, 74th Leg., ch. 797, § 15, eff. Sept. 1, 1995.

§ 15.144. Place for Keeping Files; Security

(a) The registration certificate files maintained under this subchapter shall be kept in the registrar's office at all times in a place and manner ensuring their security.

(b) Certificates may be removed from the registrar's office temporarily, in a manner ensuring their security, for use in preparing registration certificates, lists of registered voters, and other registration documents by electronic data-processing methods.

Acts 1985, 69th Leg., ch. 211, § 1, eff. Jan. 1, 1986. Renumbered from V.T.C.A., Election Code § 15.054 by Acts 1995, 74th Leg., ch. 797, § 15, eff. Sept. 1, 1995.

CHAPTER 16. CANCELLATION OF REGISTRATION

SUBCHAPTER A. OFFICIAL NOTICE TO REGISTRAR

Section

16.036.

Notice of Cancellation to Voter.

16.037.

Reinstatement of Registration.

Section

16.003.

Felony Conviction.

SUBCHAPTER C. CHALLENGE OF CANCELLATION

SUBCHAPTER B. CANCELLATION

16.031. Cancellation on Official Notice of Ineligibility.

16.062.

Request for Hearing on Challenge.

16.032. Cancellation Following End of Suspense List Period.

SUBCHAPTER D. CHALLENGE OF REGISTRATION

16.033. Cancellation Following Investigation by Registrar.

16.091.

Right to Challenge Registration.

16.0331. Cancellation on Request by Voter.

16.0921.

Confirmation Notice on Challenge Based on Residence.

16.0332. Cancellation Because of Citizenship Status.

16.093.

Hearing on Challenge.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Library References

Voter registration and elections, see Brooks, 35 Texas Practice § 13.14.

SUBCHAPTER A. OFFICIAL NOTICE TO REGISTRAR

§ 16.003. Felony Conviction

(a) Each month the institutional division of the Texas Department of Criminal Justice shall prepare an abstract of each final judgment received by the institutional division, occurring in the month, convicting a person 18 years of age or older who is a resident of the state of a felony.

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(b) The institutional division of the Texas Department of Criminal Justice shall file each abstract with the voter registrar of the person's county of residence not later than the 10th day of the month following the month in which the abstract is prepared.

Amended by Acts 1993, 73rd Leg., ch. 916, § 12, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1366, § 1, eff. Sept. 1, 1999.

Library References

Voter eligibility, see Brooks, 35 Texas Practice
§ 11.7.

SUBCHAPTER B. CANCELLATION**§ 16.031. Cancellation on Official Notice of Ineligibility**

(a) The registrar shall cancel a voter's registration immediately on receipt of:

(1) notice under Section 13.072(b) or 15.021 or a response under Section 15.053 that the voter's residence is outside the county;

(2) an abstract of the voter's death certificate under Section 16.001(a) or an abstract of an application indicating that the voter is deceased under Section 16.001(b);

(3) an abstract of a final judgment of the voter's mental incompetence, conviction of a felony, or disqualification under Section 16.002, 16.003, or 16.004;

(4) notice under Section 112.012 that the voter has applied for a limited ballot in another county;

(5) notice from a voter registration official in another state that the voter has registered to vote outside this state; or

(6) notice from the secretary of state that the voter has registered to vote in another county, as determined by the voter's driver's license number or personal identification card number issued by the Department of Public Safety or social security number.

(b) The registrar shall cancel a voter's registration immediately if the registrar:

(1) determines from information received under Section 16.001(c) that the voter is deceased;

(2) has personal knowledge that the voter is deceased; or

(3) receives from a person related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to the voter a sworn statement by that person indicating that the voter is deceased.

Amended by Acts 1987, 70th Leg., ch. 436, § 6, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 561, § 14, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, § 5.95(27), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 797, § 16, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 454, § 6, eff. Sept. 1, 1997.

§ 16.032. Cancellation Following End of Suspense List Period

If on November 30 following the second general election for state and county officers that occurs after the date the voter's name is entered on the suspense list a registered voter's name appears on the suspense list, the registrar shall cancel the voter's registration unless the name is to be deleted from the list under Section 15.023.

Amended by Acts 1995, 74th Leg., ch. 797, § 17, eff. Sept. 1, 1995.

§ 16.033. Cancellation Following Investigation by Registrar

(a) The registrar may use any lawful means to investigate whether a registered voter is currently eligible for registration in the county. This section does not authorize an investigation of eligibility that is based solely on residence.

(b) If the registrar has reason to believe that a voter is no longer eligible for registration, the registrar shall deliver written notice to the voter indicating that the voter's registration status is being investigated by the registrar. The notice shall be delivered by forwardable mail to the mailing address on the voter's registration application and to any new address of the voter known to the registrar.

(c) The notice must include:

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(1) a request for information relevant to determining the voter's eligibility for registration; and

(2) a warning that the voter's registration is subject to cancellation if the registrar does not receive an appropriate reply on or before the 60th day after the date the notice is mailed.

(d) Except as provided by Subsection (e), the registrar shall cancel a voter's registration if:

(1) after considering the voter's reply, the registrar determines that the voter is not eligible for registration;

(2) no reply is received from the voter on or before the 60th day after the date the notice is mailed to the voter under Subsection (b); or

(3) each notice mailed under Subsection (b) is returned undelivered to the registrar with no forwarding information available.

(e) A voter's registration may not be canceled under Subsection (d) if the voter's name appears on the suspense list unless the notice mailed to the voter indicated that the registrar had reason to believe that the voter is not eligible for registration because of a ground other than a ground based on residence.

(f) The registrar shall retain a copy of the notice mailed to a voter under this section on file with the voter's registration application. If the voter's reply to the notice is in writing, the registrar shall also retain the reply on file with the application. If the reply is oral, the registrar shall prepare a memorandum of the reply, indicating the substance and date of the reply, and shall retain the memorandum on file with the application.

Amended by Acts 1995, 74th Leg., ch. 797, § 18, eff. Sept. 1, 1995.

§ 16.0331. Cancellation on Request by Voter

(a) A voter desiring to cancel the voter's registration must submit to the registrar a written, signed request for the cancellation. A request may not be submitted by an agent.

(b) The registrar shall cancel a voter's registration immediately on receipt of a request under Subsection (a).

(c) The registrar shall retain the request on file with the voter's registration application.

Added by Acts 1995, 74th Leg., ch. 797, § 19, eff. Sept. 1, 1995.

§ 16.0332. Cancellation Because of Citizenship Status

(a) After the registrar receives a list under Section 62.113, Government Code, of persons excused or disqualified from jury service because of citizenship status, the registrar shall deliver to each registered voter who appears on the list a written notice requiring the voter to provide proof of United States citizenship in a form prescribed by the secretary of state. The notice shall be delivered by forwardable mail to the mailing address on the voter's registration application and to any new address of the voter known to the registrar.

(b) If a voter fails to provide the registrar with proof of citizenship before the 31st day after the date the notice is mailed to the voter, the registrar shall cancel the voter's registration.

(c) The registrar shall retain a copy of the notice mailed to a voter under this section on file with the voter's registration application. The registrar shall also retain any proof of citizenship received under this section on file with the application.

Added by Acts 1997, 75th Leg., ch. 640, § 2, eff. Sept. 1, 1997.

§ 16.036. Notice of Cancellation to Voter

(a) Immediately after cancellation of a voter's registration under Section 16.031(a)(3), 16.033, or 16.0331, the registrar shall deliver written notice of the cancellation to the voter.

(b) The notice shall be delivered by mail to the mailing address on the voter's registration application and to any new address known to the registrar.

(c) The notice must include:

(1) the date of cancellation;

(2) the reason for cancellation; and

(3) a brief explanation of the voter's right to challenge the cancellation and to appeal the registrar's decision.

Amended by Acts 1995, 74th Leg., ch. 797, § 20, eff. Sept. 1, 1995.

§ 16.037. Reinstatement of Registration

(a) If the registrar determines after cancellation of a registration that the registration should not have been canceled, the registrar shall reinstate it.

(b) If, after canceling a voter's registration under Section 16.032, the registrar receives a statement of residence executed by the voter under Section 63.0011 at an election held before the date the voter's registration was required to be canceled, the registrar shall reinstate the registration.

(c) On reinstatement of a registration, the registrar shall enter the date of and reason for the reinstatement on the voter's registration application and duplicate registration certificate, make any appropriate corrections in the registration records, and take any other action necessary to give effect to the reinstatement.

(d) A reinstatement of a registration takes effect immediately.

Amended by Acts 1993, 73rd Leg., ch. 916, § 13, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 797, § 21, eff. Sept. 1, 1995.

SUBCHAPTER C. CHALLENGE OF CANCELLATION

§ 16.062. Request for Hearing on Challenge

A person desiring to challenge the cancellation of the person's registration must file with the registrar a written, signed request for a hearing on the challenge.

Amended by Acts 1997, 75th Leg., ch. 864, § 10, eff. Sept. 1, 1997.

SUBCHAPTER D. CHALLENGE OF REGISTRATION

§ 16.091. Right to Challenge Registration

Except as otherwise provided by this subchapter, a registered voter may challenge the registration of another voter of the same county at a hearing before the registrar.

Amended by Acts 1995, 74th Leg., ch. 797, § 22, eff. Sept. 1, 1995.

§ 16.0921. Confirmation Notice on Challenge Based on Residence

(a) On the filing of a sworn statement under Section 16.092 alleging a ground based on residence, the registrar shall promptly deliver to the voter whose registration is challenged a confirmation notice in accordance with Section 15.051.

(b) If the voter fails to submit a response to the registrar in accordance with Section 15.053, the registrar shall enter the voter's name on the suspense list.

Added by Acts 1995, 74th Leg., ch. 797, § 23, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 62, § 5.07, eff. Sept. 1, 1999.

§ 16.093. Hearing on Challenge

(a) On the filing of a sworn statement under Section 16.092 alleging a ground other than residence, the registrar shall schedule a hearing on the challenge. The hearing procedure does not apply to an allegation of a ground based on residence.

(b) The registrar shall conduct the hearing not later than the 20th day after the date the statement is filed or on a later date requested by either party and agreed to by both parties.

(c) A party may appear personally at the hearing to offer evidence or argument. A party may offer evidence or argument by affidavit without personally appearing if the party submits the affidavit to the registrar before the hearing begins.

Amended by Acts 1995, 74th Leg., ch. 797, § 24, eff. Sept. 1, 1995.

CHAPTER 17. JUDICIAL REVIEW

Library References

Voter registration and elections, see Brooks, 35 Texas Practice § 13.14.

CHAPTER 18. PROCEDURES FOR IDENTIFYING REGISTERED VOTERS

SUBCHAPTER A. REGISTRATION LISTS

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| <p>Section</p> <p>18.001. Original List of Registered Voters.</p> <p>18.002. Supplemental List of Registered Voters.</p> <p>18.003. Registration Correction List.</p> <p>18.005. Form and Contents of List.</p> <p>18.006. Delivery of Lists to Election Authorities.</p> <p>18.007. Lists Furnished for Precinct Conventions.</p> <p>18.008. Copies Furnished on Request.</p> <p>18.009. Unlawful Use of Information on Registration List.</p> <p>18.012. Secretary of State to Approve Computer Services Contracts.</p> <p>18.013. Political Subdivision List in Certain Counties.</p> | <p>Section</p> <p>18.041. Annual Registration Statement.</p> <p>18.042. Preelection Registration Statement.</p> <p>18.043. Statement Required Under Federal Law.</p> |
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SUBCHAPTER B. REGISTRATION STATEMENTS

SUBCHAPTER C. REGISTRATION SERVICE PROGRAM

[Sections 18.014 to 18.040 reserved for expansion]

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| <p>18.062. State Master File.</p> <p>18.063. Information Furnished by Registrar.</p> <p>18.064. Sanction for Noncompliance.</p> <p>18.065. Secretary of State to Monitor Registrar's Compliance.</p> <p>18.067. Unlawful Use of Master File Information.</p> |
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WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Library References

Voter registration and elections, see Brooks, 35 Texas Practice § 13.14.

SUBCHAPTER A. REGISTRATION LISTS

Library References

Voter eligibility, see Brooks, 35 Texas Practice § 11.7.

§ 18.001. Original List of Registered Voters

(a) Before the beginning of early voting for the first election held in a county in each voting year, the registrar shall prepare for each county election precinct a certified list of the registered voters in the precinct. The list must contain the name of each voter whose registration will be effective on the date of the first election held in the county in the voting year.

(b) On request of the authority responsible for procuring election supplies for an election authorized by law to be held in the county during the voting year for which the lists are prepared, the registrar shall furnish to the authority a list for each county election precinct wholly in the territory covered by the election. On request of the authority for an election in which a county election precinct is partly in the political subdivision or partly in a territorial unit of the political subdivision from which a member of the subdivision's governing body is elected by only the voters residing in that unit, the registrar shall furnish for each partly included county election precinct a list that contains only the names of voters who reside in

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the political subdivision or territorial unit, as applicable. The request for restricted lists must be accompanied by a description or map of the applicable boundary of the political subdivision or territorial unit that is in sufficient detail to enable the registrar to prepare the requested lists. The request must be delivered early enough to afford the registrar reasonable time to prepare timely lists.

(c) Except as otherwise provided by this code, the list shall be used throughout the voting year.

(d) An additional copy of each list shall be furnished for use in early voting.

(e) In this code, "original list of registered voters" means a list prepared under this section.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.32; Acts 1991, 72nd Leg., ch. 554, § 3, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 728, § 3, eff. Sept. 1, 1993.

Historical and Statutory Notes

Acts 1985, 69th Leg., ch. 966 [see italicized note, main volume] was repealed by Acts 1987, 70th Leg., ch. 54, § 14(b).

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 18.002. Supplemental List of Registered Voters

(a) For each election held in the county in a voting year, on request of the authority responsible for procuring election supplies, the registrar shall prepare and furnish to the authority a certified list supplementing each original list furnished to the authority. The list must contain the name of each voter whose registration will be effective on election day but whose name does not appear on the original list.

(b) For a runoff election, as an alternative to the list required by Subsection (a), the registrar may furnish for each county election precinct wholly or partly in the territory covered by the runoff a certified list containing the name of each voter whose registration will be effective on runoff election day but whose name does not appear on the original list or on a list furnished under Subsection (a) for the main election.

(c) An additional copy of each list shall be furnished for use in early voting.

(d) In this code, "supplemental list of registered voters" means a list prepared under this section.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.33; Acts 1991, 72nd Leg., ch. 554, § 4, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 18.003. Registration Correction List

(a) For each election held in the county in a voting year, the registrar shall prepare and furnish to the authority responsible for procuring election supplies a certified list of corrections.

(b) The list must contain:

(1) the name of each person for whom the information on a list of registered voters furnished under Section 18.001 or 18.002 has changed because of cancellation or correction; and

(2) an indication that the person's registration has been canceled or the corrected registration information.

(c) An additional copy of each list shall be furnished for use in early voting.

(d) In this code, "registration correction list" means a list prepared under this section.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.34; Acts 1991, 72nd Leg., ch. 554, § 5, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 18.005. Form and Contents of List

(a) Each original and supplemental list of registered voters must:

- (1) contain the voter's name, residence address, date of birth, and registration number;
- (2) be arranged alphabetically by voter name; and
- (3) contain the notation required by Section 15.111.

(b) If the voter's residence has no address, the list must contain a concise description of the location of the voter's residence.

Amended by Acts 1987, 70th Leg., ch. 436, § 7, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 797, § 25, eff. Sept. 1, 1995.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment designated the provisions relating to original and supplemental lists as subsec. (a) and added subsec. (b).

§ 18.006. Delivery of Lists to Election Authorities

The registrar shall deliver the lists furnished under this subchapter, including the lists furnished under Section 18.007, to the appropriate authority as soon as practicable after the request but in every case in time for receipt before the beginning of early voting by mail for the election in which the lists are to be used. If those lists do not contain the names of all voters who will be eligible to vote as of the beginning of early voting by personal appearance, another set of the appropriate lists shall be delivered before the beginning of early voting by personal appearance. If those lists do not contain the names of all voters whose registrations will be effective on election day, another set of the appropriate lists shall be delivered as soon as practicable after the registrar has processed the remaining applications.

Amended by Acts 1987, 70th Leg., ch. 436, § 7, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 501, § 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, § 2.35; Acts 1991, 72nd Leg., ch. 554, § 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 916, § 14, eff. Sept. 1, 1993.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 18.007. Lists Furnished for Precinct Conventions

In a voting year in which a political party holds precinct conventions in the county under Title 10, the registrar, on request of the party's county chair, shall furnish to the chair for use in qualifying individuals for participation in the conventions one of each of the original, supplemental, and correction lists prescribed by this subchapter.

Amended by Acts 1997, 75th Leg., ch. 864, § 11, eff. Sept. 1, 1997.

§ 18.008. Copies Furnished on Request

(a) The registrar shall furnish a copy of any list prepared under this subchapter to any person requesting it. The copy shall be furnished without the names of voters whose names appear on a list with the notation "S", or a similar notation, if requested in that form.

(b) The list shall be furnished as soon as practicable after the request but not later than the 15th day after the date the registrar receives the request or completes preparation of the list from which the copy is to be made, whichever is later.

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(c) If the list is recorded on magnetic tape, the copy shall be furnished in the form of a tape or printout, as requested.

(d) The copy must be accompanied by a written notice of the criminal penalty prescribed by Section 18.009.

Amended by Acts 1993, 73rd Leg., ch. 916, § 15, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 797, § 26, eff. Sept. 1, 1995.

§ 18.009. Unlawful Use of Information on Registration List

(a) A person commits an offense if the person uses information in connection with advertising or promoting commercial products or services that the person knows was obtained under Section 18.008.

(b) An offense under this section is a Class A misdemeanor.

Amended by Acts 1997, 75th Leg., ch. 864, § 12, eff. Sept. 1, 1997.

§ 18.012. Secretary of State to Approve Computer Services Contracts

(a) A county may not contract with a computer service company or other private business entity for services related to the lists required under this subchapter unless the programs, equipment, or other materials to be covered by the contract are approved by the secretary of state. The secretary may rescind approval of the programs, equipment, or other materials at any time, and on that action the contract is nullified to the extent that it depends on the disapproved items.

(b) A computer service company or other private business entity may not use modified programs, equipment, or other materials under the contract unless the modifications are approved by the secretary of state.

(c) A person commits an offense if the person violates Subsection (b). An offense under this subsection is a Class A misdemeanor.

Amended by Acts 1993, 73rd Leg., ch. 916, § 16, eff. Sept. 1, 1993.

Historical and Statutory Notes

1993 Legislation

Section 29 of the 1993 amendatory act provides:

"The changes in law made by this Act to Section 18.012, Election Code, apply only to a contract that

is executed or renewed on or after the effective date of this Act. A contract that was executed and in force before that date is governed by the law under which it was executed or renewed, and that law is continued in effect for that purpose."

Cross References

Punishment, Class A misdemeanor, see V.T.C.A., Penal Code § 12.21.

Notes of Decisions

Necessity for approval 1

1. Necessity for approval

If voter registration information is maintained on computer system that serves all county offices,

and if commissioners court intends to contract with private business entity for any service relating to such computerized information, contract may not be executed without prior approval of Secretary of State pursuant to § 18.012 of Election Code. Op. Atty.Gen. 1990, No. JM-1275.

§ 18.013. Political Subdivision List in Certain Counties

(a) On the written request of any resident of a political subdivision of which more than one-half of the political subdivision's territory is situated in a county with a population of 25,000 or less, the registrar of a county in which the political subdivision is wholly or partly situated shall prepare and furnish to the person a list containing the registered voters of that county who reside in the political subdivision or, if requested, who reside in a territorial unit of the political subdivision from which a member of the subdivision's governing body is elected by only the voters residing in the territorial unit.

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(b) A request under Subsection (a) must be accompanied by a description or map, if a map is available, of the boundary of the political subdivision or territorial unit. The boundary information must be of sufficient detail to enable the registrar to prepare the requested list.

(c) The list must contain the name of each voter whose registration is effective on the date the list is furnished and must comply with the requirements as to form and content prescribed by Section 18.005.

(d) The list shall be furnished as soon as practicable after the request but not later than the 30th day after the date the registrar receives the request and boundary description or map.

(e) The registrar may charge a fee for the list not to exceed the actual expense incurred in preparing the list. The fees shall be used to defray expenses incurred in preparing the lists.

(f) Section 18.009 applies to the use of information obtained under Subsection (a).

(g) Except as provided by this section, this subchapter does not apply to a list furnished under this section.

Added by Acts 1991, 72nd Leg., ch. 517, § 1, eff. Sept. 1, 1991.

[Sections 18.014 to 18.040 reserved for expansion]

SUBCHAPTER B. REGISTRATION STATEMENTS

§ 18.041. Annual Registration Statement

(a) Each voting year, the registrar shall prepare a written statement of the number of persons whose voter registrations in the county and in each county election precinct will be effective on January 1.

(b) The secretary of state shall prescribe the categories of voters and computations required in the statement.

(c) The registrar shall retain a copy of the statement on file as a registration record for two years.

(d) The registrar shall file the statement with the secretary of state not later than January 2.

(e) The secretary of state shall retain the statement on file for two years.

Amended by Acts 1987, 70th Leg., ch. 54, § 2(b), eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 436, § 14, eff. Sept. 1, 1989; Acts 1987, 70th Leg., ch. 472, § 57, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 916, § 17, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 797, § 27, eff. Sept. 1, 1995.

Historical and Statutory Notes

1987 Legislation

Acts 1987, 70th Leg., ch. 54, § 2(b) to conform this section to Acts 1985, 69th Leg., ch. 560 [see italicized note under section 18.042, main volume] rewrote the subchapter B heading, rewrote the

section, and § 2(e) repealed Acts 1985, 69th Leg., ch. 560.

Acts 1987, 70th Leg., ch. 436, § 14 and Acts 1987, 70th Leg., ch. 472, § 57 both, in subssecs. (a) and (c), substituted "January" for "March".

§ 18.042. Preelection Registration Statement

(a) Not later than the 20th day before the date of the general primary election and the date of the general election for state and county officers, the registrar shall file with the secretary of state a statement of the number of persons whose voter registrations in the county and in each county election precinct will be effective on election day.

(b) The secretary of state shall prescribe the categories of voters and computations required in the statement.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 6, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 54, § 2(b), (f), eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 114, § 2, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 797, § 28, eff. Sept. 1, 1995.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in subsec. (a), changed the filing deadline from March 8 to March 1.

note, main volume], and Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 6, rewrote the section and repealed Acts 1985, 69th Leg., ch. 560, and Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 6.

1987 Legislation

The 1987 amendatory act, to conform this section to Acts 1985, 69th Leg., ch. 560 [see italicized

1989 Legislation

The 1989 amendment inserted "and in each county election precinct".

§ 18.043. Statement Required Under Federal Law

(a) At the times prescribed by the secretary of state, the registrar shall deliver to the secretary a statement containing the voter registration information determined by the secretary to be necessary to comply with reporting requirements prescribed under federal law.

(b) The secretary of state shall prescribe the form, content, and procedure for each statement required under this section.

(c) The registrar shall maintain the information required for the statements in accordance with procedures prescribed by the secretary of state.

Added by Acts 1995, 74th Leg., ch. 797, § 29, eff. Sept. 1, 1995.

SUBCHAPTER C. REGISTRATION SERVICE PROGRAM

§ 18.062. State Master File

(a) If a registration service program is implemented, the secretary of state shall maintain a master file containing registration information for each registered voter in the state.

(b) The information must be arranged according to county of registration.

(c) The file must include each voter's:

(1) name;

(2) county of residence;

(3) county election precinct number;

(4) residence address or, if the residence has no address, the address at which the voter receives mail;

(5) date of birth; and

(6) registration number.

(d) The secretary of state may acquire change of address information from the United States Postal Service for use in maintaining the master file.

Amended by Acts 1991, 72nd Leg., ch. 411, § 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 797, § 30, eff. Sept. 1, 1995.

§ 18.063. Information Furnished by Registrar

(a) On or after the first day but before the 16th day of January, March, June, September, and December of each year, each registrar of a county that has not contracted with the secretary of state for electronic data services to facilitate the implementation of the registration service program shall deliver to the secretary of state a list containing each new registration, canceled registration, and change in registration information that has occurred in the county since the delivery of the previous list under this subsection or Subsection (b), as applicable.

(b) Not more than once each calendar year, the secretary may require the registrar of a county covered by Subsection (a) to deliver to the secretary a complete list of the county's voter registration information. The registrar shall deliver the list within the period prescribed by the secretary.

(c) The information on the lists required by this section must be current as of the date of delivery. The secretary shall use the information to update the state master file.

(d) The secretary shall prescribe the form for the lists required by this section.

Amended by Acts 1987, 70th Leg., ch. 436, § 15, eff. Sept. 1, 1989; Acts 1987, 70th Leg., ch. 472, § 58, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 916, § 18, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 797, § 31, eff. Sept. 1, 1995.

Historical and Statutory Notes

1987 Legislation

Acts 1987, 70th Leg., ch. 436, § 15 and Acts 1987, 70th Leg., ch. 472, § 58 both, in subsec. (a), substituted "January" for "March" in two places.

Administrative Code References

Voter registration, submission of lists to the secretary of state, see 1 TAC § 81.8.

§ 18.064. Sanction for Noncompliance

If a registrar fails to substantially comply with Section 14.025, 16.032, 18.042, or 18.063 or with rules adopted by the secretary of state implementing the registration service program, the registrar is not entitled to receive state funds for financing voter registration in the county.

Amended by Acts 1989, 71st Leg., ch. 114, § 3, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 916, § 19, eff. Sept. 1, 1993.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment inserted "or 18.042".

§ 18.065. Secretary of State to Monitor Registrar's Compliance

(a) The secretary of state shall monitor each registrar for substantial compliance with Sections 14.025, 16.032, 18.042, and 18.063 and with rules implementing the registration service program.

(b) On determining that a registrar is not in substantial compliance, the secretary shall deliver written notice of the noncompliance to:

(1) the registrar, including in the notice a description of the violation and an explanation of the action necessary for substantial compliance and of the consequences of noncompliance; and

(2) the comptroller of public accounts, including in the notice the identity of the noncomplying registrar.

(c) On determining that a noncomplying registrar has corrected the violation and is in substantial compliance, the secretary shall deliver written notice to the registrar and to the comptroller that the registrar is in substantial compliance.

(d) The comptroller shall retain a notice received under this section on file until July 1 following the voting year in which it is received. The secretary shall retain a copy of each notice the secretary delivers under this section for two years after the date the notice is delivered.

Amended by Acts 1989, 71st Leg., ch. 114, § 4, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 916, § 20, eff. Sept. 1, 1993.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment in subsec. (a) inserted the reference to § 18.042.

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§ 18.067. Unlawful Use of Master File Information

(a) A person commits an offense if the person uses information in connection with advertising or promoting commercial products or services that the person knows was obtained under Section 18.066.

(b) An offense under this section is a Class A misdemeanor.

Amended by Acts 1997, 75th Leg., ch. 864, § 13, eff. Sept. 1, 1997.

CHAPTER 19. FINANCING VOTER REGISTRATION

Section	Section
19.001. Statement of Registrations Submitted to Comptroller.	19.002. Issuance of Warrants by Comptroller.
	19.004. Use of State Funds Restricted.
	19.005. State Funds Not Fees of Office.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Library References

Voter registration and elections, see Brooks, 35 Texas Practice § 13.14.

§ 19.001. Statement of Registrations Submitted to Comptroller

(a) Before May 15 of each year, the registrar shall prepare and submit to the comptroller of public accounts a statement containing:

- (1) the total number of initial registrations for the previous voting year;
- (2) the total number of registrations canceled under Sections 16.031(a)(1) and 16.033 for the previous voting year; and
- (3) the total number of registrations for which information was updated for the previous voting year.

(b) In each even-numbered year, the registrar shall include in the statement the total number of voters on the lists of registered voters on the date of the first election held in the county in the voting year.

(c) The registrar shall certify that the information in the statement is accurate.

Amended by Acts 1997, 75th Leg., ch. 454, § 7, eff. Sept. 1, 1997.

§ 19.002. Issuance of Warrants by Comptroller

(a) Each registrar is entitled to receive the sum of the following amounts:

- (1) 25 cents multiplied by the number of initial registrations certified under Section 19.001(a)(1);
- (2) 40 cents multiplied by the number of canceled registrations certified under Section 19.001(a)(2);
- (3) 40 cents multiplied by the number of updated registrations under Section 19.001(a)(3); and
- (4) in each even-numbered year, 40 cents multiplied by the difference between the number of registered voters and the number of initial registrations certified for the two previous voting years.

(b) After June 1 of each year, the comptroller of public accounts shall issue warrants pursuant to vouchers submitted by the registrar and approved by the secretary of state in amounts that in the aggregate do not exceed the registrar's entitlement. The secretary of state shall prescribe the procedures necessary to implement this subsection.

(c) The comptroller may require additional proof to substantiate the information in the certified statement before issuing a warrant.

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(d) The comptroller may not issue a warrant if on June 1 of the year in which the warrant is to be issued the most recent notice received by the comptroller from the secretary of state under Section 18.065 indicates that the registrar is not in substantial compliance with Section 14.025, 16.032, 18.042, or 18.063 or with rules implementing the registration service program. Amended by Acts 1987, 70th Leg., ch. 472, § 4, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 114, § 5, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 916, § 21, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 454, § 8, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment rewrote subsec. (b), and in subsec. (d) following "issue a warrant" deleted "to a registrar".

1989 Legislation

The 1989 amendment in subsec. (d) inserted the reference to § 18.042.

Notes of Decisions

Rules 3

able under chapter 19 of the Election Code to pay costs associated with the normal operations of the county voter registrar's office. Op.Atty.Gen. 1999, No. JC-0038.

3. Rules

The Secretary of State has authority to adopt rules prohibiting the use of state funds made avail-

§ 19.004. Use of State Funds Restricted

State funds disbursed under this chapter may be used only to defray expenses of the registrar's office in connection with voter registration, including additional expenses related to implementation of the National Voter Registration Act of 1993 (42 U.S.C. Section 1973gg et seq.). The secretary of state shall specify the procedures that result in additional expenses and that are required to implement that federal law.

Amended by Acts 1987, 70th Leg., ch. 472, § 5, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 797, § 32, eff. Sept. 1, 1995.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment substituted "disbursed" for "received by a registrar".

§ 19.005. State Funds Not Fees of Office

State funds disbursed under this chapter are not and may not be treated as fees of office.

Amended by Acts 1987, 70th Leg., ch. 472, § 5, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment substituted "disbursed" for "received by a registrar".

§ 19.006. State Funds Not Part of County Budget

Notes of Decisions

In general 1

able under chapter 19 of the Election Code to pay costs associated with the normal operations of the county voter registrar's office. Op.Atty.Gen. 1999, No. JC-0038.

1. In general

The Secretary of State has authority to adopt rules prohibiting the use of state funds made avail-

CHAPTER 20. VOTER REGISTRATION AGENCIES

SUBCHAPTER A. GENERAL PROVISIONS		Section
Section		20.037. Telephone or Mail Services.
20.001. Designation of Voter Registration Agencies.		[Sections 20.038 to 20.060 reserved for expansion]
20.002. Agency-Prescribed Registration Application Form.		SUBCHAPTER C. DEPARTMENT OF PUBLIC SAFETY
20.003. Official Declination of Registration Form.	20.061.	Applicability of Other Provisions.
20.004. Agency Coordinator.	20.062.	Department Forms and Procedure.
20.005. Degree of Assistance.	20.063.	Registration Procedures.
20.006. Determination of Eligibility.	20.064.	Declination Form Not Required.
20.007. Prohibited Acts.	20.065.	Delivery of Applications and Changes of Address.
20.008. Assistance by Secretary of State or Registrar.		[Sections 20.066 to 20.090 reserved for expansion]
20.009. Additional Procedures.		SUBCHAPTER D. PUBLIC LIBRARY
[Sections 20.010 to 20.030 reserved for expansion]	20.091.	Applicability of Other Provisions.
SUBCHAPTER B. REGISTRATION ASSISTANCE GENERALLY	20.092.	Registration Procedure.
20.031. Form Provided.	20.093.	Declination Form Not Required.
20.032. Registration Procedures.		[Sections 20.094 to 20.120 reserved for expansion]
20.033. Effect of Submission of Application to Employee.		SUBCHAPTER E. MARRIAGE LICENSE OFFICE
20.034. Submission to Registrar by Applicant.	20.121.	Applicability of Other Provisions.
20.035. Delivery of Applications to Registrar.	20.122.	Registration Procedures.
20.036. Declination of Registration.	20.123.	Declination Form Not Required.

SUBCHAPTER A. GENERAL PROVISIONS

§ 20.001. Designation of Voter Registration Agencies

- (a) The following state agencies are designated as voter registration agencies:
 - (1) any agency or program that provides public assistance, including:
 - (A) Texas Department of Human Services (AFDC program, Medicaid program, food stamp program, programs for the aged);
 - (B) Texas Department of Health (special supplemental food program for women, infants, and children); and
 - (C) any other agency or program as determined by the secretary of state;
 - (2) Texas Department of Mental Health and Mental Retardation;
 - (3) Texas Commission for the Deaf and Hearing Impaired;¹
 - (4) Texas School for the Deaf;
 - (5) Texas Commission for the Blind;
 - (6) Texas School for the Blind and Visually Impaired;
 - (7) Texas Rehabilitation Commission; and
 - (8) any other agency that provides a state-funded program primarily engaged in providing services to persons with disabilities, as determined by the secretary of state.
- (b) The Department of Public Safety is designated as a voter registration agency.
- (c) Each public library, including any branch or other service outlet, is designated as a voter registration agency. In this chapter, "public library" means a library that:
 - (1) is regularly open for business for more than 30 hours a week;
 - (2) is operated by a single public agency or board;
 - (3) is open without charge to all persons under identical conditions; and
 - (4) receives its financial support wholly or partly from public funds.
- (d) Each marriage license office of the county clerk is designated as a voter registration agency.

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(e) The secretary of state shall designate other agencies or offices as voter registration agencies as necessary for compliance with federal law.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

¹ A reference to the Texas Commission for the Deaf and Hearing Impaired means the Texas Commission for the Deaf and Hard of Hearing. Acts 1995, 74th Leg., ch. 835, § 29.

§ 20.002. Agency-Prescribed Registration Application Form

Instead of using the official voter registration application form prescribed by the secretary of state, a voter registration agency may use an official form prescribed by the agency, if approved by the secretary of state.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

§ 20.003. Official Declination of Registration Form

The officially prescribed form for a declination of a voter registration must include:

- (1) spaces for the person's signature and printed name and the date of signing;
- (2) the following question, followed by appropriate boxes preceding "YES" and "NO": "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";
- (3) if the agency provides public assistance, the statement: "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.";
- (4) the statement: "IF YOU HAVE NOT CHECKED EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.";
- (5) the statement: "If you would like help filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private.";
- (6) the statement: "If you believe that someone has interfered with your right to register or to decline to register to vote or with your right to privacy in deciding whether to register or in applying to register to vote, you may file a complaint with the Elections Division of the Office of the Secretary of State, P.O. Box 12060, Austin, Texas 78711.";
- (7) a statement that if the applicant declines to register to vote, that fact will remain confidential and will be used only for voter registration purposes;
- (8) a statement that if the applicant does register to vote, information regarding the agency or office to which the application is submitted will remain confidential and will be used only for voter registration purposes; and
- (9) a space for indicating that the applicant refused to sign the declination or kept the application to personally submit it to the voter registrar.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

§ 20.004. Agency Coordinator

(a) A voter registration agency shall designate one or more persons to coordinate the agency's voter registration program. The agency shall notify the secretary of state of the name of each coordinator.

(b) The registration coordinator shall conduct training for agency employees in voter registration procedures with the assistance of the secretary of state.

(c) The agency shall submit to the secretary of state a plan to implement voter registration procedures under this chapter.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

§ 20.005. Degree of Assistance

A voter registration agency shall provide the same degree of assistance, including any necessary bilingual assistance, to a person in completing a voter registration form as is provided to a person in completing the agency's forms, unless the assistance is refused.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

§ 20.006. Determination of Eligibility

(a) An employee of a voter registration agency may not make a determination about a person's eligibility for registration other than a determination of whether the person is of voting age or is a United States citizen.

(b) A person's age or citizenship may be determined by the employee only if the age or citizenship can be readily determined from information filed with the agency by the person for purposes other than voter registration.

(c) A person shall be offered voter registration assistance as provided by this chapter even if the person's age or citizenship cannot be determined.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

§ 20.007. Prohibited Acts

An employee of a voter registration agency may not:

- (1) seek to influence an applicant's political party preference;
- (2) display any political party preference or allegiance; or
- (3) make any statement or take any action the purpose or effect of which is to:
 - (A) discourage the applicant from registering to vote; or
 - (B) lead the applicant to believe that a decision of whether to register has any bearing on the availability of services or benefits.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

§ 20.008. Assistance by Secretary of State or Registrar

If a question arises concerning voter registration that an agency employee cannot answer, the employee shall provide the person:

- (1) the toll-free telephone number of the Elections Division of the Office of the Secretary of State; and
- (2) the telephone number of the voter registrar to whom registration applications are submitted.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

§ 20.009. Additional Procedures

The secretary of state shall prescribe any additional procedures necessary for the orderly and proper administration of voter registration procedures under this chapter.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

[Sections 20.010 to 20.030 reserved for expansion]

SUBCHAPTER B. REGISTRATION ASSISTANCE GENERALLY

§ 20.031. Form Provided

A voter registration agency shall provide a voter registration application form to each person who is of voting age and a United States citizen in connection with the person's application for initial services, and also in connection with any recertification, renewal, or change of address, unless the person declines in writing to register to vote.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

§ 20.032. Registration Procedures

(a) An appropriate agency employee shall routinely inform each person who applies in person for agency services of the opportunity to complete a voter registration application form and on request shall provide nonpartisan voter registration assistance to the applicant.

(b) An agency that provides services at a person's residence shall provide the opportunity to complete the form and the assistance under Subsection (a) at the residence.

(c) On receipt of a registration application, the appropriate agency employee shall review it for completeness in the applicant's presence. If the application does not contain all the

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required information and the required signature, the agency employee shall return the application to the applicant for completion and resubmission.

(d) Information regarding the agency or office to which an application is submitted is confidential and may be used only for voter registration purposes.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

§ 20.033. Effect of Submission of Application to Employee

The date of submission of a completed registration application to the agency employee is considered to be the date of submission to the voter registrar for the purpose of determining the effective date of registration only.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

§ 20.034. Submission to Registrar by Applicant

(a) The applicant may keep the registration application form or the completed application to submit the application personally to the voter registrar.

(b) The agency employee shall enter on the declination of registration form a notation that after being given the opportunity to register, the applicant kept the application or application form for personal submission of the application to the registrar.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

§ 20.035. Delivery of Applications to Registrar

(a) The agency shall deliver to the voter registrar of the county in which the agency office is located each completed registration application submitted to an agency employee.

(b) An application shall be delivered to the registrar not later than the fifth day after the date the application is submitted to the employee.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

§ 20.036. Declination of Registration

(a) If the applicant does not wish to complete a voter registration application form, the agency employee shall request that the applicant complete and sign an official declination of registration form unless the employee determines that the applicant has previously completed and signed the form.

(b) If the applicant refuses to sign the declination form, the agency employee shall enter on the form a notation of that fact.

(c) The agency shall preserve each declination for at least 22 months after the date of signing. The declination may be retained in the applicant's file at the agency or in a separate declination file.

(d) A declination is confidential and may be used only for voter registration purposes.

(e) The secretary of state shall prescribe the procedures necessary to eliminate the filing of multiple declinations by an applicant.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

§ 20.037. Telephone or Mail Services

(a) A voter registration agency that allows a person to apply for services by mail shall deliver to an applicant by mail a voter registration application form on the approval of services for the applicant.

(b) An agency shall deliver to an applicant by mail a voter registration application form if:

(1) the agency automatically notifies an applicant to renew or recertify a service by mailing a form to the applicant; or

(2) the applicant requests services by telephone and the agency provides services in that manner.

(c) An application form delivered by mail must be accompanied by a notice informing the applicant that the application may be submitted in person or by mail to the voter registrar of the county in which the applicant resides or in person to a volunteer deputy registrar for delivery to the voter registrar of the county in which the applicant resides.

(d) The agency may maintain a written record indicating that a registration application was delivered to an applicant.

(e) The agency is not required to deliver a declination of registration form under this section.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

[Sections 20.038 to 20.060 reserved for expansion]

SUBCHAPTER C. DEPARTMENT OF PUBLIC SAFETY

§ 20.061. **Applicability of Other Provisions**

The other provisions of this chapter apply to the Department of Public Safety except provisions that conflict with this subchapter.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

§ 20.062. **Department Forms and Procedure**

(a) The Department of Public Safety shall prescribe and use a form and procedure that combines the department's application form for a license or card with an officially prescribed voter registration application form.

(b) The department shall prescribe and use a change of address form and procedure that combines department and voter registration functions. The form must allow a licensee or cardholder to indicate whether the change of address is also to be used for voter registration purposes.

(c) The design, content, and physical characteristics of the department forms must be approved by the secretary of state.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

§ 20.063. **Registration Procedures**

(a) The Department of Public Safety shall provide to each person who applies in person at the department's offices for an original or renewal of a driver's license, a personal identification card, or a duplicate or corrected license or card an opportunity to complete a voter registration application form.

(b) When the department processes a license or card for renewal by mail, the department shall deliver to the applicant by mail a voter registration application form.

(c) A change of address that relates to a license or card and that is submitted to the department in person or by mail serves as a change of address for voter registration unless the licensee or cardholder indicates that the change is not for voter registration purposes. The date of submission of a change of address to a department employee is considered to be the date of submission to the voter registrar for the purpose of determining the effective date of registration only.

(d) If a completed voter registration application submitted to a department employee does not include the applicant's correct driver's license number or personal identification card number, a department employee shall enter the appropriate information on the application. If a completed application does not include the applicant's correct residence address or mailing address, a department employee shall obtain the appropriate information from the applicant and enter the information on the application.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 454, § 9, eff. Sept. 1, 1997.

§ 20.064. **Declination Form Not Required**

The Department of Public Safety is not required to comply with the procedures prescribed by this chapter relating to the form for a declination of voter registration.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

§ 20.065. Delivery of Applications and Changes of Address

At the end of each day a Department of Public Safety office is regularly open for business, the manager of the office shall deliver by mail or in person to the voter registrar of the county in which the office is located each completed voter registration application and applicable change of address submitted to a department employee.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

[Sections 20.066 to 20.090 reserved for expansion]

SUBCHAPTER D. PUBLIC LIBRARY

§ 20.091. Applicability of Other Provisions

The other provisions of this chapter apply to a public library except provisions that conflict with this subchapter.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

§ 20.092. Registration Procedure

(a) A public library shall provide to each person of voting age who applies in person for an original or renewal of a library card an opportunity to complete a voter registration application form.

(b) A public library shall use the official form prescribed by the secretary of state.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

§ 20.093. Declination Form Not Required

A public library is not required to comply with the procedures prescribed by this chapter relating to the form for a declination of voter registration.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

[Sections 20.094 to 20.120 reserved for expansion]

SUBCHAPTER E. MARRIAGE LICENSE OFFICE

§ 20.121. Applicability of Other Provisions

The other provisions of this chapter do not apply to a marriage license office of the county clerk unless expressly provided otherwise by the other provision or by rule of the secretary of state.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

§ 20.122. Registration Procedures

(a) When an original marriage license is returned to the licensees after being recorded, the county clerk shall also deliver to the licensees by mail two voter registration application forms.

(b) The county clerk shall use the official form prescribed by the secretary of state.

(c) The application forms must be accompanied by a notice informing the licensees that the applications may be submitted in person or by mail to the voter registrar of the county in which they reside or in person to a volunteer deputy registrar for delivery to the voter registrar of the county in which they reside.

(d) The county clerk may maintain a written record indicating that a registration application was delivered to a licensee.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

§ 20.123. Declination Form Not Required

The county clerk is not required to comply with the procedures prescribed by this chapter relating to the form for a declination of voter registration.

Added by Acts 1995, 74th Leg., ch. 797, § 33, eff. Sept. 1, 1995.

TITLE 3. ELECTION OFFICERS AND OBSERVERS

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CHAPTER 31. OFFICERS TO ADMINISTER ELECTIONS

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Library References

- Tex.Prac., County and Special District Law, ch. 11. Voter registration and elections, see Brooks, 35 Texas Practice § 13.14.
- Conduct of elections, election officials, see Brooks, 35 Texas Practice § 11.9.

SUBCHAPTER A. SECRETARY OF STATE

§ 31.001. Chief Election Officer

(a) The secretary of state is the chief election officer of the state.

(b) The secretary shall establish in the secretary's office an elections division with an adequate staff to enable the secretary to perform the secretary's duties as chief election officer. The secretary may assign to the elections division staff any function relating to the administration of elections that is under the secretary's jurisdiction.

Amended by Acts 1997, 75th Leg., ch. 864, § 14, eff. Sept. 1, 1997.

§ 31.002

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§ 31.002. Official Forms

(a) The secretary of state shall prescribe the design and content, consistent with this code, of the forms necessary for the administration of this code other than Title 15. The design and content must enhance the ability of a person to understand the applicable requirements and to physically furnish the required information in the space provided.

(b) The secretary shall furnish samples of the forms to:

- (1) the appropriate authorities who have administrative duties under this code; and
- (2) other persons who request a form for duplication.

(c) The samples of forms shall be furnished without charge.

(d) An authority having administrative duties under this code shall use an official form in performing the administrative functions, except in an emergency in which an official form is unavailable or as otherwise provided by this code. Other persons are not required to use an official form unless expressly required to do so by this code.

Amended by Acts 1995, 74th Leg., ch. 797, § 34, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1349, § 6, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, § 5.08, eff. Sept. 1, 1999.

§ 31.0021. Certain Official Forms: Inclusion of Nepotism Information

(a) On forms designed and furnished by the secretary of state for an application for a place on the ballot or a designation of a campaign treasurer, the secretary shall include a brief summary of:

- (1) the nepotism prohibition imposed by Chapter 573, Government Code; and
- (2) a list of the specific kinds of relatives that are included within the prohibited degrees of relationship prescribed by Chapter 573, Government Code.

(b) Any other authority that designs and furnishes an application for a place on the ballot shall include on that form the same summary included on forms prescribed by the secretary of state under Subsection (a).

Added by Acts 1987, 70th Leg., ch. 427, § 3, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, § 5.95(25), eff. Sept. 1, 1995.

§ 31.003. Uniformity

Administrative Code References

Voter registration, secretary of state's office, see
1 TAC § 81.1 et seq.

Notes of Decisions

2. Discrimination

Provisions of Texas Election Code that gave discretion to Texas Secretary of State to take various actions did not impose upon Secretary duty to warrant that local election authorities followed ADA. *Lightbourn v. County of El Paso, Tex.*, C.A.5 (Tex.)1997, 118 F.3d 421, certiorari denied 118 S.Ct. 700, 139 L.Ed.2d 643.

"Election laws," as used in Texas statutes that require Texas Secretary of State to perform various functions relating to and based on Texas Election Code and election laws outside that Code, meant laws that specifically governed elections, rather than generally applicable laws that might affect elections; thus, that phrase did not include ADA, and did not impose upon Secretary duty to warrant that local election authorities followed ADA. *Lightbourn v. County of El Paso, Tex.*,

C.A.5 (Tex.)1997, 118 F.3d 421, certiorari denied 118 S.Ct. 700, 139 L.Ed.2d 643.

Registered voters with sight or mobility impairments established that system of voting in State of Texas did not comport with Americans with Disabilities Act (ADA), but discriminated against disabled; voters had constitutional right to vote and right to secret ballot, state's reasons for failure to observe that right, including possibility of fraud or illegal voting and cost, were speculative, Secretary of State was subject to ADA and Rehabilitation Act, it was Secretary who had to act to end any discrimination and who was final enforcer of statutory accessibility requirements, and accommodating handicapped voters would not require modification which would fundamentally alter nature of vote for all other citizens. *Lightbourn v. County of El Paso, Tex.*, W.D.Tex.1995, 904 F.Supp. 1429, reversed 118 F.3d 421, certiorari denied 118 S.Ct. 700, 139 L.Ed.2d 643.

§ 31.004. Assistance and Advice

Notes of Decisions

Federal law 1

1. Federal law

Provisions of Texas Election Code that gave discretion to Texas Secretary of State to take various actions did not impose upon Secretary duty to warrant that local election authorities followed ADA. Lightbourn v. County of El Paso, Tex., C.A.5 (Tex.)1997, 118 F.3d 421, certiorari denied 118 S.Ct. 700, 139 L.Ed.2d 643.

"Election laws," as used in Texas statutes that require Texas Secretary of State to perform various functions relating to and based on Texas Elec-

tion Code and election laws outside that Code, meant laws that specifically governed elections, rather than generally applicable laws that might affect elections; thus, that phrase did not include ADA, and did not impose upon Secretary duty to warrant that local election authorities followed ADA. Lightbourn v. County of El Paso, Tex., C.A.5 (Tex.)1997, 118 F.3d 421, certiorari denied 118 S.Ct. 700, 139 L.Ed.2d 643.

Under former V.A.T.S. Election Code, art. 1.03, subd. 1 (repealed; see, now, §§ 31.001, 31.003, 31.004), the Secretary of State had no authority to interpret federal law. Election Law Opinion No. MAM-4 (1985).

§ 31.005. Protection of Voting Rights

Notes of Decisions

1. Construction and application

Provisions of Texas Election Code that gave discretion to Texas Secretary of State to take various actions did not impose upon Secretary duty to warrant that local election authorities followed ADA. Lightbourn v. County of El Paso, Tex., C.A.5 (Tex.)1997, 118 F.3d 421, certiorari denied 118 S.Ct. 700, 139 L.Ed.2d 643.

"Election laws," as used in Texas statutes that require Texas Secretary of State to perform vari-

ous functions relating to and based on Texas Election Code and election laws outside that Code, meant laws that specifically governed elections, rather than generally applicable laws that might affect elections; thus, that phrase did not include ADA, and did not impose upon Secretary duty to warrant that local election authorities followed ADA. Lightbourn v. County of El Paso, Tex., C.A.5 (Tex.)1997, 118 F.3d 421, certiorari denied 118 S.Ct. 700, 139 L.Ed.2d 643.

§ 31.006. Referral of Complaint to Attorney General

If, after receiving a complaint alleging criminal conduct in connection with an election, the secretary of state determines that there is reasonable cause to suspect that the alleged criminal conduct occurred, the secretary shall promptly refer the complaint to the attorney general. The secretary shall deliver to the attorney general all pertinent documents in the secretary's possession.

Added by Acts 1993, 73rd Leg., ch. 728, § 4, eff. Sept. 1, 1993.

§ 31.007. Suspension of Provisions Implementing National Voter Registration Act

(a) If under federal law, order, regulation, or other official action the National Voter Registration Act of 1993¹ is not required to be implemented or enforced in whole or in part, an affected state law or rule is suspended to the extent that the law or rule was enacted or adopted to implement that Act, and it is the intent of the legislature that the applicable law in effect immediately before the enactment or adoption be reinstated and continued in effect pending enactment of corrective state legislation.

(b) On a finding by the secretary of state that a suspension of a law or rule has occurred under Subsection (a), the secretary may modify applicable procedures as necessary to give effect to the suspension and to reinstatement of the procedures of the former law.

(c) The secretary of state may adopt rules to implement this section as necessary.

Added by Acts 1995, 74th Leg., ch. 797, § 35, eff. Sept. 1, 1995.

¹ 42 U.S.C.A. § 1973gg.

§ 31.008. Collection of Information: Forum on Election Cost Savings

(a) The secretary of state shall collect and maintain information on the number of elections held in this state and the administrative costs associated with the elections.

(b) The secretary of state shall conduct an annual forum to allow election officials from political subdivisions to exchange ideas on the administration of elections, including issues related to cost savings and efficiency in the conduct of elections. The election officials shall be given the opportunity at the forum to make recommendations on proposed changes in the election laws.

Added by Acts 1997, 75th Leg., ch. 1219, § 1, eff. June 20, 1997.

Historical and Statutory Notes

1997 Legislation

Section 8(e) of Acts 1997, 75th Leg., ch. 1219, provides:

"If this Act conflicts with another Act of the 75th Legislature, Regular Session, 1997, the changes in

law made by this Act prevail to the extent of the conflict regardless of the relative dates of enactment."

[Sections 31.009 to 31.030 reserved for expansion]

SUBCHAPTER B. COUNTY ELECTIONS ADMINISTRATOR

Administrative Code References

Deposit of currency, see 1 TAC § 81.104.

§ 31.032. Appointment of Administrator; County Election Commission

(a) The position of county elections administrator is filled by appointment of the county election commission, which consists of:

- (1) the county judge, as chair;
- (2) the county clerk, as vice chair;
- (3) the county tax assessor-collector, as secretary; and

(4) the county chair of each political party that made nominations by primary election for the last general election for state and county officers preceding the date of the meeting at which the appointment is made.

(b) The affirmative vote of a majority of the commission's membership is necessary for the appointment of an administrator.

(c) Each appointment must be evidenced by a written resolution or order signed by the number of commission members necessary to make the appointment. Not later than the third day after the date an administrator is appointed, the officer who presided at the meeting shall file a signed copy of the resolution or order with the county clerk. Not later than the third day after the date the copy is filed, the county clerk shall deliver a certified copy of the resolution or order to the secretary of state.

(d) The initial appointment may be made at any time after the adoption of the order creating the position.

Amended by Acts 1997, 75th Leg., ch. 864, § 15, eff. Sept. 1, 1997.

§ 31.033. Commission Meetings

(a) The county election commission shall meet at the call of the chair. However, the vice chair or any three members of the commission may call a meeting if the calling authority considers a meeting to be necessary or desirable and the chair fails to call the meeting after being requested to do so.

(b) The authority calling a meeting shall set the date, hour, and place for the meeting and shall deliver written notice of the time and place to each other commission member not later than the fourth day before the meeting date.

(c) Each member who is present at a meeting is entitled to vote on any matter that is put to a vote.

Amended by Acts 1997, 75th Leg., ch. 864, § 16, eff. Sept. 1, 1997.

§ 31.035. Restrictions on Political Activities

(a) A county elections administrator may not be a candidate for a public office or an office of a political party, hold a public office, or hold an office of or position in a political party. At the time an administrator becomes a candidate or accepts an office or position in violation of this subsection, the administrator vacates the position of administrator.

(b) A county elections administrator commits an offense if the administrator makes a political contribution or political expenditure, as defined by the law regulating political funds and campaigns, or publicly supports or opposes a candidate for public office or a measure to be voted on at an election. An offense under this subsection is a Class A misdemeanor. On a final conviction, the administrator's employment is terminated, and the person convicted is ineligible for future appointment as county elections administrator.

(c) In this section, "candidate" means a person who has taken affirmative action, as described by the law regulating political funds and campaigns, for the purpose of gaining nomination or election.

Amended by Acts 1997, 75th Leg., ch. 864, § 17, eff. Sept. 1, 1997.

§ 31.039. Salary; Staff; Operating Expenses

(a) The commissioners court shall set the number of deputies and other persons that the county elections administrator may employ.

(b) The salary of the administrator may not exceed the salary paid to the county clerk, and the salaries paid to the administrator's employees may not exceed the salaries paid to the employees of the county clerk in comparable positions.

(c) The commissioners court may allow the automobile expense that it considers necessary to the administrator and to any of the administrator's employees in the performance of their official duties.

(d) The commissioners court shall provide the administrator with suitable office space and with the equipment and operating expenses needed for the proper conduct of the office.

(e) The amount initially appropriated by the commissioners court for the operating expenses of the administrator's office may not be less than the total amount last appropriated to the county clerk and the county tax assessor-collector for the functions assigned to the administrator.

(f) A person employed on a full-time basis by the administrator's office is subject to Section 31.035 in the same manner as the administrator. This subsection applies only to counties with a population of one million or more that have an election administrator.

Amended by Acts 1999, 76th Leg., ch. 536, § 1, eff. Sept. 1, 1999.

§ 31.044. Division of Certain Duties Between County Clerk and Administrator

(a) With respect to meetings of the commissioners court, including meetings at which the only business conducted pertains to elections, the county clerk shall perform the clerk's regularly prescribed duties in giving notice of and preparing the agenda for the meetings, attending the meetings and making a record of the proceedings, preparing and maintaining the minutes of the court, and filing and preserving copies of the court's orders, except as provided by Subsection (b). The county elections administrator shall cooperate with the county clerk in supplying information on election matters that are to be brought before the court and shall attend or be represented at the meetings of the court at which election matters are considered. The county clerk shall furnish the administrator with a copy of each order of the court that pertains to or affects an election, and the administrator shall maintain the copies on file.

(b) The administrator is responsible for providing the clerical assistance needed by the commissioners court in canvassing precinct election returns. The administrator shall maintain the official file of the court's tabulation of election results, and the county clerk need not maintain a file of copies of the tabulations.

(c) In an election on a measure in which the commissioners court is the final canvassing authority, if a statute requires the county clerk to record an order of the court in its minutes declaring whether the measure carried or failed, the county clerk shall perform that duty. A copy of the order shall also be filed in the office of the administrator. If a statute requires

§ 31.044

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the county clerk to certify the result of the election to some other authority, the clerk shall perform that duty.

(d) If a statute provides for the ordering of an election on a measure by the commissioners court, the county judge, or another county authority on submission of a petition requesting the election, the administrator shall perform the duties that the statute places on the county clerk in connection with filing the petition, determining its validity, and any other matters preceding the ordering of the election.

(e) If a statute prescribing the procedure for creating a political subdivision provides for the ordering of an election by a county authority as a step in the creation process, the administrator shall perform the duties that the statute places on the county clerk in connection with matters preceding the entry of the order on whether the election will be ordered, including the filing of a petition for the creation, the holding of any hearing on the proposal, the filing of any report or other document that is a step in the procedure, and the taking of any appeal from the order on whether the election is to be ordered. If the holding of an election ordered by a county authority is not one of the steps in the creation process, the county clerk shall perform the duties placed on that officer in connection with the creation of a political subdivision.

(f) If a statute provides that the return of an election notice for an election ordered by a county authority is to be recorded in the minutes of the commissioners court, the return shall be filed in the office of the administrator.

(g) The county clerk is the proper officer to receive and post copies of proposed constitutional amendments under Article XVII, Section 1, of the Texas Constitution. However, the secretary of state shall also send a copy of each proposed amendment to the administrator for the administrator's information.

Amended by Acts 1997, 75th Leg., ch. 864, § 18, eff. Sept. 1, 1997.

§ 31.045. Classification of Duties by Secretary of State

(a) The secretary of state shall adopt rules consistent with Sections 31.043 and 31.044 that classify the duties and functions placed on the county clerk by statutes outside this code according to whether they are to be performed by the county elections administrator or by the county clerk.

(b) If the administrator or county clerk of a county having the position of administrator is uncertain as to which person should perform a duty or function that the secretary has not classified, the person shall request the secretary to classify that duty or function, and the secretary shall comply with the request as soon as practicable.

(c) The secretary shall deliver a copy of each rule proposed under this section to the administrator and to the county clerk of each county having the position of administrator not later than the fifth day after the date notice of the proposal is published in the Texas Register and shall deliver a copy of each adopted rule to those persons not later than the fifth day after the date the certified copy of the rule is filed in the secretary's office. Failure to comply with this subsection does not affect the validity of a rule.

(d) On receiving notice of the creation of the position of administrator in a county, the secretary shall deliver to the county clerk a current set of the rules adopted under this section. On receiving notice of the initial appointment of the administrator, the secretary shall deliver a set of the rules to the administrator.

(e) The secretary may, on 30 days' notice, adopt a rule classifying a duty or function if the rule is needed in a shorter time than provided by the regular rulemaking process. The rule is considered an emergency rule for purposes of Chapter 2001, Government Code. The secretary is not required to give notice of the proposed rule under Subsection (c), but the secretary must give notice of the rule's adoption under that subsection.

Amended by Acts 1995, 74th Leg., ch. 76, § 5.95(49), eff. Sept. 1, 1995.

§ 31.049. Criminal Penalties

A statute prescribing a criminal penalty against the county clerk or the clerk's deputies or other employees for conduct relating to duties or functions transferred to the county elections

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administrator applies to the administrator or to the administrator's deputies or employees as appropriate.

Amended by Acts 1997, 75th Leg., ch. 864, § 19, eff. Sept. 1, 1997.

SUBCHAPTER D. CONTRACT FOR ELECTION SERVICES

Library References

Conduct of elections, election contracts, see
Brooks, 35 Texas Practice § 11.13.

§ 31.092. Contract for Election Services Authorized

Notes of Decisions

Interlocal cooperation 1 _____ utilize officer's services, provided Election Code requirements are not met. Op.Atty.Gen.1992, No. DM-134.

1. Interlocal cooperation
County may fund office of election administrator by contracting with political subdivisions that will

§ 31.097. Early Voting

(a) An election services contract may provide that the county election officer's deputies may serve as deputy early voting clerks even if the officer is not to serve as the early voting clerk or supervise early voting.

(b) If the county election officer is to serve as the early voting clerk or is to provide deputies to serve as deputy early voting clerks, the officer's written order appointing a permanent or temporary deputy of the officer as a deputy early voting clerk is sufficient, without the necessity for an appointment by any other authority.

(c) A permanent deputy of the county election officer is not subject to the eligibility requirements of this subsection. For a temporary deputy of the officer to be eligible for appointment as a deputy early voting clerk, the deputy must have the qualifications for appointment as a presiding election judge except that:

(1) an appointee is not required to be a qualified voter of any particular territory other than the county served by the county election officer or the political subdivision in which the election is held; and

(2) if an employee of the contracting political subdivision is appointed, the appointee's status as an employee does not disqualify the appointee from serving in an election in which an officer of the political subdivision is a candidate.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.36; Acts 1991, 72nd Leg., ch. 554, § 7, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, § 20, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 31.100. Disposition of Contract Money; Payment of Contracting Officer's Expenses

(a) Money paid to a county election officer under an election services contract shall be deposited in a separate fund in the county treasury. The county election officer may make expenditures from the fund without budgeting or appropriation by the commissioners court. However, claims against the fund shall be audited and approved in the same manner as other claims against the county before they are paid.

(b) Only actual expenses directly attributable to an election services contract may be paid from the election services contract fund, and the county election officer may not charge for performing any duties that the officer is required by law to perform.

§ 31.100

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(c) An election services contract must include an itemized list of estimated election expenses. If the estimated expenses, not including the fee charged under Subsection (d), exceed the actual expenses, the amount of the difference shall be refunded to the contracting authority.

(d) The county election officer may not be personally compensated for election services performed under an election services contract. A fee charged by the officer for general supervision of the election may not exceed 10 percent of the total amount of the contract, but may not be less than \$75.

(e) Salaries of personnel regularly employed by the county election officer shall be paid from funds regularly budgeted and appropriated for that purpose, except that those employees may be paid from the election services contract fund for contractual duties performed outside of normal business hours. Salaries and wages paid to persons temporarily employed to perform duties under an election services contract shall be paid out of the election services contract fund. The amount paid from the fund may not exceed the normal rate of pay in that locality for the same or similar services.

(f) A surplus in the election services contract fund may be used only to defray expenses of the county election officer's office in connection with election-related duties or functions. The secretary of state shall prescribe regulations for the use of any surplus in a fund.

(g) The commissioners court may not consider the availability of the election services contract fund in adopting the county budget for the office of the county election officer. Amended by Acts 1991, 72nd Leg., ch. 622, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1349, § 7, eff. Sept. 1, 1997.

Notes of Decisions

Election services contract fund 1

utilize officer's services, provided Election Code requirements are met. Op.Atty.Gen.1992, No. DM-134.

1. Election services contract fund

County may fund office of election administrator by contracting with political subdivisions that will

SUBCHAPTER E. MISCELLANEOUS PROVISIONS

§ 31.122. Office Hours of Election Authority During Election Period

(a) Except as provided by Section 31.123, each county clerk, city secretary, or secretary of the governing body of a political subdivision other than a county or city or the authority performing the duties of a secretary under this code shall keep that officer's office open for election duties for at least three hours each day, during regular office hours, on regular business days during the period:

(1) beginning not later than the 50th day before the date of each general election of the political subdivision or the third day after the date a special election is ordered by an authority of the political subdivision; and

(2) ending not earlier than the 40th day after election day.

(b) If the political subdivision is an independent school district, a regular business day means a day on which the school district's main business office is regularly open for business.

Amended by Acts 1993, 73rd Leg., ch. 728, § 5, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1219, § 2, eff. June 20, 1997.

Library References

Office hours, see Brooks, 35 Texas Practice § 7.24.

§ 31.123. Appointment of Agent During Election Period

(a) If the secretary of the governing body of a political subdivision other than a county or city or the authority performing the duties of a secretary under this code does not maintain an office during the hours and days required by Section 31.122, the secretary or other

ELECTION OFFICERS & OBSERVERS**§ 31.123****Title 3**

authority shall appoint another officer or employee of the political subdivision as the secretary's or authority's agent to perform the duties provided by this section. The appointment is subject to the approval of the political subdivision's governing body.

(b) The agent shall maintain office hours, as directed by the appointing authority, for at least the hours and days required by Section 31.122, in the agent's regular office, the office of the appointing authority, or an office designated by the governing body of the political subdivision served by the authority.

(c) The agent shall maintain in the agent's office the documents, records, and other papers relating to the election that:

- (1) by law are placed in the custody of the authority appointing the agent; and
- (2) are public information.

(d) The agent shall:

(1) receive any personally delivered document relating to the election that the appointing authority is authorized or required to receive; and

(2) make available for inspection and copying, in accordance with applicable regulations, the documents, records, and other papers that are required to be maintained in the agent's office under Subsection (c).

(e) The appointing authority may authorize the agent to perform any other ministerial duties in connection with the election that may lawfully be performed by an employee of the appointing authority.

(f) The appointing authority shall post, on the bulletin board used for posting notice of meetings of the political subdivision's governing body, a notice containing the agent's name, the location of the agent's office, the agent's office hours, and duration of the agent's appointment. The notice shall remain continuously posted during the minimum period for maintaining the agent's office.

Amended by Acts 1997, 75th Leg., ch. 864, § 21, eff. Sept. 1, 1997.

CHAPTER 32. ELECTION JUDGES AND CLERKS

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32.0551.	Ineligibility of Campaign Manager.	32.114.	Public County Training Program.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Library References

Tex.Prac., County and Special District Law, ch. 11.

Conduct of elections, election officials, see Brooks, 35 Texas Practice § 11.9.

SUBCHAPTER A. APPOINTMENT OF ELECTION JUDGES

§ 32.002. Judges for County Election

(a) The commissioners court at its July term shall appoint the election judges for each regular county election precinct.

(b) Judges appointed under Subsection (a) serve for a term of one year beginning on August 1 following the appointment, except that the commissioners court by order recorded in its minutes may provide for a term of two years.

(c) The presiding judge and alternate presiding judge must be affiliated or aligned with different political parties, subject to this subsection. Before July of each year, the county chair of a political party whose candidate for governor received the highest or second highest number of votes in the county in the most recent gubernatorial general election shall submit in writing to the commissioners court a list of names of persons in order of preference for each precinct who are eligible for appointment as an election judge. The commissioners court shall appoint the first person meeting the applicable eligibility requirements from the list submitted in compliance with this subsection by the party with the highest number of votes in the precinct as the presiding judge and the first person meeting the applicable eligibility requirements from the list submitted in compliance with this subsection by the party with the second highest number of votes in the precinct as the alternate presiding judge. The commissioners court may reject the list if the persons whose names are submitted on the list are determined not to meet the applicable eligibility requirements.

(d) The county clerk shall submit to the commissioners court a list of names of persons eligible for appointment as presiding judge and alternate presiding judge for each precinct in which an appointment is not made under Subsection (c). The commissioners court shall appoint an eligible person from the list who is affiliated or aligned with the appropriate party, if available.

(e) The commissioners court shall fill a vacancy in the position of election judge for the remainder of the unexpired term. An appointment to fill a vacancy may be made at any regular or special term of court. Not later than 48 hours after the county clerk becomes aware of a vacancy, the county clerk shall notify the county chair of the same political party with which the original judge was affiliated or aligned of the vacancy. Not later than the fifth day after the date of notification of the vacancy, the county chair of the same political party with which the original judge was affiliated or aligned shall submit to the commissioners court in writing the name of a person who is eligible for the appointment. If a name is submitted in compliance with this subsection, the commissioners court shall appoint that person to the unexpired term. If a name is not submitted in compliance with this subsection, the county clerk shall submit to the commissioners court a list of names of persons eligible as an appointee for the unexpired term. The commissioners court shall appoint an eligible person from the list who is affiliated or aligned with the same party, if available.

(f) Subject to Section 32.003, the judges appointed under this section shall serve in each election ordered by the governor or a county authority in which the regular county election precincts are required to be used.

Amended by Acts 1997, 75th Leg., ch. 1349, §§ 8, 9, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1009, § 1, eff. Sept. 1, 1999.

Notes of Decisions

In general 1

former judges' claims under Voting Rights Act (VRA) to recover lost election fees. Foreman v. Dallas County, Tex., N.D.Tex.1998, 990 F.Supp. 505.

1. In general

Attorney General's preclearance of procedure for appointing election judges did not render moot

Three-judge district court may set aside election and order new one under §§ 5 of Voting Rights Act

ELECTION OFFICERS & OBSERVERS

§ 32.007

Title 3

(VRA), grant to local officials opportunity to seek federal approval of unprecleared changes before ordering new election or setting aside results of election, or enjoin further enforcement of unpre-

cleared changes until state or political subdivision demonstrates compliance with §§ 5. *Foreman v. Dallas County, Tex.*, N.D.Tex.1998, 990 F.Supp. 505.

§ 32.006. Judges for Primary Elections

(a) The county chair of a political party holding a primary election shall appoint for each primary, with the approval of the county executive committee, the judges for each precinct in which the election will be held in the county.

(b) If a vacancy in the positions of both the presiding judge and the alternate judge arises after the appointments are approved and the county executive committee is not scheduled to meet before the election for which the appointments are made, the county chair may fill the vacancies without the approval of the committee.

Amended by Acts 1997, 75th Leg., ch. 864, § 22, eff. Sept. 1, 1997.

Library References

Party nominations, see Brooks, 35 Texas Practice § 11.21.

Notes of Decisions

Appointment by chairman 2

2. Appointment by chairman

Election Code violations that occurred when presiding judge of both early voting ballot board and signature verification committee for political party primary election had been appointed by election

clerk, rather than by political party chairman, and in failing to make written and posted appointment to signature verification committee did not affect outcome of primary runoff election for county commissioners court and did not provide basis for setting aside outcome. *Alvarez v. Espinoza* (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

§ 32.007. Emergency Appointment

(a) If neither the presiding judge nor the alternate presiding judge can serve in an election and their inability to serve is discovered so late that it is impracticable to fill the vacancy in the normal manner, the presiding officer of the appointing authority or the authority if a single officer shall appoint a replacement judge to preside at the election, subject to Subsection (f). If the appointing authority is unavailable, the authority responsible for distributing the supplies for the election shall appoint the replacement judge.

(b) If a person authorized to act as presiding judge is not present at the polling place at the time for opening the polls, on receiving information of the absence, the authority authorized to appoint a replacement under Subsection (a) shall investigate the absence and appoint a replacement judge, subject to Subsection (f), unless the authority learns that a previously appointed judge will immediately report for duty.

(c) The appointing authority shall promptly give notice of the emergency appointment to the authority responsible for distributing the supplies for the election. As soon as practicable but not later than the time for closing the polls for the election, the appointing authority shall prepare a written memorandum of the appointment and deliver a signed copy to the presiding officer of the local canvassing authority and to the general custodian of election records. The copies shall be preserved for the period for preserving the precinct election records.

(d) A judge appointed under this section serves only for the election for which the appointment is made.

(e) In this chapter, "emergency appointment" means an appointment made under this section.

(f) A person who is appointed as a replacement for a judge originally appointed under Section 32.002 must be affiliated or aligned with the same political party as was the original judge, if possible.

Amended by Acts 1997, 75th Leg., ch. 1349, § 10, eff. Sept. 1, 1997.

§ 32.010. **Furnishing Precinct Boundary Information to Judges**

(a) If a presiding election judge has not been given a current description of the boundary of the election precinct for which the judge is appointed, a description of the boundary and a map of the precinct, if a map is available, shall accompany the notice given under Section 32.009.

(b) If a change in a precinct's boundary occurs after the date a notice under Section 32.009 is delivered to the precinct's presiding judge, the authority responsible for delivering the notice shall deliver to the judge a current description of the precinct boundary and a map, if a map is available. The authority shall deliver the boundary information as soon as practicable after the date the order making the change is adopted and not later than the 30th day before the date of the first election for which the judge is appointed after the change takes effect.

(c) The authority responsible for distributing the supplies for an election shall give current precinct boundary information to an alternate judge who is to serve as the presiding judge for an election or a presiding judge who is appointed as an emergency appointee.

Amended by Acts 1997, 75th Leg., ch. 864, § 23, eff. Sept. 1, 1997.

SUBCHAPTER B. APPOINTMENT OF ELECTION CLERKS

§ 32.033. **Number of Clerks**

(a) The authority that appoints the election judges shall prescribe the maximum number of clerks that each presiding judge may appoint for each election. The authority may prescribe different maximums for different types of elections.

(b) Except as provided by Subsection (c), the presiding judge shall appoint at least two clerks for each precinct in each election and may appoint as many additional clerks, within the prescribed limit, as are necessary for the proper conduct of the election.

(c) In each election ordered by the governor or a county authority in which the regular county election precincts are required to be used, the presiding judge shall appoint clerks for each precinct in the number, within the prescribed limit, the judge considers necessary for the proper conduct of the election.

Amended by Acts 1987, 70th Leg., ch. 54, § 3(a), eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendatory act, to conform this section to Acts 1987, 69th Leg., ch. 121 [see italicized

note, main volume], added the exception in subsec.

(b), added subsec. (c), and repealed Acts 1985, 69th Leg., ch. 121.

§ 32.034. **Clerks for Elections for Federal, State, and County Offices**

(a) The clerks for the general election for state and county officers or for a special election to fill a vacancy in an office regularly filled at the general election shall be selected from different political parties if possible.

(b) The county chair of a political party whose candidate for governor received the highest or second highest number of votes in the county in the most recent gubernatorial general election may, not later than the 25th day before a general election or the 10th day before a special election to which Subsection (a) applies, submit to a presiding judge a list containing the names of at least two persons who are eligible for appointment as a clerk. If a timely list is submitted, the presiding judge shall appoint at least one clerk from the list, except as provided by Subsection (c).

(c) If only one additional clerk is to be appointed for an election in which the alternate presiding judge will serve as a clerk, the clerk shall be appointed from the list of a political party with which neither the presiding judge nor the alternate judge is affiliated or aligned, if such a list is submitted. If two such lists are submitted, the presiding judge shall decide from which list the appointment will be made. If such a list is not submitted, the presiding judge is not required to make an appointment from any list.

(d) The presiding judge shall make an appointment under this section not later than the fifth day after the date the judge receives the list and shall deliver written notification of the appointment to the appropriate county chair.

Amended by Acts 1997, 75th Leg., ch. 864, § 24, eff. Sept. 1, 1997.

SUBCHAPTER C. ELIGIBILITY

§ 32.051. General Eligibility Requirements

(a) Except as provided by Subsection (b) or (e), to be eligible to serve as a judge of an election precinct, a person must:

(1) be a qualified voter of the precinct; and

(2) for a regular county election precinct for which an appointment is made by the commissioners court, satisfy any additional eligibility requirements prescribed by written order of the commissioners court.

(b) If the authority making an emergency appointment of a presiding judge cannot find an eligible qualified voter of the precinct who is willing to accept the appointment, the eligibility requirement for a clerk prescribed by Subsection (c) applies.

(c) To be eligible to serve as a clerk of an election precinct, a person must be a qualified voter:

(1) of the county, in a countywide election ordered by the governor or a county authority or in a primary election;

(2) of the part of the county in which the election is held, for an election ordered by the governor or a county authority that does not cover the entire county of the person's residence; or

(3) of the political subdivision, in an election ordered by an authority of a political subdivision other than a county.

(d) The Alcoholic Beverage Code supersedes this section to the extent of any conflict.

(e) In a regular county election precinct for which an appointment is made by the commissioners court and in which a political party's candidate for governor received more than 85 percent of the vote in the most recent gubernatorial general election, the alternate presiding judge may be a qualified voter of another precinct in the county.

Amended by Acts 1997, 75th Leg., ch. 1349, § 11, eff. Sept. 1, 1997.

Notes of Decisions

In general 1

1. In general

This section requires election judge to be registered voter of election precinct he serves as judge

and also provides for appointment of registered voter in emergency as defined by V.T.C.A., Election Code, § 32.007. Op.Atty.Gen. 1986, No. JM-467.

§ 32.054. Ineligibility of Employee or Relative of Candidate

(a) A person is ineligible to serve as an election judge or clerk in an election if the person is employed by or related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to an opposed candidate for a public office or the party office of county chair in the election. For purposes of this subsection, a candidate whose name appears on the ballot is not considered to be opposed by a write-in candidate other than a declared write-in candidate under Chapter 146.

(b) For purposes of this section, a person is employed by a candidate if:

(1) the candidate is an owner or officer of a business entity by which the person is employed;

(2) the candidate is an officer of a governmental department or agency by which the person is employed; or

(3) the person is under the candidate's supervision in public or private employment.

(c) In this section, "candidate" means a person who has taken affirmative action, as described by the law regulating political funds and campaigns, for the purpose of gaining nomination or election.

Amended by Acts 1991, 72nd Leg., ch. 561, § 15, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, § 5.95(27), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 864, § 25, eff. Sept. 1, 1997.

§ 32.055. Ineligibility of Campaign Treasurer

(a) A person is ineligible to serve as an election judge or clerk in an election if the person is the campaign treasurer of a candidate in that election.

(b) In this section, "candidate" means a person who has taken affirmative action, as described by the law regulating political funds and campaigns, for the purpose of gaining nomination or election.

Amended by Acts 1989, 71st Leg., ch. 2, § 7.03, eff. Aug. 28, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment to conform to Acts 1987, 70th Leg., ch. 899 in subsec. (a) deleted a reference to the assistant campaign treasurer.

§ 32.0551. Ineligibility of Campaign Manager

(a) A person is ineligible to serve as an election judge or clerk in an election if the person is a campaign manager of a candidate in that election.

(b) In this section:

(1) "Campaign manager" means:

(A) the person who directs, with or without compensation, the day-to-day operations of a candidate's election campaign; or

(B) each person who directs, with or without compensation, a substantial portion of the day-to-day operations of a candidate's election campaign if no single person performs that function.

(2) "Candidate" means a person who has taken affirmative action, as described by the law regulating political funds and campaigns, for the purpose of gaining nomination or election.

Added by Acts 1993, 73rd Leg., ch. 728, § 6, eff. Sept. 1, 1993.

§ 32.0552. Ineligibility of Person Convicted of Election Offense

A person is ineligible to serve as an election judge or clerk in an election if the person has been finally convicted of an offense in connection with conduct directly attributable to an election.

Added by Acts 1997, 75th Leg., ch. 1349, § 12, eff. Sept. 1, 1997.

SUBCHAPTER D. POWERS AND DUTIES

§ 32.071. General Responsibility of Presiding Judge

The presiding judge is in charge of and responsible for the management and conduct of the election at the polling place of the election precinct that the judge serves.

Amended by Acts 1997, 75th Leg., ch. 864, § 26, eff. Sept. 1, 1997.

Notes of Decisions

1. Construction and application

has authority to limit excessive or disruptive activity. Election Law Opinion No. JH-2 (1991).

Election judge at central counting station must allow watchers their rights under this code, but

§ 32.072. Duties and Working Hours of Clerks

(a) The presiding judge shall designate the working hours of and assign the duties to be performed by the election clerks serving under the judge.

(b) Subject to Section 32.073, clerks may be assigned to work for different lengths of time and to begin work at different hours.

Amended by Acts 1997, 75th Leg., ch. 864, § 27, eff. Sept. 1, 1997.

Administrative Code References

Number of election workers per polling location,
see 1 TAC § 81.119.

Notes of Decisions

In general 1

1. In general

A clerk appointed by party nomination pursuant to former V.A.T.S. Election Code, art. 3.01 (repealed; see, now, § 32.034) was required to be

permitted to serve from the time the polls opened until the ballots had been counted, or until the vote totals had been recorded, or until the ballots had been delivered to the central counting station, as appropriate depending upon the voting system used, and the business of the polling place was completed. Election Law Opinion No. MAM-2 (1984).

§ 32.073. Absence of Election Officers From Polling Place

(a) The presiding judge and the clerks who are on duty at the time of any manual count or examination of ballots before the time for closing the polls shall remain on duty without leaving the polling place while the polls are open. Clerks may be assigned to work for periods ending before any manual count or examination of ballots begins. The presiding judge may permit temporary absences for meals or other necessary activities.

(b) If the presiding judge does not permit the clerks to be absent for meals, the judge must permit meals to be brought or delivered to the polling place.

(c) With respect to regulating temporary absences from the polling place while the polls are open, the presiding judge shall treat all election officers serving at the polling place uniformly.

Amended by Acts 1987, 70th Leg., ch. 472, § 6, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 28, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in subsec. (a), in the sentence relating to the clerks remaining on duty substituted "are on duty at the time of any manual count or examination of ballots" for "begin work",

permitted the assignment of clerks for periods ending before any manual count or examination of the ballots begins, and permitted the presiding judge to permit "temporary" absences for meals; and in subsec. (c) inserted "temporary".

Administrative Code References

Number of election workers per polling location,
see 1 TAC § 81.119.

§ 32.075. Law Enforcement Duties and Powers

(a) The presiding judge shall preserve order and prevent breaches of the peace and violations of this code in the polling place and in the area within which electioneering and loitering are prohibited from the time the judge arrives at the polling place on election day until the judge leaves the polling place after the polls close.

(b) In performing duties under Subsection (a), the presiding judge may appoint one or more persons to act as special peace officers for the polling place. A special peace officer may not enforce the prohibition against electioneering or loitering near the polling place unless the officer's appointment is approved by the presiding officer of the local canvassing authority.

(c) In performing duties under Subsection (a), a presiding judge has the power of a district judge to enforce order and preserve the peace, including the power to issue an arrest warrant.

(d) A person who is arrested at a polling place while voting or waiting to vote shall be permitted to vote, if entitled to do so, before being removed from the polling place.

Amended by Acts 1997, 75th Leg., ch. 864, § 29, eff. Sept. 1, 1997.

Library References

Conduct of elections, conduct at polls, see Brooks, 35 Texas Practice § 11.17.

Notes of Decisions

1. In general

Election judge at central counting station must allow watchers their rights under this code, but

has authority to limit excessive or disruptive activity. Election Law Opinion No. JH-2 (1991).

SUBCHAPTER E. COMPENSATION

§ 32.091. Compensation for Services at Polling Place

(a) An election judge or clerk is entitled to compensation for services rendered at a precinct polling place at an hourly rate not to exceed \$6. A judge or clerk may be compensated at that rate for services rendered under Section 62.014(c).

(b) A judge or clerk may not be paid for more than one hour of work before the polls open, except for payment made for work under Section 62.014(c). In a precinct in which voting machines are used, a judge or clerk may not be paid for more than two hours of work after the time for closing the polls or after the last voter has voted, whichever is later.

Amended by Acts 1993, 73rd Leg., ch. 728, § 7, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1349, § 13, eff. Sept. 1, 1997.

§ 32.094. Statement of Compensation

(a) After each election, each presiding judge serving in the election shall prepare and sign, in duplicate, a statement containing the following information:

(1) the name and address of the presiding judge and each clerk who served under the judge;

(2) the number of hours that each election officer worked at the polling place or at another location under Section 62.014(c), excluding time for which payment may not be made; and

(3) the name of the election officer who delivered the election records, keys, and unused supplies, and, if more than one officer, the name of and the amount of compensation allocated to each officer.

(b) In addition to the information required by Subsection (a), the compensation statement must include the total hourly compensation earned by each officer if the authority responsible for distributing the election supplies directs the presiding judge to include that information.

(c) The presiding judge shall follow the instructions of the authority responsible for distributing the election supplies with respect to:

(1) the time by which and the authority to whom the presiding judge is to deliver the compensation statement; and

(2) any other instructions that the authority considers appropriate to ensure that the election officers are paid.

(d) The time designated under Subsection (c)(1) for delivery of the compensation statement may not be later than 5 p.m. of the third day after election day.

(e) The original compensation statement shall be used for making payment for the services. The general custodian of election records shall preserve the duplicate for the period for preserving the precinct election records. If the presiding judge delivers the statement to an authority other than the general custodian of election records, the authority receiving the statement shall deliver the duplicate to the general custodian not later than the third day after the date of its receipt.

Amended by Acts 1997, 75th Leg., ch. 864, § 30, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1349, § 14, eff. Sept. 1, 1997.

SUBCHAPTER F. TRAINING

§ 32.112. Expense of Training Judges

The governing body of a political subdivision may appropriate funds to:

- (1) compensate its election judges, early voting clerk, and deputy early voting clerks in charge of early voting polling places for attending training programs, at an hourly rate not to exceed the maximum rate of compensation of an election judge for services rendered at a precinct polling place; and
- (2) pay the expenses of conducting the programs.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.37; Acts 1991, 72nd Leg., ch. 554, § 8, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 32.113. Training Programs

(a) The governing body of a political subdivision other than a county may, and the county executive committee of a political party shall, provide training programs for its election officers.

(b) A political subdivision or county executive committee may conduct its training programs independently or jointly with other entities.

(c) A law outside this code providing for a training program in connection with a specified type of election supersedes this subchapter to the extent of any conflict.

(d) The governing body of the political subdivision shall notify the voter registrar of each county in which the political subdivision is situated of the date, hour, and place of each session of the training program.

Amended by Acts 1993, 73rd Leg., ch. 916, § 22, eff. Sept. 1, 1993.

§ 32.114. Public County Training Program

(a) The county clerk shall provide one or more sessions of a training program for the election judges and clerks appointed to serve in elections ordered by the governor or a county authority. Each election judge shall complete the training program.

(b) A training program provided under this section is open to the public free of charge.

(c) The county clerk shall:

(1) post a notice of the time and place of each session on the bulletin board used for posting notice of meetings of the commissioners court and shall include on the notice a statement that the program is open to the public;

(2) notify each presiding judge appointed by the commissioners court of the time and place of each session and of the duty of each election judge to complete the training program;

(3) notify the county chair of each political party in the county of the time and place of each session; and

(4) notify the voter registrar of the date, hour, and place of each session.

(d) Each presiding judge receiving notice under Subsection (c)(2) shall notify the alternate presiding judge and other persons who serve as clerks for the judge's precinct of the time and place of each session.

Amended by Acts 1993, 73rd Leg., ch. 916, § 23, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 864, § 31, eff. Sept. 1, 1997.

CHAPTER 33. WATCHERS

SUBCHAPTER A. APPOINTMENT

Section

Section
33.002. Appointment by Candidate.
33.003. Appointment by Political Party.
33.004. Appointment for Write-In Candidate.
33.006. Certificate of Appointment.
33.007. Number and Place of Service of Watchers.

SUBCHAPTER B. ELIGIBILITY

33.033. Ineligibility of Employee or Relative of Election Officer.
33.035. Ineligibility of Person Convicted of Election Offense.

SUBCHAPTER C. SERVICE

33.051. Acceptance of Watcher.
33.052. Hours of Service at Precinct Polling Place.
33.053. Hours of Service at Early Voting Polling Place.
33.054. Hours of Service at Early Voting Ballot Board Meeting.
33.055. Hours of Service at Central Counting Station.
33.057. Observing Preparation of Voter's Ballot.
33.060. Observing Delivery of Election Records.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Library References

Conduct of elections, election officials, see Brooks, 35 Texas Practice § 11.9.

SUBCHAPTER A. APPOINTMENT

§ 33.002. Appointment by Candidate

(a) Watchers may be appointed by each candidate whose name appears on the ballot or the list of declared write-in candidates in an election for:

- (1) a public office other than the office of vice-president of the United States; or
- (2) an office of a political party.

(b) In an election for an office of the state government that is filled by voters of more than one county, watchers may also be appointed by the candidate's campaign treasurer.

(c) In an election for an office of the federal government that is filled by voters of more than one county, watchers may also be appointed by the chair or treasurer of the candidate's principal campaign committee or by a designated agent of the chair or treasurer.

Amended by Acts 1997, 75th Leg., ch. 864, § 32, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1349, § 15, eff. Sept. 1, 1997.

§ 33.003. Appointment by Political Party

(a) The county chair of each political party that has one or more nominees on the ballot may appoint watchers.

(b) If the county chair does not make an authorized appointment, any three members of the county executive committee may make the appointment.

Amended by Acts 1997, 75th Leg., ch. 864, § 33, eff. Sept. 1, 1997.

§ 33.004. Appointment for Write-In Candidate

(a) A group of registered voters may appoint watchers on behalf of a write-in candidate in an election in which a declaration of write-in candidacy is not required to be filed.

(b) To be eligible to participate in the appointment under this section of a watcher for a precinct polling place, a person must be a registered voter of the precinct. To be eligible to participate in the appointment under this section of a watcher for an early voting polling

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place, the meeting place of an early voting ballot board, or a central counting station, a person must be a registered voter of the territory served by that facility.

(c) The minimum number of voters required to make an appointment under this section is the lesser of:

(1) 15; or

(2) five percent of the registered voters of the appropriate territory as determined from the list of registered voters to be used for the election.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.38; Acts 1991, 72nd Leg., ch. 554, § 9, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1349, § 16, eff. Sept. 1, 1997.

Historical and Statutory Notes**1991 Legislation**

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 33.006. Certificate of Appointment

(a) For an appointment of a watcher to be effective, the appointing authority must issue a certificate of appointment to the appointee.

(b) A certificate of appointment must:

(1) be in writing and signed by the appointing authority or, for an appointment for a write-in candidate under Section 33.004, by each of the voters making the appointment;

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

(3) state the name, residence address, and voter registration number of the appointee and be signed by the appointee;

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

(5) in an election on a measure, identify the measure if more than one is to be voted on and state which side of the measure the appointee represents; and

(6) contain an affidavit executed by the appointee stating that the appointee will not have possession of any mechanical or electronic means of recording images or sound while serving as a watcher.

(c) In addition to complying with Subsection (b), a certificate issued to a watcher appointed for a write-in candidate under Section 33.004 must:

(1) include the residence address and voter registration number of eligible signers in the required number;

(2) include the signed statement of the candidate, or a person who would be authorized to make appointments on the candidate's behalf if the candidate's name appeared on the ballot, that the appointment is made with the signer's consent; and

(3) state the residence or office address of the signer under Subdivision (2) and the capacity in which the signer signs, if the statement is not signed by the candidate.

Amended by Acts 1987, 70th Leg., ch. 498, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 728, § 8, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 864, § 34, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1349, § 17, eff. Sept. 1, 1997.

Historical and Statutory Notes**1987 Legislation**

The 1987 amendment, in subsec. (b)(3) inserted provision as to signing of the certificate by the appointee.

§ 33.007. Number and Place of Service of Watchers

(a) Each appointing authority may appoint not more than two watchers for each precinct polling place, meeting place for an early voting ballot board, or central counting station involved in the election.

(b) Each appointing authority may appoint not more than seven watchers for each main or branch early voting polling place involved in the election. Not more than two watchers appointed by the same authority may be on duty at the same early voting polling place at the same time.

(c) In an election in which the election officers serving at a precinct polling place also serve as an early voting ballot board, a watcher who is appointed for the precinct polling place may observe the processing of early voting ballots by the early voting ballot board, or separate watchers may be appointed to observe only that activity.

(d) The number of watchers accepted for service on each side of a measure may not exceed the number authorized by this section. If the number of appointments exceeds the authorized number, the authority accepting the watchers for service shall accept the watchers in the order in which they present their certificates of appointment.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.39; Acts 1991, 72nd Leg., ch. 554, § 10, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

SUBCHAPTER B. ELIGIBILITY

§ 33.033. Ineligibility of Employee or Relative of Election Officer

(a) A person is ineligible to serve as a watcher at a particular location if the person is the employer of or is employed by or related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to an election judge, an election clerk, an early voting clerk, or a deputy clerk serving at that location.

(b) For purposes of this section, a person is employed by an election officer in the same circumstances that a person is employed by a candidate under Section 32.054(b).

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.40; Acts 1991, 72nd Leg., ch. 554, § 11, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 561, § 16, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, § 5.95(27), eff. Sept. 1, 1995.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 33.035. Ineligibility of Person Convicted of Election Offense

A person is ineligible to serve as a watcher in an election if the person has been finally convicted of an offense in connection with conduct directly attributable to an election.

Added by Acts 1997, 75th Leg., ch. 1349, § 18, eff. Sept. 1, 1997.

SUBCHAPTER C. SERVICE

§ 33.051. Acceptance of Watcher

(a) A watcher appointed to serve at a precinct polling place, a meeting place for an early voting ballot board, or a central counting station must deliver a certificate of appointment to the presiding judge at the time the watcher reports for service. A watcher appointed to serve at an early voting polling place must deliver a certificate of appointment to the early voting clerk or deputy clerk in charge of the polling place when the watcher first reports for service.

(b) The officer presented with a watcher's certificate of appointment shall require the watcher to countersign the certificate to ensure that the watcher is the same person who

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signed the certificate. Except as provided by Subsection (c), a watcher who presents himself or herself at the proper time with a certificate of appointment shall be accepted for service unless the person is ineligible to serve or the number of appointees to which the appointing authority is entitled have already been accepted.

(c) A watcher may not be accepted for service if the watcher has possession of any mechanical or electronic means of recording images or sound. The presiding judge may inquire whether a watcher has possession of any prohibited recording device before accepting the watcher for service.

(d) The certificate of a watcher serving at an early voting polling place shall be retained at the polling place until voting at the polling place is concluded. At each subsequent time that the watcher reports for service, the watcher shall inform the clerk or deputy in charge. The officer may require the watcher to sign the watcher's name in the officer's presence, for comparison with the signature on the certificate, if the officer is uncertain of the watcher's identity.

(e) If a watcher is not accepted for service, the certificate of appointment shall be returned to the watcher with a signed statement of the reason for the rejection.

Amended by Acts 1987, 70th Leg., ch. 498, § 2, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, § 2.41; Acts 1991, 72nd Leg., ch. 554, § 12, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 728, § 9, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 864, § 35, eff. Sept. 1, 1997.

Historical and Statutory Notes**1991 Legislation**

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 33.052. Hours of Service at Precinct Polling Place

(a) A watcher at a precinct polling place may begin service at any time after the presiding judge arrives at the polling place on election day and may remain at the polling place until the presiding judge and the clerks complete their duties there. A watcher may not be accepted for service unless the watcher is present at the time the polls are opened for voting.

(b) A watcher may not leave the polling place during the time the polls are open unless the presiding judge gives the watcher permission to be absent for a meal or other necessary activity. If the presiding judge permits the clerks to leave the polling place temporarily during the time the polls are open, the judge must grant the same privilege to watchers.

(c) A watcher who votes at another polling place in the same election or in another election held on the same day must be permitted to leave the polling place for the purpose of voting during the first two hours after the polls open if the watcher has not already voted in the election.

(d) If a watcher leaves the polling place without permission before the time for closing the polls, the presiding judge may refuse to readmit the watcher.

(e) A watcher may leave the polling place after the time for closing the polls without obtaining permission, and the presiding judge shall readmit the watcher on request.

Amended by Acts 1987, 70th Leg., ch. 472, § 7, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 36, eff. Sept. 1, 1997.

Historical and Statutory Notes**1987 Legislation**

The 1987 amendment in subsec. (b) inserted "temporarily" in the sentence relating to equal privileges for clerks and watchers.

§ 33.053. Hours of Service at Early Voting Polling Place

A watcher serving at an early voting polling place may be present at the polling place at any time it is open and until completion of the securing of any voting equipment used at the polling place that is required to be secured on the close of voting each day. The watcher may serve during the hours the watcher chooses.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.42; Acts 1991, 72nd Leg., ch. 554, § 13, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, § 37, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 33.054. Hours of Service at Early Voting Ballot Board Meeting

(a) A watcher serving at the meeting place of an early voting ballot board may be present at any time the board is processing or counting ballots and until the board completes its duties. The watcher may serve during the hours the watcher chooses, except as provided by Subsection (b).

(b) A watcher may not leave during voting hours on election day without the presiding judge's permission if the board has recorded any votes cast on voting machines or counted any ballots, unless the board has completed its duties and has been dismissed by the presiding judge.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.43; Acts 1991, 72nd Leg., ch. 554, § 14, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, § 38, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 33.055. Hours of Service at Central Counting Station

(a) A watcher serving at a central counting station may be present at any time the station is open for the purpose of processing or preparing to process election results and until the election officers complete their duties at the station. The watcher may serve during the hours the watcher chooses, except as provided by Subsection (b).

(b) A watcher may not leave during voting hours on election day without the presiding judge's permission if the counting of ballots at the central counting station has begun.

Amended by Acts 1997, 75th Leg., ch. 864, § 39, eff. Sept. 1, 1997.

§ 33.056. Observing Activity Generally

Notes of Decisions

In general ½
Recording devices 1

1. Recording devices

A poll watcher may not use mechanical or electronic device for audio, visual, or audiovisual recording at any location of service, including a central counting station. Election Law Opinion No. JH-2 (1991).

½. In general

Election judge at central counting station must allow watchers their rights under this code, but has authority to limit excessive or disruptive activity. Election Law Opinion No. JH-2 (1991).

Under former V.A.T.S. Election Code, art. 3.07(e) (repealed; see, now, § 33.058) a poll watcher could not use a tape recorder in the polling place. Election Law Opinion No. MAM-2 (1984).

§ 33.057. Observing Preparation of Voter's Ballot

(a) A watcher is entitled to be present at the voting station when a voter is being assisted by an election officer, and the watcher is entitled to examine the ballot before it is deposited in the ballot box to determine whether it is prepared in accordance with the voter's wishes.

(b) A watcher may not be present at the voting station when a voter is preparing the voter's ballot or is being assisted by a person of the voter's choice.

Amended by Acts 1997, 75th Leg., ch. 864, § 40, eff. Sept. 1, 1997.

§ 33.058. Restrictions on Watcher's Activities

Notes of Decisions

Recording devices 2

1. In general

Election judge at central counting station must allow watchers their rights under this code, but has authority to limit excessive or disruptive activity. Election Law Opinion No. JH-2 (1991).

2. Recording devices

Under former V.A.T.S. Election Code, art. 3.07(e) (repealed; see, now, this section) a poll watcher could not use a tape recorder in the polling place. Election Law Opinion No. MAM-2 (1984).

§ 33.060. Observing Delivery of Election Records

(a) On request of a watcher, an election officer who delivers election records from a precinct polling place, an early voting polling place, a meeting place for an early voting ballot board, or a central counting station shall permit the watcher appointed to serve at that location to accompany the officer in making the delivery.

(b) If delivery is made in a vehicle, an election officer complies with this section if the officer permits the watcher to follow in a different vehicle and drives in a manner that enables the watcher to keep the vehicle in sight.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.44; Acts 1991, 72nd Leg., ch. 554, § 15, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

CHAPTER 34. STATE INSPECTORS

Section

34.001. Appointment of State Inspectors.

Library References

Conduct of elections, election officials, see
Brooks, 35 Texas Practice § 11.9.

§ 34.001. Appointment of State Inspectors

(a) The secretary of state may appoint one or more state inspectors for an election.

(b) The secretary of state shall appoint one or more inspectors for an election if the secretary receives a written request for the appointment from 15 or more registered voters:

(1) of the county for which the inspector is requested, for an election ordered by the governor or a county authority or for a primary election; or

(2) of the political subdivision in which the election specified by the request is held, for an election ordered by an authority of a political subdivision other than a county.

(c) A request under Subsection (b) must be received by the secretary of state not later than the fourth regular business day before the date of the election for which the inspectors are requested. The request is not available for public inspection until the day after election day.

(d) State inspectors are responsible to the secretary of state and subject to the secretary's direction. The secretary may terminate an appointment at any time.

Amended by Acts 1993, 73rd Leg., ch. 728, § 10, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 864, § 41, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1349, § 19, eff. Sept. 1, 1997.

TITLE 4. TIME AND PLACE OF ELECTIONS

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CHAPTER 41. ELECTION DATES AND HOURS FOR VOTING

SUBCHAPTER A. ELECTION DATES		Section	
Section		41.0051.	General Election in Certain Coastal Cities.
41.001.	Uniform Election Dates.	41.0052.	Changing General Election Date.
41.0011.	Emergency Requiring Early Election.	41.0053.	Elections on Spring Uniform Date in Certain Political Subdivisions.
41.003.	Repealed.	41.007.	Primary Elections.
41.0041.	Election on Measure After Particular Period.		
41.005.	General Election of Political Subdivision Other Than County.		
		SUBCHAPTER B. HOURS FOR VOTING	
		41.031.	Voting Hours.
		41.033.	Early Closing of Certain Polls.

Cross References

Upper Sabine Valley Solid Waste Management District, confirmation and tax elections, see Vernon's Ann.Civ.St. art. 4477-7K.

Library References

Tex.Prac., County and Special District Law, ch. 11.

SUBCHAPTER A. ELECTION DATES

Cross References

Annexation elections, municipalities of certain size, date, see V.T.C.A., Local Government Code § 43.030.

Home-rule municipality, charter commission election, see V.T.C.A., Local Government Code § 9.002.

Library References

Election dates, see Brooks, 35 Texas Practice § 11.5.

§ 41.001. Uniform Election Dates

(a) Except as otherwise provided by this subchapter, each general or special election in this state shall be held on one of the following dates:

- (1) the third Saturday in January;
- (2) the first Saturday in May;
- (3) the second Saturday in August; or
- (4) the first Tuesday after the first Monday in November.

(b) Subsection (a) does not apply to:

- (1) a runoff election;
- (2) a local option election held under the Alcoholic Beverage Code;
- (3) an election for the issuance or assumption of bonds or the levy of a tax for the maintenance of a public school or college, if the governing body of the political subdivision issuing or assuming the bonds or levying the tax, by resolution, order, or ordinance, finds that holding the election on a date other than a uniform election date is in the public interest, which finding is conclusive and incontestable;
- (4) an election to resolve a tie vote;
- (5) an election held under an order of a court or other tribunal;
- (6) an emergency election ordered under Section 41.0011;
- (7) an expedited election to fill a vacancy in the legislature held under Section 203.013;
- (8) an election held by a political subdivision using the convention method of election;
- (9) an election held under a statute that expressly provides that the requirement of Subsection (a) does not apply to the election; or
- (10) an election to recall an officer of a political subdivision.

(c) Except for an election under Subsection (a) or Section 41.0011, an election may not be held within 30 days before or after the date of the general election for state and county officers, general primary election, or runoff primary election.

(d) A general election of officers of a city, school district, junior college district, or hospital district may not be held on the January or August uniform election date.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 7, eff. Sept. 1, 1987; Acts 1987, 70th Leg., 2nd C.S., ch. 60, § 1, eff. Oct. 20, 1987; Acts 1991, 72nd Leg., ch. 389, § 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 467, § 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1219, § 3, eff. June 20, 1997; Acts 1997, 75th Leg., ch. 1349, § 20, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, § 19.01(15), eff. Sept. 1, 1999.

Historical and Statutory Notes

1986 Legislation

Section 37 of the 1986 amendatory act, effective September 1, 1987, provides:

"(a) A political subdivision that before the effective date of this Act was required to hold its general election of officers on the first Saturday in April shall hold the general election on the third Saturday in May in accordance with Subsection (a), Section 41.001, Election Code, as amended by this Act, unless the governing body of the political subdivision chooses a different date under Subsection (c), Section 41.005, Election Code. However, if the governing body wishes to choose the third Saturday in January as the new election date, Subdivision (2) of Subsection (c) of Section 41.005 does not apply to the change, but the governing body must change the date not later than September 10, 1987.

"(b) Subsection (d) of Section 41.005 and Section 41.006, Election Code, apply to the change in election dates."

1987 Legislation

Acts 1987, 70th Leg., ch. 54, § 25(r) provides:

"Section 37, Chapter 14, Acts of the 69th Legislature, 3rd Called Session, 1986, relating to the elimination of the first Saturday in April as a uniform election date and to the transition from that date to another uniform election date by political subdivisions, applies to the amendments made by this section. Failure to amend expressly any law in conflict with this section or with Section 7 or 37, Chapter 14, Acts of the 69th Legislature, 3rd Called Session, 1986, is not evidence of legislative intent that the conflicting law be given effect."

Sections 4 and 5 of Acts 1987, 70th Leg., 2nd C.S., ch. 60, provide:

"Sec. 4. (a) A political subdivision that before the effective date of this Act was required to hold its general election of officers on the first Saturday in April shall hold the general election on the first Saturday in May in accordance with Section 41.001(a), Election Code, as amended by this Act, unless the governing body of the political subdivi-

sion chooses a different date before January 1, 1988, under Section 41.005(c), Election Code. A change under Section 41.005(c) may be made before the effective date of this Act. However, if a governing body previously required to use the April date wishes to choose the third Saturday in January in even-numbered years as the new election date, Section 41.005(c)(2) does not apply to the change, but the governing body must change the date not later than September 10, 1987.

"(b) A political subdivision created by an Act of the 70th Legislature, 1987, with a general election date of the third Saturday in May shall hold the general election on the first Saturday in May. Section 41.005(c), Election Code, does not apply to a political subdivision covered by this subsection.

"(c) Section 41.005(d) and Section 41.006, Election Code, apply to a change in election dates under this section.

"Sec. 5. An election for the issuance or assumption of bonds or an election for the levy of a tax for the maintenance of a public school or college that is ordered before the effective date of this Act is subject to Section 41.001(b), Election Code, as it existed immediately before the effective date of this Act, and the prior law is continued in effect for that purpose."

1997 Legislation

Section 8 of Acts 1997, 75th Leg., ch. 1219, provides:

"(a) An election that is ordered before the effective date of this Act and that is described by

Subdivision (3), (9), or (10), Section 41.001(b), Election Code, as it existed immediately before the effective date of this Act, is subject to that prior law, and the prior law is continued in effect for that purpose.

"(b) Notwithstanding an election date prescribed under a statute that expressly provides that the requirement of Section 41.001(a), Election Code, does not apply to the election, an election held under the statute shall be held on an authorized uniform election date as provided by Chapter 41, Election Code.

"(c) The prohibition on using the August uniform election date under Section 41.001(c), Election Code, as added by this Act, does not apply to an election to be held on that date in 1997.

"(d) Section 41.006, Election Code, applies to the change in election dates under this Act.

"(e) If this Act conflicts with another Act of the 75th Legislature, Regular Session, 1997, the changes in law made by this Act prevail to the extent of the conflict regardless of the relative dates of enactment."

Section 78 of Acts 1997, 75th Leg., ch. 1349 provides:

"Not later than January 15, 1999, the secretary of state shall file a report with the lieutenant governor and the speaker of the house of representatives on the costs of elections held by political subdivisions of this state on dates other than the uniform election dates prescribed by Section 41.001, Election Code."

Cross References

City manager form of government, uniform election date on adoption petition, see V.T.C.A., Local Government Code § 25.025.

Civil service, uniform election date to adopt or repeal municipal civil service statutes, see V.T.C.A., Local Government Code § 143.004.

Conversion of hospital districts, inapplicability of this section, see V.T.C.A., Health & Safety Code § 282.122.

Conversion of rural fire prevention districts, inapplicability of this section, see V.T.C.A., Health & Safety Code § 794.102.

Counties, date of election to relocate county seat, see V.T.C.A., Local Government Code § 73.013.

County civil service system, uniform date for adoption election, see V.T.C.A., Local Government Code § 158.004.

Disannexation from general-law municipality, election date, see V.T.C.A., Local Government Code § 43.143.

Division of water control and improvement districts, governing resulting districts, see V.T.C.A., Water Code § 51.750.

Fire and police departments of certain municipalities, uniform election date on proposed minimum salary, see V.T.C.A., Local Government Code § 141.034.

Home-rule municipalities, date of election of municipal officers, application of this chapter, see V.T.C.A., Local Government Code § 26.042.

Municipal hospital authorities, dissolution referendum, inapplicability of subsec. (a) of this section, see V.T.C.A., Health & Safety Code § 262.005.

Municipal parking authority, uniform election date for authorizing election, see V.T.C.A., Local Government Code § 431.023.

Municipalities, consolidation election on uniform election date, see V.T.C.A., Local Government Code § 61.004.

Sheriffs, uniform election date on proposed increase in minimum salaries of department members, see V.T.C.A., Local Government Code § 152.072.

Solid waste management, Gaines County, application of this section, see Vernon's Ann.Civ.St. art. 4477-7j.

Type B general-law municipality, election of officers, see V.T.C.A., Local Government Code § 23.023.

Type C general-law municipality, uniform election date of mayor and commissioners, see V.T.C.A., Local Government Code § 24.023.

Zoning by counties of certain lakes, uniform election date for local option election, see V.T.C.A., Local Government Code § 231.076.

Notes of Decisions

1. Construction and application

Writ of mandamus to compel city council to set election on certified initiative petition from citizen organizations was premature, where the city council still had discretion in determining response to petition and when to set election. City Council of Austin v. Save Our Springs Coalition (App. 3 Dist. 1992) 828 S.W.2d 340.

Pursuant to Const. Art. 11, § 11 a home rule city in which the charter provided for terms of office exceeding two years had to call a special election to fill a vacancy within 120 days from the date the vacancy occurred, notwithstanding the fact that no standard election date as provided by former V.A.T.S. Election Code, art. 2.01b (repealed; see, now, this section) occurred within that period. Election Law Opinion No. MAM-1 (1984).

§ 41.0011. Emergency Requiring Early Election

(a) If the governor determines that an emergency warrants holding a special election before the appropriate uniform election date, the election may be held on an earlier nonuniform date.

(b) An authority of a political subdivision desiring to order a special election as an emergency election under this section must ask the governor for permission to do so. If the governor determines that an emergency exists, the governor shall grant permission.

(c) The proclamation or order for an emergency election under this section must include a statement identifying the nature of the emergency.

Added by Acts 1991, 72nd Leg., ch. 389, § 2, eff. Sept. 1, 1991.

§ 41.002. General Election for State and County Officers

Library References

Conduct of elections, ordering elections, see Brooks, 35 Texas Practice § 11.10.

§ 41.003. Repealed by Acts 1997, 75th Leg., ch. 1219, § 7, eff. June 20, 1997

Historical and Statutory Notes

1997 Legislation

An amendment to this section by Acts 1997, 75th Leg., ch. 1349, § 21 did not take effect pursuant to the provisions of Section 8(e) of Acts 1997, 75th Leg., ch. 1219, which provides:

"If this Act conflicts with another Act of the 75th Legislature, Regular Session, 1997, the changes in law made by this Act prevail to the extent of the conflict regardless of the relative dates of enactment."

The repealed section, relating to authorized November elections in even-numbered years, was derived from:

Acts 1951, 52nd Leg., p. 1097, ch. 492, § 9b.
Acts 1975, 64th Leg., p. 2295, ch. 715, § 1.
Acts 1977, 65th Leg., p. 2032, ch. 811, § 2.
Acts 1979, 66th Leg., p. 503, ch. 234, § 1.
Acts 1981, 67th Leg., p. 888, ch. 314, § 1.
Acts 1981, 67th Leg., p. 2401, ch. 607, § 1.
V.A.T.S. Election Code, art. 2.01b(a), (c).
Acts 1985, 69th Leg., ch. 211, § 1.
Acts 1991, 72nd Leg., ch. 522, § 3.
Acts 1995, 74th Leg., ch. 260, § 23.

§ 41.004. Special Election Within Particular Period

Notes of Decisions

In general 1

Austin v. Save Our Springs Coalition (App. 3 Dist. 1992) 828 S.W.2d 340.

1. In general

Writ of mandamus to compel city council to set election on certified initiative petition from citizen organizations was premature, where the city council still had discretion in determining response to petition and when to set election. City Council of

Pursuant to Const. art. 11, § 11 a home rule city in which the charter provided for terms of office exceeding two years had to call a special election to fill a vacancy within 120 days from the date the vacancy occurred, notwithstanding the fact that no standard election date as provided by former V.A.T.S. Election Code, art. 2.01b (repealed; see,

§ 41.004

Note 1

now, § 41.001) occurred within that period. Election Law Opinion No. MAM-1 (1984).

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§ 41.0041. Election on Measure After Particular Period

(a) If a law outside this code other than the constitution prohibits another election from being held on the same or a similar measure for a specified number of years after an election on a measure, a subsequent election on the measure may be held on the corresponding uniform election date in the appropriate year, regardless of the fact that the date falls a number of days short of the requisite period.

(b) This section does not apply to a local option election held under the Alcoholic Beverage Code.¹

Amended by Acts 1991, 72nd Leg., ch. 389, § 2, eff. Sept. 1, 1991.

¹ V.T.C.A. Alcoholic Beverage Code, § 251.01 et seq.

§ 41.005. General Election of Political Subdivision Other Than County

(a) This section does not apply to a general election for county officers.

(b) If a law outside this code requires the general election for officers of a political subdivision to be held on a date other than a uniform election date, the governing body of the political subdivision shall set the election date to comply with this subchapter.

(c) A governing body changing an election date under this section shall adjust the terms of office to conform to the new election date.

Amended by Acts 1991, 72nd Leg., ch. 389, § 3, eff. Sept. 1, 1991.

Historical and Statutory Notes

1986 Legislation

Section 37 of Acts 1986, 69th Leg., 3rd C.S., ch. 14, effective September 1, 1987, provides:

"(a) A political subdivision that before the effective date of this Act was required to hold its general election of officers on the first Saturday in April shall hold the general election on the third Saturday in May in accordance with Subsection (a), Section 41.001, Election Code, as amended by this Act, unless the governing body of the political subdivision chooses a different date under Subsection (c), Section 41.005, Election Code. However, if the governing body wishes to choose the third Saturday in January as the new election date, Subdivision (2) of Subsection (c) of Section 41.005 does not apply to the change, but the governing body must change the date not later than September 10, 1987.

"(b) Subsection (d) of Section 41.005 and Section 41.006, Election Code, apply to the change in election dates."

1987 Legislation

Acts 1987, 70th Leg., ch. 54, § 25(r) provides:

"Section 37, Chapter 14, Acts of the 69th Legislature, 3rd Called Session, 1986, relating to the elimination of the first Saturday in April as a uniform election date and to the transition from that date to another uniform election date by political subdivisions, applies to the amendments made by this section. Failure to amend expressly any law in conflict with this section or with Section

7 or 37, Chapter 14, Acts of the 69th Legislature, 3rd Called Session, 1986, is not evidence of legislative intent that the conflicting law be given effect."

Section 4 of Acts 1987, 70th Leg., 2nd C.S., ch. 60 provides:

"Sec. 4. (a) A political subdivision that before the effective date of this Act was required to hold its general election of officers on the first Saturday in April shall hold the general election on the first Saturday in May in accordance with Section 41.001(a), Election Code, as amended by this Act, unless the governing body of the political subdivision chooses a different date before January 1, 1988, under Section 41.005(c), Election Code. A change under Section 41.005(c) may be made before the effective date of this Act. However, if a governing body previously required to use the April date wishes to choose the third Saturday in January in even-numbered years as the new election date, Section 41.005(c)(2) does not apply to the change, but the governing body must change the date not later than September 10, 1987.

"(b) A political subdivision created by an Act of the 70th Legislature, 1987, with a general election date of the third Saturday in May shall hold the general election on the first Saturday in May. Section 41.005(c), Election Code, does not apply to a political subdivision covered by this subsection.

"(c) Section 41.005(d) and Section 41.006, Election Code, apply to a change in election dates under this section."

Cross References

Municipal officers, date of election, see V.T.C.A.,
Local Government Code § 22.003.

Notes of Decisions

Date of election 1 _____ 41 of the Election Code for the district's director
elections. Op.Atty.Gen.1993, No. DM-269.

1. **Date of election**
The water control district's board of directors
should select a uniform election date under chapter

§ 41.0051. General Election in Certain Coastal Cities

The general election for officers of a city that borders the Gulf of Mexico, has a population
of more than 230,000 according to the 1980 census, and held its general election for officers in
1987 on the first Saturday in April may be held on any Saturday in April in odd-numbered
years.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 60, § 3, eff. Oct. 20, 1987.

§ 41.0052. Changing General Election Date

(a) The governing body of a political subdivision other than a county may, not later than
December 31, 1999, change the date on which it holds its general election for officers to
another authorized uniform election date. An election on the new date may not be held
before 2000.

(b) A governing body changing an election date under this section shall adjust the terms of
office to conform to the new election date.

Added by Acts 1993, 73rd Leg., ch. 728, § 11, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch.
1219, § 4, eff. June 20, 1997; Acts 1999, 76th Leg., ch. 1068, § 1, eff. Sept. 1, 1999.

§ 41.0053. Elections on Spring Uniform Date in Certain Political Subdivisions

(a) This section applies only to:

(1) a city with a population of more than 450,000 in which all members of the city's
governing body are elected at large;

(2) an independent school district or public junior college district with a service area that
is primarily the same as that of a city described by Subdivision (1); and

(3) a metropolitan transit authority with a principal city described by Subdivision (1).

(b) A general or special election of officers of a political subdivision covered by this section
shall be held on the spring uniform election date.

Added by Acts 1997, 75th Leg., ch. 1219, § 6, eff. June 20, 1997.

Historical and Statutory Notes

1997 Legislation

Section 6(c), (d) of Acts 1997, 75th Leg., ch. 1219,
provides:

"(c) The governing body of a political subdivi-
sion holding an election under Subsection (a) of
this section shall adjust the terms of office to

conform to the new election date. The governing
body shall adjust the election schedule to conform
to the new date as provided by Section 41.006,
Election Code.

"(d) This section prevails over another Act of
the 75th Legislature, Regular Session, 1997, to the
extent of a conflict."

§ 41.006. Adjusting Election Schedule

Historical and Statutory Notes

1986 Legislation

Section 37 of Acts 1986, 69th Leg., 3rd C.S., ch.
14, effective September 1, 1987, provides:

"(a) A political subdivision that before the effec-
tive date of this Act was required to hold its
general election of officers on the first Saturday in

§ 41.006

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April shall hold the general election on the third Saturday in May in accordance with Subsection (a), Section 41.001, Election Code, as amended by this Act, unless the governing body of the political subdivision chooses a different date under Subsection (c), Section 41.005, Election Code. However, if the governing body wishes to choose the third Saturday in January as the new election date, Subdivision (2) of Subsection (c) of Section 41.005 does not apply to the change, but the governing body must change the date not later than September 10, 1987.

"(b) Subsection (d) of Section 41.005 and Section 41.006, Election Code, apply to the change in election dates."

1987 Legislation

Acts 1987, 70th Leg., ch. 54, § 25(r) provides:

"Section 37, Chapter 14, Acts of the 69th Legislature, 3rd Called Session, 1986, relating to the elimination of the first Saturday in April as a

uniform election date and to the transition from that date to another uniform election date by political subdivisions, applies to the amendments made by this section. Failure to amend expressly any law in conflict with this section or with Section 7 or 37, Chapter 14, Acts of the 69th Legislature, 3rd Called Session, 1986, is not evidence of legislative intent that the conflicting law be given effect."

Section 4(c) of Acts 1987, 70th Leg., 2nd C.S., ch. 60 provides:

"Section 41.005(d) and Section 41.006, Election Code, apply to a change in election dates under this section."

1997 Legislation

Section 8(d) of Acts 1997, 75th Leg., ch. 1219, provides:

"Section 41.006, Election Code, applies to the change in election dates under this Act."

§ 41.007. Primary Elections

(a) The general primary election date is the second Tuesday in March in each even-numbered year.

(b) The runoff primary election date is the second Tuesday in April following the general primary election.

(c) The presidential primary election date is the second Tuesday in March in each presidential election year.

(d) No other election may be held on the date of a primary election.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in subsec. (a), changed the general primary election date from the first Saturday in May to the second Tuesday in March; in subsec. (b), changed the runoff primary election

date from the first Saturday in June following the general primary election to the second Tuesday in April; added subsec. (c); and redesignated former subsec. (c) as subsec. (d), deleting therein "general or runoff" which had preceded "primary election".

Library References

Conduct of elections, ordering elections, see Brooks, 35 Texas Practice § 11.10.

§ 41.008. Effect of Holding Election on Improper Date

Library References

Statutory construction, directory versus mandatory construction, see Brooks, 35 Texas Practice § 3.18.

SUBCHAPTER B. HOURS FOR VOTING

§ 41.031. Voting Hours

(a) Except as provided by Section 41.033, the polls shall be opened at 7 a.m. for voting and shall be closed at 7 p.m.

(b) Voting may not be conducted after the time for closing the polls except as provided by Section 41.032.

Amended by Acts 1997, 75th Leg., ch. 1070, § 48, eff. Sept. 1, 1997.

§ 42.002

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- (2) a special election ordered by the governor;
 - (3) a primary election; and
 - (4) a countywide election ordered by the commissioners court, county judge, or other county authority, except an election subject to Section 42.062(2).
- (b) Except as provided by Sections 42.008 and 42.009, county election precincts may not be consolidated for an election.

Amended by Acts 1989, 71st Leg., ch. 114, § 6, eff. Sept. 1, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment designated the section as subsec. (a); and added subsec. (b).

§ 42.005. Relationship to Wards, Districts, and Justice and Commissioners Precincts

(a) A county election precinct, including a consolidated precinct, may not contain territory from more than one of each of the following types of territorial units:

- (1) a commissioners precinct;
- (2) a justice precinct;
- (3) a congressional district;
- (4) a state representative district;
- (5) a state senatorial district;
- (6) a ward in a city with a population of 10,000 or more; or
- (7) a State Board of Education district.

(b) If application of this section conflicts with application of Section 42.006, this section prevails.

(c) In this section, "ward" means a territorial unit of a city, regardless of its designation under other law, from which a member of the city's governing body is elected by only the voters residing in the territorial unit.

(d) County election precincts are not required to comply with Subsection (a)(6) if:

(1) the commissioners court by order recorded in its minutes determines that compliance is impracticable because of the requirements of a federal court order affecting elections in the county; and

(2) not later than January 1 of each year, the voter registrar furnishes to each political subdivision affected by the federal court order that is authorized or required to hold elections in the county during that year a list of registered voters for each election precinct used in the political subdivision's elections.

Amended by Acts 1987, 70th Leg., ch. 54, § 4(a), eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 114, § 7, eff. Sept. 1, 1989.

Historical and Statutory Notes

1987 Legislation

Acts 1987, 70th Leg., ch. 54, § 4(a), to conform this section to Acts 1985, 69th Leg., ch. 340, S.B. 688 [see italicized note, main volume], added subsec. (d), and repealed Acts 1985, 69th Leg., ch. 340.

Acts 1987, 70th Leg., 2nd C.S., ch. 24 added subsec. (e) but failed to take effect as a result of the 1987 referendum.

Effect of Acts 1987, 70th Leg., 2nd C.S., ch. 24 and 1987 election, see note following V.T.C.A. Education Code, § 11.21.

1989 Legislation

The 1989 amendment in subsec. (a) inserted "including a consolidated precinct".

§ 42.0051. Combining Certain Precincts

(a) If changes in county election precinct boundaries to give effect to a redistricting plan result in county election precincts with a number of registered voters less than 500, a commissioners court for a general or special election, or for a primary election the county

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§ 42.008

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executive committee of a political party conducting a primary election, may combine county election precincts notwithstanding Section 42.005 to avoid unreasonable expenditures for election equipment, supplies, and personnel.

(b) County election precincts in a county with a population of 250,000 or more may also be combined under Subsection (a) if the changes result in county election precincts with 500 or more but fewer than 750 registered voters.

(c) A combined precinct under this section is subject to the maximum population prescribed for a precinct under Section 42.006.

(d) A combined precinct may not be established if it:

(1) results in a dilution of voting strength of a group covered by the federal Voting Rights Act (42 U.S.C. Section 1973c et seq.);

(2) results in a dilution of representation of a group covered by the Voting Rights Act in any political or electoral process or procedure; or

(3) results in discouraging participation by a group covered by the Voting Rights Act in any political or electoral process or procedure because of the location of a polling place or other factors.

Added by Acts 1993, 73rd Leg., ch. 205, § 1, eff. May 19, 1993. Amended by Acts 1997, 75th Leg., ch. 1350, § 1, eff. Sept. 1, 1997.

§ 42.006. Population Requirements

(a) Except as otherwise provided by this section, a county election precinct must contain at least 100 but not more than 2,000 registered voters.

(b) For an election precinct in a county with a population under 100,000, the minimum number of registered voters the precinct may contain is 50, except as provided by Subsection (c).

(c) In a county with a population under 50,000, a county election precinct may contain fewer than 50 registered voters if the commissioners court receives a written petition, signed by at least 25 registered voters of the county, requesting establishment or continuation of the precinct.

(d) In a county in which a voting system has been adopted for use in the general election for state and county officers, the maximum number of registered voters a precinct may contain is:

(1) 3,000, in a county with a population of 250,000 or more;

(2) 4,000, in a county with a population of 175,000 or more but less than 250,000; and

(3) 5,000, in a county with a population of less than 175,000.

(e) In computing a number of registered voters under this section, voters whose names appear on the list of registered voters with the notation "S", or a similar notation, shall be excluded.

Amended by Acts 1987, 70th Leg., ch. 472, § 8, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 797, § 36, eff. Sept. 1, 1995.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in subsec. (d), in subd. (1) substituted "250,000" for "175,000", inserted subd. (2), and redesignated former subd. (2) as subd. (3).

§ 42.008. Consolidating Precincts in Special Election

(a) In a special election for which use of county election precincts is required, the commissioners court may consolidate, on the recommendation of the county election board, two or more county election precincts into a single precinct if the polling place is located so it will adequately serve the voters of the consolidated precinct.

(b) If county election precincts are consolidated for a countywide election, at least one consolidated precinct must be situated wholly within each commissioners precinct.

Amended by Acts 1993, 73rd Leg., ch. 277, § 1, eff. Sept. 1, 1993.

Cross References

Consolidation of precincts prohibited, see V.T.C.A., Election Code § 42.002. Notice of consolidation and polling place, see V.T.C.A., Election Code §§ 4.003, 4.004.

§ 42.009. Consolidating Precincts in Primary Election

The county executive committee of a political party holding a primary election may order two or more county election precincts consolidated into a single precinct if:

- (1) the polling place is located so it will adequately serve the voters of the consolidated precinct; and
- (2) at least one consolidated precinct is situated wholly within each commissioners precinct.

Amended by Acts 1987, 70th Leg., ch. 479, § 3, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment deleted a subsec. (a) designation from the text and deleted former subsecs. (b) to (d).

Cross References

Consolidation of precincts prohibited, see V.T.C.A., Election Code § 42.002.

SUBCHAPTER B. CHANGING COUNTY PRECINCT BOUNDARIES

§ 42.031. Reviewing Precincts for Compliance: Boundary Changes

(a) During March or April of each odd-numbered year, each commissioners court shall determine whether the county election precincts comply with Sections 42.005, 42.006, and 42.007. The commissioners court may make that determination during March or April of an even-numbered year. Before May 1 of the year in which the determination is made, the commissioners court shall order the boundary changes necessary for compliance.

(b) The commissioners court may order a boundary change only during March or April unless the change is necessary to:

- (1) comply with Section 42.005 or 42.032;
- (2) reduce the number of registered voters in a precinct so it does not exceed the maximum number permitted by Section 42.006; or
- (3) include within a precinct a suitable building available for use as a polling place if no suitable building is available for that purpose within the existing precinct boundary.

Amended by Acts 1987, 70th Leg., ch. 436, § 16, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 472, § 9, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

Acts 1987, 70th Leg., ch. 436, § 16 and Acts 1987, 70th Leg., ch. 472, § 9 both substituted

"March or April" for "July or August" throughout the section and in subsec. (a) substituted "May" for "September".

§ 42.032. Redistricting: Boundary Changes

If changes in county election precinct boundaries are necessary to give effect to a redistricting plan under Article III, Section 28, of the Texas Constitution, each commissioners court shall order the changes before October 1 of the year in which the redistricting is done.

Amended by Acts 1987, 70th Leg., ch. 436, § 16, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 472, § 9, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

Acts 1987, 70th Leg., ch. 436, § 16 and Acts 1987, 70th Leg., ch. 472, § 9 both substituted "October" for "December".

United States Supreme Court

Elections, redistricting plans, vote dilution, see *Grove v. Emison*, U.S.Minn.1993, 113 S.Ct. 1075, 507 U.S. 25, 122 L.Ed.2d 388.

§ 42.033. Effective Date of Boundary Change

(a) A change in a county election precinct boundary takes effect on the first day of the first even-numbered voting year following the voting year in which the change is ordered.

(b) Except as provided by Subsection (c), for a boundary change under Section 42.031(b), the commissioners court may order an earlier effective date than that prescribed by Subsection (a) if:

(1) an election for an officer of a territorial unit under Section 42.005(a) is scheduled or may be scheduled to be held before the effective date of the change under Subsection (a) and the territorial unit contains the election precinct as changed; and

(2) the voter registrar has sufficient time to correct the registration records before the effective date of the change.

(c) A change in a county election precinct boundary may not take effect on a date occurring between the date of the general primary election and the date of the general election for state and county officers unless the change is necessary to:

(1) comply with Section 42.005 after a boundary change made under Article V, Section 18, of the Texas Constitution;

(2) include within a precinct a suitable building available for use as a polling place if no suitable building is available for that purpose within the existing precinct boundary; or

(3) comply with a court order.

Amended by Acts 1989, 71st Leg., ch. 114, § 8, eff. Sept. 1, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment, in subsec. (b), inserted the exception relating to subsec. (c); and added subsec. (c).

Cross References

Change of boundary, effective date, see V.T.C.A., Election Code § 42.033.

§ 42.035. Public Notice

(a) Beginning with the first week following the week in which an order changing a county election precinct boundary is adopted, the commissioners court shall publish notice of the change in a newspaper in the county once a week for three consecutive weeks.

(b) The notice must include a brief, general description of the boundary change.

(c) If no newspaper is published in the county, the commissioners court shall post the notice at the county courthouse on the bulletin board used for posting notice of meetings of the commissioners court. The notice must remain posted continuously for three consecutive weeks.

(d) The county clerk shall deliver a copy of the notice to the secretary of state not later than the 20th day after the date the order changing the boundary is adopted.

Amended by Acts 1989, 71st Leg., ch. 114, § 9, eff. Sept. 1, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment added subsec. (d).

§ 42.036. Additional Notice in Populous Counties

- (a) This section applies only to a county with a population of one million or more.
- (b) The commissioners court shall deliver written notice of each proposed change and of each order making a change in a county election precinct boundary to:
 - (1) the county chair of each political party that held a primary election in the county on the most recent general primary day;
 - (2) the political party's precinct chair of each affected election precinct; and
 - (3) the presiding judge appointed by the commissioners court for each affected election precinct.
- (c) The notice of a proposed boundary change must be delivered not later than the seventh day before the date of the commissioners court meeting at which the proposed change will be considered. The notice of an order making a boundary change must be delivered not later than the seventh day after the date the order is adopted.
- (d) The notice of a proposed change must describe the proposed change in brief, general terms, identify the precincts to be affected by the proposed change, and state the date, hour, and place of the meeting.
- (e) The notice of an order making a boundary change must describe the change in brief, general terms and identify the changed precincts. As an alternative, the notice to the county chair may be a copy of the order, and the notice to a precinct chair or presiding judge may be a copy of the portion of the order affecting the precinct served by that person.
- (f) A person entitled to notice under this section may challenge a boundary change made in violation of this section by petition to the district court. The petition must be filed not later than one year after the date the change is scheduled to take effect. If the court determines that the commissioners court failed to comply with this section, the court shall declare the boundary change void. The validity of an election held before the date of a final judgment declaring a change void is not affected by the judgment. Noncompliance with this section may not be challenged in any other manner.
- (g) For one year following the effective date of a change in a county election precinct boundary, the commissioners court shall maintain a record containing a copy of each notice required by this section in connection with the boundary change and showing the date the notice was delivered.

Amended by Acts 1991, 72nd Leg., ch. 597, § 65, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, § 42, eff. Sept. 1, 1997.

CHAPTER 43. POLLING PLACES

SUBCHAPTER A. NUMBER AND LOCATION OF POLLING PLACES		Section	
		43.032.	Building Acquired by County for Polling Place.
Section		43.033.	Consideration for Use of Public Building as Polling Place.
43.003.	Designation of Location: Primary Election.	43.034.	Accessibility of Polling Place to the Elderly and Persons With Physical Disabilities.
SUBCHAPTER B. BUILDING FOR USE AS POLLING PLACE			
43.031.	Polling Place in Public Building.		

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Library References

Voting precincts and polling places, see Brooks,
35 Texas Practice § 11.4.

SUBCHAPTER A. NUMBER AND LOCATION OF POLLING PLACES

§ 43.001. One Polling Place in Each Precinct

Notes of Decisions

1. In general

Primary administrator's joining of the nineteen election precinct polling places violated statute requiring that each precinct be served by single polling place located within boundaries of precinct, insofar as polling places were not within the boundaries of a precinct, where precincts themselves remained separate both in terms of their identities and record-keeping, and administrator joined certain polling places due to fact that he could not find polling place or workers for those precincts. *Honts v. Shaw* (App. 3 Dist. 1998) 975 S.W.2d 816.

Primary administrator's joining of the nineteen election precinct polling places in violation of statute requiring that each precinct be served by single polling place located within boundaries of precinct, a directory provision, was not grounds for setting aside election results, where violations did not result in illegal votes being counted, there was no evidence that any eligible voters were prevented from voting or that election officials failed to count legal votes, and there were no allegations that election officials engaged in illegal conduct. *Honts v. Shaw* (App. 3 Dist. 1998) 975 S.W.2d 816.

§ 43.003. Designation of Location: Primary Election

The county chair of a political party holding a primary election shall designate the location of the polling place for each election precinct in the primary unless the precinct is one that is consolidated. In that case, the county executive committee shall designate the location.

Amended by Acts 1997, 75th Leg., ch. 864, § 43, eff. Sept. 1, 1997.

Notes of Decisions

Delegation 3
Noncompliance 2

2. Noncompliance

Although the moving of the polling place for precinct in runoff election violated the election code, and even assuming provisions governing time and place for holding elections were mandatory, the change in location was a de minimus change, and thus, did not warrant voiding election, where polling place was moved across parking lot, where it was shown that not one voter was actually prevented from voting, and where at least one sign directed people to new polling site; if provisions were directory instead of mandatory, election was not void as challenger failed to prove that violation affected outcome of election. *Des Champ v. Featherston* (App. 3 Dist. 1994) 886 S.W.2d 536.

Primary administrator's joining of the nineteen election precinct polling places in violation of statute requiring that each precinct be served by single polling place located within boundaries of

precinct, a directory provision, was not grounds for setting aside election results, where violations did not result in illegal votes being counted, there was no evidence that any eligible voters were prevented from voting or that election officials failed to count legal votes, and there were no allegations that election officials engaged in illegal conduct. *Honts v. Shaw* (App. 3 Dist. 1998) 975 S.W.2d 816.

3. Delegation

County chair of political party cannot delegate statutory grant of authority to designate polling place for each election precinct in primary. *Honts v. Shaw* (App. 3 Dist. 1998) 975 S.W.2d 816.

County chair of political party did not improperly delegate statutory grant of authority to designate polling place for each election precinct in primary, even though it appeared that chair gave primary administrator authority to make decisions regarding location of polling places and administrator prepared list designating polling places, where chair formally designated list by signing it. *Honts v. Shaw* (App. 3 Dist. 1998) 975 S.W.2d 816.

§ 43.004. Designation of Location: Elections of Other Political Subdivisions

Notes of Decisions

1. Cities

This section provides that polling place for municipal election should be located within election precinct. Op.Atty.Gen. 1986, No. JM-467.

SUBCHAPTER B. BUILDING FOR USE AS POLLING PLACE

§ 43.031. Polling Place in Public Building

(a) In this subchapter, "public building" means a building owned or controlled by the state or a political subdivision.

(b) Each polling place shall be located inside a building.

(c) The building selected for a polling place shall be a public building if practicable. The entity that owns or controls a public building shall make the building available for use as a polling place in any election that covers territory in which the building is located. If more than one authority requests the use of the building for the same day and simultaneous use is impracticable, the entity that owns or controls the building shall determine which authority may use the building.

(d) If a suitable public building is unavailable, the polling place may be located in some other building, and any charge for its use is an election expense. A polling place may not be located in a building under this subsection unless electioneering is permitted on the building's premises outside the prescribed limits within which electioneering is prohibited, except that a polling place may be located in a building at which electioneering is not permitted if it is the only building available for use as a polling place in the election precinct.

(e) A polling place may not be located at the residence of a person who is:

(1) a candidate for an elective office, including an office of a political party; or

(2) related within the third degree by consanguinity or the second degree by affinity, as determined under Chapter 573, Government Code, to a candidate described by Subdivision (1).

Amended by Acts 1989, 71st Leg., ch. 976, § 1, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1350, § 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1316, § 1, eff. Sept. 1, 1999.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment, in subsec. (c), inserted the second and third sentences.

§ 43.032. Building Acquired by County for Polling Place

(a) If a public building is unavailable for use as the polling place for a county election precinct, the commissioners court may purchase or construct a building in the precinct for that purpose.

(b) The commissioners court may permit a building purchased or constructed under Subsection (a) to be used with or without charge for purposes other than as a polling place.

Amended by Acts 1989, 71st Leg., ch. 976, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment, deleted subsec. (b), and redesignated subsec. (c) as (b).

§ 43.033. Consideration for Use of Public Building as Polling Place

(a) No charge, including a charge for personnel, utilities, or other expenses incurred before or after regular business hours, may be made for the use of a public building for a polling

place if the day of the election is a day on which the building is normally open for business. If the day of the election is a day on which the building is not normally open for business, a charge may be made only for reimbursement for the actual expenses resulting from use of the building in the election.

(b) The reimbursing authority is entitled to an itemized statement of expenses before making remittance.

(c) A person commits an offense if the person assesses a charge for the use of a public building for a polling place in violation of Subsection (a). An offense under this subsection is a Class C misdemeanor.

Amended by Acts 1987, 70th Leg., ch. 481, § 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 976, § 2, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 728, § 12, eff. Sept. 1, 1993.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment added subsec. (c).

1989 Legislation

The 1989 amendment, in subsec. (a), substituted "if the day of the election is a day on which the

building is normally open for business. If the day of the election is a day on which the building is not normally open for business, a charge may be made only" for "except".

Cross References

Punishment, Class C misdemeanor, see V.T.C.A., Penal Code § 12.23.

Notes of Decisions

Before and after hours expenses 2
Validity 1

benefit of schools. Election Law Opinion No. GSB-1 (1990).

1. Validity

Interpreting this section to prohibit a public school from charging for expenses incurred from the use of the building as a polling place prior to and after normal business hours does not violate constitutional provision relating to taxes for the

2. Before and after hours expenses

Prohibition on charging for expenses incurred by a school district for the use of a school building as a polling place on a day when the building is open for business includes expenses incurred before and after regular school hours. Election Law Opinion No. GSB-1 (1990).

§ 43.034. Accessibility of Polling Place to the Elderly and Persons With Physical Disabilities

(a) Each polling place shall be accessible to and usable by the elderly and persons with physical disabilities. To be considered accessible, a polling place must meet the standards established under Article 9102, Revised Statutes, including the following standards:

- (1) the polling place must be on the ground-level floor or be accessible from the ground-level floor by an elevator with doors that provide an opening of at least 36 inches in width;
- (2) doors, entrances, and exits used to enter or leave the polling place must have a minimum width of 32 inches;
- (3) any curb adjacent to the main entrance to a polling place must have curb cuts or temporary nonslip ramps;
- (4) any stairs necessary to enter or leave the polling place must have a handrail on each side of the stairs and a nonslip ramp; and
- (5) the polling place may not have a barrier that impedes the path of a person with physical disabilities to the voting station.

(b) The commissioners court shall provide a polling place that complies with Subsection (a) in each county election precinct. The site shall be made available for use as a polling place on every day that an election may be held within the precinct by any authority that holds elections. The commissioners court may make expenditures from either the general fund or

the permanent improvement fund to bring an existing county-owned site into compliance with Subsection (a).

(c) The governing body of each political subdivision that holds elections shall cooperate with the commissioners court in its respective county in implementing this section and is subject to the same requirements for compliance as prescribed by Subsection (b). If the authority holding an election rejects a county-designated polling place that is available and chooses to use a different site of its own designation, it shall provide a polling place that complies with Subsection (a) at its own expense. A political party that is holding a primary election may not reject an available county-designated polling place without the prior consent of the secretary of state.

Amended by Acts 1993, 73rd Leg., ch. 622, § 1, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 809, §§ 1, 2, eff. Sept. 1, 1999.

Cross References

Precinct convention locations, requirements for access, see V.T.C.A., Election Code § 174.022.

Notes of Decisions

In general 1

1. In general

Although Texas Secretary of State had state-imposed legal duty to ensure uniformity of application, operation, and interpretation of statute that places responsibility for accessibility of polling

places to elderly and physically handicapped on "commissioners court[s]" and "governing body of each political subdivision that holds elections," this uniformity—without more—was not "benefit" to plaintiffs for purposes of ADA, and alleged denial of uniformity was not example of discrimination under ADA. *Lightbourn v. County of El Paso, Tex.*, C.A.5 (Tex.)1997, 118 F.3d 421, certiorari denied 118 S.Ct. 700, 139 L.Ed.2d 643.

TITLE 5. ELECTION SUPPLIES

WESTLAW Computer Assisted Legal Research

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- update your research with the most current information
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For more information on using WESTLAW to supplement your research, see the WESTLAW Electronic Research Guide, which follows the Preface.

Library References

Conduct of elections, election supplies and equipment, see Brooks, 85 Texas Practice § 11.11.

CHAPTER 51. ELECTION SUPPLIES

SUBCHAPTER A. PROCURING, ALLOCATING, AND DISTRIBUTING ELECTION SUPPLIES

Section

- 51.002. County Election Board.
- 51.003. Procuring and Allocating Supplies.
- 51.004. Distributing Supplies.
- 51.005. Number of Ballots.
- 51.006. Preparing Ballots for Distribution.
- 51.007. Record of Ballot Distribution.

Section

- 51.010. Failure to Distribute or Deliver Supplies.
- 51.012. Repealed.
- 51.013. Identification of Printers for Primary Election or General Election for State and County Officers.

SUBCHAPTER B. ELECTION EQUIPMENT

- 51.032. Voting Booths.
- 51.035. Use of County-Owned Equipment for Primary Election.

Library References

Tex.Prac., County and Special District Law, ch. 11.

SUBCHAPTER A. PROCURING, ALLOCATING, AND DISTRIBUTING ELECTION SUPPLIES

§ 51.002. County Election Board

(a) A county election board is established in each county for the general election for state and county officers, a special election for an officer regularly elected at the general election, and any other election ordered by a county authority or held at county expense.

(b) For the general election for state and county officers and for a special election for an officer regularly elected at the general election, the county election board consists of the county judge, county clerk, voter registrar, sheriff, and county chair of each political party required to nominate candidates by primary election. For other elections, the board consists of the county judge, county clerk, voter registrar, and sheriff.

(c) The county clerk is the chair of the county election board.

Amended by Acts 1997, 75th Leg., ch. 864, § 44, eff. Sept. 1, 1997.

Library References

Election duties, see Brooks, 35 Texas Practice
§ 20.45.

§ 51.003. Procuring and Allocating Supplies

Except as otherwise provided by law, the following authority shall procure the election supplies necessary to conduct an election and shall determine the quantity of the various types of supplies to be provided to each precinct polling place and early voting polling place:

- (1) for an election ordered by the governor or a county authority, the county clerk, subject to the approval of the county election board;
- (2) for a primary election, the county chair of the political party holding the primary, subject to the approval of the party's county executive committee;
- (3) for an election ordered by a city authority, the city secretary; and
- (4) for an election ordered by an authority of a political subdivision other than a county or city, the secretary of the subdivision's governing body or, if the governing body has no secretary, the governing body's presiding officer.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.45; Acts 1991, 72nd Leg., ch. 554, § 16, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, § 45, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

Library References

Conduct of elections, election supplies and equipment, see Brooks, 35 Texas Practice § 11.11.

§ 51.004. Distributing Supplies

(a) Except as otherwise provided by law, the authority responsible for procuring the election supplies for an election shall distribute the supplies for the election.

(b) The appropriate supplies shall be distributed to each presiding election judge not later than one hour before the polls are required to be open for voting and to the early voting clerk before the beginning of early voting.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.46; Acts 1991, 72nd Leg., ch. 554, § 17, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 51.005. Number of Ballots

(a) The authority responsible for procuring the election supplies for an election shall provide for each election precinct a number of ballots equal to at least the percentage of voters who voted in that precinct in the most recent corresponding election plus 25 percent of that number, except that the number of ballots provided may not exceed the total number of registered voters in the precinct.

(b) In computing a number of registered voters under this section, voters whose names appear on the list of registered voters with the notation "S", or a similar notation, shall be excluded.

(c) The secretary of state shall prescribe procedures for determining the number of ballot stubs to be provided.

Amended by Acts 1995, 74th Leg., ch. 797, § 37, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1078, § 1, eff. Sept. 1, 1997.

Historical and Statutory Notes

1997 Legislation "The secretary of state by rule shall prescribe any procedures necessary to implement this Act."
Section 23 of Acts 1997, 75th Leg., ch. 1078, provides:

Library References

Conduct of elections, ballots, see Brooks, 35
Texas Practice § 11.14.

§ 51.006. Preparing Ballots for Distribution

The authority responsible for distributing election supplies shall package and seal each set of ballots before their distribution and shall mark the package with the number of ballots enclosed and the range of the ballot serial numbers. If the authority is the early voting clerk, the ballots allocated for early voting need not be packaged and sealed.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.47; Acts 1991, 72nd Leg., ch. 554, § 18, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 51.007. Record of Ballot Distribution

(a) As soon as practicable after the ballots are packaged for distribution, the authority responsible for distributing election supplies shall prepare a record of the number of ballots and the range of serial numbers on the ballots to be distributed to each presiding judge and the early voting clerk.

(b) The authority shall preserve the record for the period for preserving the precinct election records.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.48; Acts 1991, 72nd Leg., ch. 554, § 19, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 51.009. Sheriff to Deliver Supplies

Library References

Conduct of elections, election supplies and equipment, see Brooks, 35 Texas Practice § 11.11. Election duties, see Brooks, 35 Texas Practice § 20.45.

§ 51.010. Failure to Distribute or Deliver Supplies

(a) A person commits an offense if the person is responsible for distributing election supplies for an election and intentionally fails to distribute any of the supplies by the deadline prescribed by Section 51.004(b).

(b) A person commits an offense if the person is entrusted with the delivery of election supplies for use at polling places and intentionally fails to deliver any of the supplies within the time specified by the person who entrusted the delivery to the person.

(c) An offense under this section is a Class C misdemeanor.

Amended by Acts 1997, 75th Leg., ch. 864, § 46, eff. Sept. 1, 1997.

§ 51.011. **Obstructing Distribution of Supplies**

Library References

Other election remedies, election offenses, see
Brooks, 35 Texas Practice § 11.26.

§ 51.012. **Repealed by Acts 1995, 74th Leg., ch. 705, § 31(a)(2), eff. Sept. 1, 1995**

§ 51.013. **Identification of Printers for Primary Election or General Election for State and County Officers**

(a) Each person who prints ballots or other election supplies for a primary election or the general election for state and county officers shall file a statement with the secretary of state as provided by this section.

(b) The statement must be filed not later than the 60th day before the date of the applicable election.

(c) The statement must include:

(1) the name, business address, and business telephone number of the printer;

(2) the name and telephone number of any agent or employee of the printer who is designated to receive inquiries or issue information about the printing of ballots or other election supplies; and

(3) the name and address of each client for whom the ballots or other supplies are printed, the voting methods for which the materials are printed for the client, and a description of the materials printed for the client.

(d) The secretary of state shall prescribe the form for the statement required by this section.

Added by Acts 1987, 70th Leg., ch. 472, § 10, eff. Sept. 1, 1987.

Cross References

Correcting ballot, notice of correction by certain printers, see V.T.C.A., Election Code § 52.0062.

Library References

Conduct of elections, election supplies and equipment, see Brooks, 35 Texas Practice § 11.11.

SUBCHAPTER B. ELECTION EQUIPMENT

§ 51.031. **Approval of Ballot and Voting Booths**

Administrative Code References

Elections, approval of voting booths by secretary of state, see 1 TAC § 81.70.

§ 51.032. **Voting Booths**

(a) Voting booths that provide privacy for voters while marking their ballots shall be provided at each polling place.

(b) The entrance of the voting booth may be open or it may have a door or curtain that a voter may close while occupying the booth.

(c) A voting booth may be used without approval of the secretary of state if the booth complies with the standards prescribed by the secretary of state or if the booth:

(1) is rectangular, with at least three sides of opaque material beginning not more than three feet from the floor and extending to a height of at least six feet from the floor;

(2) has inside dimensions at least 22 inches wide and 30 inches deep; and

(3) has a shelf for writing.

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(d) The voting booth standards prescribed by the secretary of state must assure that privacy for voters while marking their ballots is provided and that the voting booth's composition and design are suitable for the intended use.

Amended by Acts 1987, 70th Leg., ch. 472, § 11, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in subsec. (c) inserted "complies with the standards prescribed by the

secretary of state or if the booth", and added subsec. (d).

§ 51.035. Use of County-Owned Equipment for Primary Election

(a) On request of the county chair of a political party holding a primary election, the county clerk shall furnish available county-owned ballot boxes and voting booths to the party for use in its primary election.

(b) If there is not enough county-owned equipment to satisfy the requests made under Subsection (a), the commissioners court shall allocate the equipment among the political parties requesting it.

(c) A fee may not be charged for use of equipment furnished under this section, but the political party shall reimburse the county for the actual expenses incurred by the county in transporting the equipment to and from the polling places if the county provides that service.

Amended by Acts 1997, 75th Leg., ch. 864, § 47, eff. Sept. 1, 1997.

CHAPTER 52. BALLOT FORM, CONTENT, AND PREPARATION

SUBCHAPTER A. PREPARING THE BALLOT

Section	
52.002.	Authority Preparing Ballot.
52.003.	Placing Candidate's Name on Ballot.
52.004.	Failure to Place Candidate's Name on Ballot.
52.0061.	Notice of Correction by Authority Responsible for Preparing Ballot.
52.0062.	Notice of Correction by Certain Printers.
52.0063.	Unlawful Preparation of Ballots.
52.0064.	Destruction of Incorrect Ballots.
52.007.	Specimen Ballot.

SUBCHAPTER B. NAME ON BALLOT

52.031.	Form of Name on Ballot.
52.032.	Candidates With Same or Similar Surnames.

Section

SUBCHAPTER C. FORM OF BALLOT

52.061.	Printing on Ballot.
52.068.	Office Title to Appear on Ballot if No Candidate for Office.
52.070.	Voting Square and Instruction for Candidates.
52.071.	Voting Square and Instruction for Straight-Party Vote.
52.074.	Ballot Stub for Certain Voters.

SUBCHAPTER D. ORDER OF PARTIES, OFFICES, NAMES, AND PROPOSITIONS ON BALLOT

52.092.	Offices Regularly Filled at General Election for State and County Officers.
52.094.	Names of Candidates.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Library References

Conduct of elections, ballots, see Brooks, 35 Texas Practice § 11.14.

SUBCHAPTER A. PREPARING THE BALLOT

§ 52.002. Authority Preparing Ballot

Except as otherwise provided by law, the following authority shall have the official ballot prepared:

- (1) for an election ordered by the governor or a county authority, the county clerk;
- (2) for a primary election, the county chair of the political party holding the primary;
- (3) for an election ordered by a city authority, the city secretary; and
- (4) for an election ordered by an authority of a political subdivision other than a county or city, the secretary of the subdivision's governing body or, if the governing body has no secretary, the governing body's presiding officer.

Amended by Acts 1997, 75th Leg., ch. 864, § 48, eff. Sept. 1, 1997.

§ 52.003. Placing Candidate's Name on Ballot

(a) Except as otherwise provided by law, the authority responsible for having the official ballot prepared shall have placed on the ballot the name of each candidate:

- (1) who has filed with the authority an application for a place on the ballot that complies with the requirements as to form, content, and procedure that the application must satisfy for the candidate's name to be placed on the ballot; or
- (2) whose entitlement to placement on the ballot has been lawfully certified to the authority.

(b) A candidate's name shall be placed on the ballot in the form indicated on the candidate's application or, if the application was not filed with the authority, in the form certified to the authority.

(c) Except as otherwise provided by law, in a runoff election, the authority shall have placed on the ballot the name of each candidate who is entitled to a place on the runoff ballot as indicated by the canvass for the main election.

Amended by Acts 1997, 75th Leg., ch. 864, § 49, eff. Sept. 1, 1997.

United States Supreme Court

Access to ballots by minor party candidates, minimum number of primary votes required, see *Munro v. Socialist Workers Party*, U.S.Wash.1986, 107 S.Ct. 533, 479 U.S. 189, 93 L.Ed.2d 499.

Notes of Decisions

1. In general

Court of Appeals did not lack original jurisdiction in suit brought by candidate for position of party chair to compel current holder of that position to place candidate's name on party primary ballot, despite claim that candidate's avowed support of individual who advocated abolition of democratic form of government now existing in United

States raised factual questions requiring resolution at trial court level; only question to be determined was legal one as to whether current chair was clothed with power to raise and determine issue of fact by controverting allegations contained in candidate's application and then deciding issues so raised. *Witherspoon v. Pouland* (App. 5 Dist. 1990) 784 S.W.2d 951.

§ 52.004. Failure to Place Candidate's Name on Ballot

(a) A person commits an offense if the person is responsible for having the official ballot prepared for an election and knowingly fails to place on the ballot the name of a candidate who is entitled to have the candidate's name placed on the ballot.

(b) An offense under this section is a Class A misdemeanor.

Amended by Acts 1997, 75th Leg., ch. 864, § 50, eff. Sept. 1, 1997.

§ 52.0061. Notice of Correction by Authority Responsible for Preparing Ballot

(a) The authority responsible for having the official ballot prepared shall deliver written notice to the secretary of state not later than 24 hours after the authority's determination to prepare new ballots to make a correction on the ballot.

(b) The notice must include a statement of the nature of the correction to be made.

Added by Acts 1989, 71st Leg., ch. 289, § 1, eff. Sept. 1, 1989.

§ 52.0062. Notice of Correction by Certain Printers

(a) Each person required to file a statement under Section 51.013 shall deliver written notice to the secretary of state not later than 48 hours after the person receives a request to

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§ 52.007

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prepare new ballots to make a correction on the ballot for a primary election or the general election for state and county officers.

(b) The notice must include the name, address, and telephone number of the person requesting the corrected ballots and a statement of the nature of the correction to be made.

Added by Acts 1989, 71st Leg., ch. 289, § 1, eff. Sept. 1, 1989.

§ 52.0063. Unlawful Preparation of Ballots

(a) A person commits an offense if the person knowingly prepares or causes to be prepared new ballots to make a correction on the ballot without complying with Section 52.0061 or 52.0062, as applicable.

(b) Except as authorized by Section 52.006, a person commits an offense if the person knowingly prepares or causes to be prepared for an election any ballot that contains the same number as a ballot that has been prepared for the election.

(c) An offense under this section is a Class A misdemeanor.

Added by Acts 1989, 71st Leg., ch. 289, § 1, eff. Sept. 1, 1989.

Cross References

Class A misdemeanor, punishment, see V.T.C.A.,
Penal Code § 12.21.

§ 52.0064. Destruction of Incorrect Ballots

(a) If new ballots are prepared to make a correction on the ballot, the authority responsible for having the official ballot prepared shall destroy the incorrect ballots in the presence of:

- (1) the sheriff, in an election ordered by the governor or a primary election; or
- (2) the authority responsible for ordering the election, in any other election.

(b) The authority responsible for having the official ballot prepared shall post in the authority's office a notice of the date, hour, and place of the destruction of the incorrect ballots. The notice must remain posted continuously for the 72 hours preceding the scheduled time of the destruction.

(c) Any interested person is entitled to be present at the destruction of incorrect ballots.

(d) The authority responsible for having the official ballot prepared shall prepare a record of the incorrect ballots that are destroyed. The authority shall preserve the record for the period for preserving the precinct election records.

Added by Acts 1989, 71st Leg., ch. 289, § 1, eff. Sept. 1, 1989. Acts 1993, 73rd Leg., ch. 728, § 13, eff. Sept. 1, 1993.

§ 52.007. Specimen Ballot

(a) An official ballot for each ballot format used in each election shall be designated a specimen ballot.

(b) The specimen ballot shall be made available for public inspection:

- (1) for an election other than a primary election, in the office of the authority responsible for having the official ballot prepared; or
- (2) for a primary election, in the office of the county clerk.

(c) The specimen ballot shall be made available for public inspection as soon as practicable after the official ballots have been prepared for the election and shall be preserved for the period for preserving the precinct election records.

(d) The county chair of each political party holding a primary election shall deliver the ballots to be used as specimen ballots to the county clerk when the official ballots are received from the printer.

(e) The authority in whose office the specimen ballot is kept shall mark each specimen ballot with "SPECIMEN" in a manner that will not prevent the reading of its contents. If more than one ballot format is used in the election, the authority shall indicate on the specimen ballot the election precincts in which each ballot format is used.

(f) A specimen ballot may not be reproduced for distribution.

Amended by Acts 1997, 75th Leg., ch. 864, § 51, eff. Sept. 1, 1997.

Administrative Code References

Voting system specimen ballots, see 1 TAC
§ 81.41.

§ 52.008. **Sample Ballot**

Administrative Code References

Voting system sample ballots, see 1 TAC
§ 81.40.

SUBCHAPTER B. NAME ON BALLOT

§ 52.031. **Form of Name on Ballot**

(a) A candidate's name shall be printed on the ballot with the given name or initials first, followed by a nickname, if any, followed by the surname, in accordance with this section.

(b) In combination with the surname, a candidate may use one or more of the following:

- (1) a given name;
- (2) a contraction or familiar form of a given name by which the candidate is known; or
- (3) an initial of a given name.

(c) A nickname of one unhyphenated word of not more than 10 letters by which the candidate has been commonly known for at least three years preceding the election may be used in combination with a candidate's name. A nickname that constitutes a slogan or otherwise indicates a political, economic, social, or religious view or affiliation may not be used. A nickname may not be used unless the candidate executes and files with the application for a place on the ballot an affidavit indicating that the nickname complies with this subsection.

(d) A suffix such as "Sr.," "Jr.," or "2nd" may be used in combination with a candidate's name.

(e) A married woman or widow may use in combination with her surname, if the same as her husband's surname, the given name or initials of her husband with the prefix "Mrs."

Amended by Acts 1997, 75th Leg., ch. 1349, § 22, eff. Sept. 1, 1997.

§ 52.032. **Candidates With Same or Similar Surnames**

(a) If two or more candidates for the same office have the same or similar surnames, each of those candidates may have printed on the ballot a brief distinguishing description or title, not to exceed four words, following the candidate's name.

(b) The description or title may only refer to the candidate's place of residence or present or former profession, occupation, or position. However, the description or title may not refer to a public office.

Amended by Acts 1987, 70th Leg., ch. 472, § 12, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation
The 1987 amendment designated the provisions of the section as subsecs. (a) and (b) and in subsec.

(b) prohibited reference to a public office in the description or title.

SUBCHAPTER C. FORM OF BALLOT

§ 52.061. **Printing on Ballot**

(a) The ballot shall be printed in black ink on white or light-colored paper, but the ballot may not be the same color as sample ballots.

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(b) The type on the ballot may vary in size and style for the office titles, column headings, names of candidates, proposition headings, and propositions, but the type for each particular category must be uniform.

Amended by Acts 1997, 75th Leg., ch. 1349, § 23, eff. Sept. 1, 1997.

§ 52.065. Arrangement of Ballot With Party Nominee

United States Supreme Court

Free speech, elections, prohibition on write-in voting, see *Burdick v. Takushi*, 1992, 112 S.Ct. 2059, 504 U.S. 428, 119 L.Ed.2d 245.

§ 52.068. Office Title to Appear on Ballot if No Candidate for Office

(a) If no candidate's name is to appear on the ballot for a particular office to be voted on at an election in which write-in votes for the office are permitted by law, the authority responsible for having the official ballot prepared shall have the office title printed on the ballot and shall provide a space for a write-in vote as required by this code. However, in an election in which write-in votes may be counted only for names appearing on a list of write-in candidates, if no candidate's name is to appear on the ballot or the list of write-in candidates for a particular office, the office title is not printed on the ballot.

(b) If the authority fails to have the office title printed on the ballot, a person may not be declared elected to the office because of write-in votes that are cast by writing in the office title and the person's name unless the total number of votes cast for all write-in candidates for that office is more than 50 percent of the total number of voters participating in the election who are eligible to vote for the office.

Amended by Acts 1987, 70th Leg., ch. 472, § 13, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 497, § 1, eff. Sept. 1, 1987; Acts 1999, 76th Leg., ch. 62, § 5.09, eff. Sept. 1, 1999.

Historical and Statutory Notes

1987 Legislation

Acts 1987, 70th Leg., ch. 472, § 13 and Acts 1987, 70th Leg., ch. 497, § 1 both in the first sentence of subsec. (a) inserted "in which write-in

votes for the office are permitted by law" and deleted ", if write-in votes are permitted by law in the election," preceding "shall provide", and added the last sentence.

§ 52.070. Voting Square and Instruction for Candidates

(a) A square for voting shall be printed to the left of each candidate's name on a ballot.

(b) Immediately below "OFFICIAL BALLOT," the following instruction shall be printed: "Vote for the candidate of your choice in each race by placing an 'X' in the square beside the candidate's name."

(c) Appropriate changes in the instruction shall be made if only one race appears on the ballot or if more than one candidate is to be elected in a race.

(d) If more than one candidate is to be elected in any race on the ballot, "Vote for none, one, two, . . . or ____" (in the numerical sequence appropriate for the number of candidates to be elected) shall be printed immediately below each office title appearing on the ballot.

(e) A square shall be printed to the left of each line provided for write-in voting under Section 52.066(c), but failure to place a mark in the square does not affect the counting of a write-in vote.

Amended by Acts 1987, 70th Leg., ch. 472, § 14, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 497, § 2, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

Acts 1987, 70th Leg., ch. 472, § 14 and Acts 1987, 70th Leg., ch. 497, § 2 both, in subsec. (d),

substituted "none, one, two, . . . or ____" (in the numerical sequence appropriate for" for "and" and inserted a parenthesis following "elected".

§ 52.071. **Voting Square and Instruction for Straight-Party Vote**

(a) On a ballot on which a party column appears, a square larger than the square prescribed by Section 52.070(a) shall be printed to the left of each political party's name.

(b) The following instruction shall be added to the instruction required by Section 52.070(b): "You may cast a straight-party vote (that is, cast a vote for all the nominees of one party) by placing an 'X' in the square beside the name of the party of your choice. If you cast a straight-party vote for all the nominees of one party and also cast a vote for an opponent of one of that party's nominees, your vote for the opponent will be counted as well as your vote for all the other nominees of the party for which the straight-party vote was cast."

Amended by Acts 1987, 70th Leg., ch. 472, § 15, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in subsec. (b) added the instruction relating to counting of a vote for the opponent where a straight-party vote is cast.

Cross References

Electronic system ballots, straight-party vote instruction required, see V.T.C.A., Election Code § 124.063.

§ 52.072. **Propositions**

Library References

Voter approval, see Brooks, 35 Texas Practice § 17.5.

Notes of Decisions

2. City elections

Bischoff v. City of Austin (App. 3 Dist. 1983) 656 S.W.2d 209, ref. n.r.e., [main volume] motion grant-

ed 662 S.W.2d 156, appeal dismissed, certiorari denied 104 S.Ct. 1699, 466 U.S. 919, 80 L.Ed.2d 172.

§ 52.073. **Voting Square and Instruction for Propositions**

Notes of Decisions

City charters and ordinances 2

instructions are authorized. Election Law Opinion No. JH-3 (1992).

1. Construction and application

Election Code mandates that propositions on ballot appear in "for or against" format and not in "either-or" format. To the left of each proposition, "FOR" and "AGAINST" must be printed. Election Law Opinion No. JH-3 (1992).

Ballot instructions must be in the form authorized by statute; no additional or conflicting ballot

2. City charters and ordinances

Under express terms of constitution, provisions of city charter may not be inconsistent with Texas Election Code. Election Law Opinion No. JH-3 (1992).

Home rule charter or ordinance provisions which conflict with subsequently adopted general laws are invalid. Election Law Opinion No. JH-3 (1992).

§ 52.074. **Ballot Stub for Certain Voters**

(a) The authority responsible for having the official ballot prepared shall have a detached ballot stub prepared as provided by this section for use by a voter who executes an affidavit in accordance with Section 63.010.

(b) The ballot stub shall be in a form approved by the secretary of state and must include:

- (1) a space for entering the number matching the corresponding ballot number;

- (2) spaces for entering the designation of the nature of the election and the date of the election;
- (3) the instruction: "Sign ballot stub, enclose in envelope, and give to election officer.;" and
- (4) a space for the voter's signature.

Added by Acts 1997, 75th Leg., ch. 1078, § 2, eff. Sept. 1, 1997.

Historical and Statutory Notes

1997 Legislation "The secretary of state by rule shall prescribe any procedures necessary to implement this Act." Section 23 of Acts 1997, 75th Leg., ch. 1078, provides:

SUBCHAPTER D. ORDER OF PARTIES, OFFICES, NAMES, AND PROPOSITIONS ON BALLOT

§ 52.092. Offices Regularly Filled at General Election for State and County Officers

- (a) For an election at which offices regularly filled at the general election for state and county officers are to appear on the ballot, the offices shall be listed in the following order:
 - (1) offices of the federal government;
 - (2) offices of the state government:
 - (A) statewide offices;
 - (B) district offices;
 - (3) offices of the county government:
 - (A) county offices;
 - (B) precinct offices.
- (b) Offices of the federal government shall be listed in the following order:
 - (1) president and vice-president of the United States;
 - (2) United States senator;
 - (3) United States representative.
- (c) Statewide offices of the state government shall be listed in the following order:
 - (1) governor;
 - (2) lieutenant governor;
 - (3) attorney general;
 - (4) comptroller of public accounts;
 - (5) commissioner of the General Land Office;
 - (6) commissioner of agriculture;
 - (7) railroad commissioner;
 - (8) chief justice, supreme court;
 - (9) justice, supreme court;
 - (10) presiding judge, court of criminal appeals;
 - (11) judge, court of criminal appeals.
- (d) District offices of the state government shall be listed in the following order:
 - (1) member, State Board of Education;
 - (2) state senator;
 - (3) state representative;
 - (4) chief justice, court of appeals;
 - (5) justice, court of appeals;
 - (6) district judge;
 - (7) criminal district judge;

- (8) family district judge;
- (9) district attorney;
- (10) criminal district attorney.

(e) County offices shall be listed in the following order:

- (1) county judge;
- (2) judge, county court at law;
- (3) judge, county criminal court;
- (4) judge, county probate court;
- (5) county attorney;
- (6) district clerk;
- (7) district and county clerk;
- (8) county clerk;
- (9) sheriff;
- (10) sheriff and tax assessor-collector;
- (11) county tax assessor-collector;
- (12) county treasurer;
- (13) county school trustee (county with population of two million or more);
- (14) county surveyor;
- (15) inspector of hides and animals.

(f) Precinct offices shall be listed in the following order:

- (1) county commissioner;
- (2) justice of the peace;
- (3) constable;
- (4) public weigher.

(g) If two or more offices having the same title except for a place number or other distinguishing number are to appear on the ballot, the number shall appear as part of the office title and the offices shall be listed in numerical order.

(h) The secretary of state shall assign a place number to each position to be filled at the general election for state and county officers for each full or unexpired term in the following offices:

- (1) justice, supreme court;
- (2) judge, court of criminal appeals; and
- (3) justice, court of appeals in a court having a membership in excess of three, if distinguishing the positions to be filled is necessary.

(i) The secretary of state shall designate the position of new offices on the ballot.

(j) The office of judge of a multicounty statutory county court created under Subchapter D, Chapter 25, Government Code,¹ is considered to be a county office for purposes of listing the office on the ballot and to be a district office for all other purposes under this code.

Amended by Acts 1987, 70th Leg., ch. 54, § 15(b), eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 746, § 69, eff. Oct. 1, 1991; Acts 1997, 75th Leg., ch. 1423, § 6.01, eff. Sept. 1, 1997.

¹ V.T.C.A. Government Code, § 25.2601.

Historical and Statutory Notes

1987 Legislation

Effect of Acts 1987, 70th Leg., 2nd C.S., ch. 24 and 1987 election, see note following V.T.C.A. Education Code, § 11.21.

Cross References

Identification on official ballots of justices of Second Court of Appeals, applicability of this section, see V.T.C.A., Government Code § 22.203.

§ 52.094. Names of Candidates

(a) Except as otherwise provided by law, for an election at which the names of more than one candidate for the same office are to appear on the ballot in an independent column or are to appear on a general or special election ballot that does not contain a party nominee, the order of the candidates' names shall be determined by a drawing.

(b) The authority responsible for having the official ballot prepared for the election shall conduct the drawing.

(c) The authority conducting the drawing shall post in the authority's office a notice of the date, hour, and place of the drawing. The notice must remain posted continuously for 72 hours immediately preceding the scheduled time of the drawing, except that for a runoff election or an election held to resolve a tie vote, the notice must remain posted for 24 hours immediately preceding the scheduled time of the drawing.

(d) For an election held at county expense or a city election, on receipt of a candidate's written request accompanied by a stamped, self-addressed envelope, the authority conducting the drawing shall mail written notice of the date, hour, and place of the drawing to the candidate. For an election held by any other political subdivision, the authority conducting the drawing shall mail written notice of the date, hour, and place of the drawing to each candidate, at the address stated on the candidate's application for a place on the ballot, not later than the fourth day before the date of the drawing.

(e) Each candidate affected by a drawing is entitled to be present or have a representative present at the drawing.

Amended by Acts 1997, 75th Leg., ch. 864, § 52, eff. Sept. 1, 1997.

TITLE 6. CONDUCT OF ELECTIONS

WESTLAW Computer Assisted Legal Research

WESTLAW supplements your legal research in many ways. WESTLAW allows you to

- update your research with the most current information
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For more information on using WESTLAW to supplement your research, see the WESTLAW Electronic Research Guide, which follows the Preface.

Library References

Conduct of elections, conduct at polls, see
Brooks, 35 Texas Practice § 11.17.

CHAPTER 61. CONDUCT OF VOTING GENERALLY

SUBCHAPTER A. GENERAL PROVISIONS		Section	
Section		61.006.	Unlawfully Divulging Vote.
61.001.	Bystanders Excluded; Unlawful Presence of Candidate.	61.007.	Unlawfully Revealing Information Before Polls Close.
61.005.	Security of Ballots, Ballot Boxes, Stubs, and Envelopes.	61.010.	Wearing Name Tag Or Badge in Polling Place.
		61.011.	Removing Written Communications Found in Polling Place.

Library References

Tex.Prac., County and Special District Law, ch. 11. Conduct of elections, conduct at polls, see
Brooks, 35 Texas Practice § 11.17.

SUBCHAPTER A. GENERAL PROVISIONS

§ 61.001. Bystanders Excluded; Unlawful Presence of Candidate

(a) Except as permitted by this code, a person may not be in the polling place from the time the presiding judge arrives there on election day to make the preliminary arrangements until the precinct returns have been certified and the election records have been assembled for distribution following the election.

(b) A candidate in the election commits an offense if the candidate is in a polling place during the period described by Subsection (a) for a purpose other than:

- (1) voting; or
- (2) official business in the building in which the polling place is located.

(c) It is an exception to the application of Subsection (b) that the candidate:

- (1) is not within plain view or hearing of the persons in the voting area or the area in which voters are being accepted for voting; and
- (2) is not engaged in campaign activity.

(d) An offense under this section is a Class C misdemeanor.

Amended by Acts 1997, 75th Leg., ch. 1350, § 3, eff. Sept. 1, 1997.

§ 61.003. Electioneering and Loitering Near Polling Place Prohibited

Library References

Electioneering and loitering near polling place, complaints, informations and indictments, see McCormick et al., 7 Texas Practice § 34.01 (10th ed.).

§ 61.004. Unlawful Operation of Sound Truck

Library References

Unlawful operation of sound truck, complaints, informations and indictments, see McCormick et al., 7 Texas Practice § 34.02 (10th ed.). Other election remedies, election offenses, see Brooks, 35 Texas Practice § 11.26.

§ 61.005. Security of Ballots, Ballot Boxes, Stubs, and Envelopes

(a) From the time a presiding judge receives the official ballots for an election until the precinct returns for that election have been certified, the presiding judge shall take the precautions necessary to prevent access to the ballots, ballot boxes, ballot stubs, and stub envelopes in a manner not authorized by law.

(b) The ballots, ballot boxes, ballot stubs, and stub envelopes at a polling place shall be in plain view of at least one election officer from the time the polls open for voting until the precinct returns have been certified.

(c) A presiding election judge commits an offense if the judge fails to prevent another person from handling a ballot box containing voters' marked ballots or an envelope containing voters' signed ballot stubs in an unauthorized manner or from making an unauthorized entry into the ballot box or envelope. An offense under this subsection is a Class A misdemeanor.

Amended by Acts 1997, 75th Leg., ch. 1078, § 3, eff. Sept. 1, 1997.

Library References

Other election remedies, election offenses, see Brooks, 35 Texas Practice § 11.26.

§ 61.006. Unlawfully Divulging Vote

(a) A person commits an offense if the person was in a polling place for any purpose other than voting and knowingly communicates to another person information that the person obtained at the polling place about how a voter has voted.

(b) An offense under this section is a felony of the third degree.

(c) This section does not apply to information presented in an official investigation or other official proceeding in which the information is relevant.

Amended by Acts 1997, 75th Leg., ch. 864, § 53, eff. Sept. 1, 1997.

§ 61.007. Unlawfully Revealing Information Before Polls Close

(a) An election officer, watcher, or other person serving at a polling place in an official capacity commits an offense if, before the polls close or the last voter has voted, whichever is later, the officer, watcher, or other person reveals:

- (1) the number of votes that have been received for a candidate or for or against a measure;
- (2) a candidate's position relative to other candidates in the tabulation of the votes;
- (3) whether a measure is passing or failing; or
- (4) the names of persons who have or have not voted in the election.

(b) An offense under this section is a Class C misdemeanor.

(c) Beginning at 9:30 a.m. and at each subsequent two-hour interval through 5:30 p.m., the presiding judge shall post written notice of the total number of voters who have voted in the

§ 61.007

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precinct. The notice shall be posted at an outside door through which a voter may enter the building in which the polling place is located.

Amended by Acts 1987, 70th Leg., ch. 440, § 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 472, § 16, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 2, § 7.04, eff. Aug. 28, 1989.

Historical and Statutory Notes

1987 Legislation

Acts 1987, 70th Leg., ch. 440, § 1 and Acts 1987, 70th Leg., ch. 472, § 16 both added a subsec. (c).

Leg., ch. 2, § 7.04 eff. Aug. 28, 1989 to conform to its implied repeal by Acts 1987, 70th Leg., ch. 472, § 16 which added another subsec. (c).

1989 Legislation

A former subsec. (c) as added by Acts 1987, 70th Leg., ch. 440, § 1 was repealed by Acts 1989, 71st

Library References

Conduct of elections, returns, see Brooks, 35
Texas Practice § 11.18.

Notes of Decisions

Early voters 1

open to public and their release is not subject to provision of Election Code § 61.007 that names of persons voting may not be revealed until after polls close on election day. Op. Atty. Gen. 1992, No. DM-168.

1. Early voters

Names of persons voting by personal appearance during early voting period for election are

§ 61.008. Unlawfully Influencing Voter

Library References

Unlawfully influencing voter, complaints, informations and indictments, see McCormick et al., 7 Texas Practice § 34.03 (10th ed.).

§ 61.010. Wearing Name Tag Or Badge in Polling Place

(a) Except as provided by Subsection (b), a person may not wear a badge, insignia, emblem, or other similar communicative device relating to a candidate, measure, or political party appearing on the ballot, or to the conduct of the election, in the polling place or within 100 feet of any outside door through which a voter may enter the building in which the polling place is located.

(b) An election judge, an election clerk, a state or federal election inspector, a certified peace officer, or a special peace officer appointed for the polling place by the presiding judge shall wear while on duty in the area described by Subsection (a) a tag or official badge that indicates the person's name and title or position.

(c) A person commits an offense if the person violates Subsection (a). An offense under this subsection is a Class C misdemeanor.

Added by Acts 1987, 70th Leg., ch. 472, § 17, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1349, §§ 24, 25, eff. Sept. 1, 1997.

Cross References

Punishment, Class C misdemeanor, see V.T.C.A., Penal Code § 12.23.

§ 61.011. Removing Written Communications Found in Polling Place

(a) An election officer shall periodically check each voting station and other areas of the polling place for sample ballots or other written communications used by voters that were left or discarded in the polling place.

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(b) An election officer shall remove from the sight of the voters any written communication found under Subsection (a).

Added by Acts 1997, 75th Leg., ch. 112, § 1, eff. Sept. 1, 1997.

CHAPTER 62. PRELIMINARY ARRANGEMENTS

Section		Section	
62.006.	Placing Box and Envelope for Deposit of Marked Ballots and Stubs.	62.014.	Modification of List of Registered Voters.
62.0081.	Presiding Judge to Prepare Ballot Stubs.	62.015.	Placing Indelible Marking Instrument in Station.
62.009.	Disarranging Ballots for Voters' Selection.		

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Library References

Conduct of elections, conduct at polls, see Brooks, 35 Texas Practice § 11.17.

§ 62.003. Oath of Election Officers

Notes of Decisions

Duration of oath 1

1. Duration of oath

Oath of office taken by election judge during early balloting for primary election governed con-

duct from time it was taken until completion of that day's official duties, but did not prohibit judge from politicking between general primary election and runoff primary election. *Alvarez v. Espinoza* (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

§ 62.006. Placing Box and Envelope for Deposit of Marked Ballots and Stubs

The ballot box to be used by the voters to deposit marked ballots shall be locked. The ballot box and envelope no. 5 shall be placed where they will be in plain view of the election officers, watchers, and persons waiting to vote.

Amended by Acts 1997, 75th Leg., ch. 1078, § 4, eff. Sept. 1, 1997.

§ 62.008. Presiding Judge to Sign Ballots

Notes of Decisions

3. Effect of failure to sign ballots

Ballots unsigned by presiding election judge were valid, as statute imposing signature requirement contained only directory language. *Simmons v. Jones* (App. 8 Dist. 1992) 838 S.W.2d 298.

Ballots unsigned by presiding election judge were not invalidated by statute stating that ballots

without signature of presiding judge should not be counted, providing it is determined that ballot was not provided to voter at polling place, where evidence established that number of ballots counted equaled number of names on voting register, and that unsigned ballots were not brought in from any other place. *Simmons v. Jones* (App. 8 Dist. 1992) 838 S.W.2d 298.

§ 62.0081. Presiding Judge to Prepare Ballot Stubs

(a) The presiding judge shall enter on each ballot stub to be used at the polling place the same number that appears on the corresponding ballot, the designation of the nature of the election, and the date of the election.

(b) The preparation of ballot stubs need not be completed before the polls open, but an unprepared stub may not be made available for selection by the voters.

(c) The presiding judge shall clip the ballot stub and envelope for its enclosure to the corresponding ballot.

Added by Acts 1997, 75th Leg., ch. 1078, § 5, eff. Sept. 1, 1997.

Historical and Statutory Notes

1997 Legislation

"The secretary of state by rule shall prescribe any procedures necessary to implement this Act."

Section 23 of Acts 1997, 75th Leg., ch. 1078, provides:

§ 62.009. Disarranging Ballots for Voters' Selection

(a) As needed for voting, an election officer shall disarrange a supply of the ballots so that they are in random numerical order.

(b) The disarranged ballots shall be placed face down on a table in a manner preventing an election officer or other person from ascertaining the number of a ballot selected by a voter.

(c) The ballots with stubs shall be placed separately from the regular ballots.

Amended by Acts 1997, 75th Leg., ch. 1078, § 6, eff. Sept. 1, 1997.

§ 62.012. Posting Sample Ballot

Administrative Code References

Voting system sample ballots, see 1 TAC § 81.40.

§ 62.014. Modification of List of Registered Voters

(a) If a registration correction list is provided for a polling place, an election officer shall make the changes to the list of registered voters that are necessary to make it conform to the registration correction list.

(b) An election officer shall enter "early voting voter" beside the name of each person on the list of registered voters whose name appears on the precinct early voting list furnished by the early voting clerk.

(c) An election officer may make the changes to the list of registered voters required by this section at a location other than the polling place before it is opened for voting.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.49; Acts 1991, 72nd Leg., ch. 554, § 20, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1349, § 26, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 62.015. Placing Indelible Marking Instrument in Station

(a) An indelible marking instrument shall be placed in each voting station.

(b) In this section, "indelible marking instrument" means an instrument that makes marks that cannot easily be removed or erased.

Amended by Acts 1987, 70th Leg., ch. 54, § 5(a), eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendatory act, to conform this section to Acts 1985, 69th Leg., Ch. 969 [see italicized

note, main volume], rewrote the section, and repealed Acts 1985, 69th Leg., Ch. 969.

CHAPTER 63. ACCEPTING VOTER

Section		Section	
63.001.	Regular Procedure for Accepting Voter.	63.008.	Voter Without Certificate Who Is on List.
63.0011.	Statement of Residence Required.	63.009.	Voter Without Certificate Who is Not on List.
63.002.	Signature Roster.	63.010.	Challenge of Voter.
63.005.	Registration Omissions List.	63.0101.	Documentation of Proof of Identification.
63.006.	Voter With Correct Certificate Who is Not on List.	63.011.	Repealed.
63.007.	Voter With Incorrect Certificate Who is Not on List.		

Library References

Conduct of elections, conduct at polls, see
Brooks, 35 Texas Practice § 11.17.

§ 63.001. Regular Procedure for Accepting Voter

(a) Except as otherwise provided by this code, acceptance of voters shall be conducted as provided by this section and Section 63.0011.

(b) On offering to vote, a voter must present the voter's voter registration certificate to an election officer at the polling place.

(c) On presentation of a registration certificate, an election officer shall determine whether the voter's name on the registration certificate is on the list of registered voters for the precinct.

(d) If the voter's name is on the precinct list of registered voters, the voter shall be accepted for voting.

(e) On accepting a voter, an election officer shall indicate beside the voter's name on the list of registered voters that the voter is accepted for voting.

(f) After determining whether to accept a voter, an election officer shall return the voter's registration certificate to the voter.

Amended by Acts 1995, 74th Leg., ch. 797, § 38; eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 864, § 54, eff. Sept. 1, 1997.

§ 63.0011. Statement of Residence Required

(a) Before a voter may be accepted for voting, an election officer shall ask the voter if the voter's residence address on the precinct list of registered voters is current and whether the voter has changed residence within the county.

(b) If the voter's residence address is not current because the voter has changed residence within the county, the voter may vote, if otherwise eligible, in the election precinct in which the voter is registered if the voter resides in the county in which the voter is registered and, if applicable:

(1) resides in the political subdivision served by the authority ordering the election if the political subdivision is other than the county; or

(2) resides in the territory covered by the election in a less-than-countywide election ordered by the governor or a county authority.

(c) Before being accepted for voting, the voter must execute and submit to an election officer a statement including:

(1) a statement that the voter satisfies the applicable residence requirements prescribed by Subsection (b);

(2) the voter's residence address or, if the residence has no address, the address at which the voter receives mail and a concise description of the location of the voter's residence;

(3) the month, day, and year of the voter's birth; and

(4) the date the statement is submitted to the election officer.

§ 63.0011

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Title 6

(d) The voter registrar shall provide to the general custodian of election records a sufficient number of statements of residence for use in each election.

(e) The voter registrar shall retain each statement of residence on file with the voter's voter registration application.

Added by Acts 1995, 74th Leg., ch. 797, § 39, eff. Sept. 1, 1995.

§ 63.002. Signature Roster

(a) A signature roster shall be maintained by an election officer at the polling place.

(b) A voter who is accepted for voting must sign the roster before the voter is permitted to vote.

(c) If the voter cannot sign the voter's name, an election officer shall enter the voter's name with a notation of the reason for the voter's inability to sign the roster.

Amended by Acts 1997, 75th Leg., ch. 864, § 55, eff. Sept. 1, 1997.

§ 63.005. Registration Omissions List

(a) A registration omissions list shall be maintained by an election officer at the polling place.

(b) With respect to each voter who is accepted for voting but whose name is not on the list of registered voters for the precinct in which the voter is accepted, the election officer shall record:

(1) the voter's name, residence address, and voter registration number, if known; and

(2) a notation of the section of this code under which the voter is accepted that provides for accepting voters who are not on the list.

Amended by Acts 1997, 75th Leg., ch. 864, § 56, eff. Sept. 1, 1997.

§ 63.006. Voter With Correct Certificate Who is Not on List

(a) A voter who, when offering to vote, presents a voter registration certificate indicating that the voter is currently registered in the precinct in which the voter is offering to vote, but whose name is not on the precinct list of registered voters, shall be accepted for voting.

(b) After the voter is accepted, an election officer shall indicate beside the voter's name on the poll list that the voter was accepted under this section.

Amended by Acts 1997, 75th Leg., ch. 864, § 57, eff. Sept. 1, 1997.

§ 63.007. Voter With Incorrect Certificate Who is Not on List

(a) A voter who, when offering to vote, presents a voter registration certificate indicating that the voter is currently registered in a different precinct from the one in which the voter is offering to vote, and whose name is not on the precinct list of registered voters, shall be accepted for voting if the voter executes an affidavit stating that the voter:

(1) is a resident of the precinct in which the voter is offering to vote or is otherwise entitled by law to vote in that precinct;

(2) was a resident of the precinct in which the voter is offering to vote at the time that information on the voter's residence address was last provided to the voter registrar;

(3) did not deliberately provide false information to secure registration in a precinct in which the voter does not reside; and

(4) is voting only once in the election.

(b) After the voter is accepted, an election officer shall:

(1) indicate beside the voter's name on the poll list that the voter was accepted under this section; and

(2) enter on the registration omissions list the precinct of the voter's registration as indicated by the voter's registration certificate.

Amended by Acts 1997, 75th Leg., ch. 864, § 58, eff. Sept. 1, 1997.

§ 63.008. Voter Without Certificate Who Is on List

(a) A voter who does not present a voter registration certificate when offering to vote, but whose name is on the list of registered voters for the precinct in which the voter is offering to vote, shall be accepted for voting if the voter executes an affidavit stating that the voter does not have the voter's voter registration certificate in the voter's possession at the polling place at the time of offering to vote and:

- (1) the voter presents proof of identification in a form described by Section 63.0101; or
- (2) the affidavit is also signed by a person who is working at the polling place and who attests to the identity of the voter.

(b) If the requirements prescribed by Subsection (a) are not met, the voter may not be accepted for voting, and an election officer shall indicate beside the voter's name on the list of registered voters that the voter was rejected under this section.

Amended by Acts 1997, 75th Leg., ch. 864, § 59, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1078, § 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1349, § 27, eff. Sept. 1, 1997.

Historical and Statutory Notes

1997 Legislation

Section 23 of Acts 1997, 75th Leg., ch. 1078, provides: "The secretary of state by rule shall prescribe any procedures necessary to implement this Act."

§ 63.009. Voter Without Certificate Who is Not on List

(a) Except as provided by Subsection (b), a voter who does not present a voter registration certificate when offering to vote, and whose name is not on the list of registered voters for the precinct in which the voter is offering to vote, shall be accepted for voting if the voter presents proof of identification and executes an affidavit in accordance with Section 63.010.

(b) If an election officer can determine from the voter registrar that the person is a registered voter of the county, the affidavits required by Sections 63.007 and 63.008 are substituted for the affidavit required by Section 63.010 in complying with that section. After the voter is accepted under this subsection, an election officer shall also indicate beside the voter's name on the poll list that the voter was accepted under this section.

Amended by Acts 1993, 73rd Leg., ch. 728, § 14, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1078, § 8, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1349, § 28, eff. Sept. 1, 1997.

§ 63.010. Challenge of Voter

(a) The eligibility of a person offering to vote may be challenged by an election officer, watcher, or any other person lawfully in the polling place. An election officer may not refuse to accept a voter without informing the voter of the voter's right to vote under the challenge procedure prescribed by this section.

(b) A challenge by a person other than the presiding judge shall be directed to the judge.

(c) A challenge of a voter may occur before or after the voter is accepted for voting but may not occur after an accepted voter enters a voting station.

(d) The presiding judge shall inform a voter of a challenge and of the issues raised by the challenge. The presiding judge shall request the voter to present proof of identification in a form described by Section 63.0101 and to execute an affidavit that states the facts necessary to support the voter's eligibility to vote. On presentation of the required proof of identification and affidavit, the presiding judge shall determine the voter's identity. If the voter fails to present the required proof of identification, the presiding judge cannot verify the voter's identity from the proof presented, or the voter refuses to execute an affidavit, the voter may not be accepted for voting, and an election officer shall indicate on the affidavit or, if none, on a written statement containing the voter's name and any known residence address, and, if applicable, on the list of registered voters beside the voter's name that the voter was rejected under this section. After determining the voter's identity, the presiding judge shall return the documentation of proof to the voter.

(e) If a challenged voter whose identity is verified executes an affidavit that states the facts necessary to support the voter's eligibility to vote, the voter shall be accepted, and "sworn" shall be entered on the poll list beside the voter's name. If the voter's affidavit does not state

the facts necessary to support the voter's eligibility to vote, the voter may not be accepted for voting, and an election officer shall indicate on the affidavit and, if applicable, on the list of registered voters beside the voter's name that the voter was rejected under this section.

(f) If a voter is challenged and rejected after having been accepted for voting, the presiding judge shall enter "challenged and rejected" beside the voter's name on the list of registered voters or registration omissions list and on the poll list, signature roster, and any affidavits executed by the voter under this chapter.

Amended by Acts 1993, 73rd Leg., ch. 728, § 15, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1078, § 9, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1349, § 29, eff. Sept. 1, 1997.

§ 63.0101. Documentation of Proof of Identification

The following documentation is acceptable as proof of identification under this chapter:

(1) a driver's license or personal identification card issued to the person by the Department of Public Safety or a similar document issued to the person by an agency of another state, regardless of whether the license or card has expired;

(2) a form of identification containing the person's photograph that establishes the person's identity;

(3) a birth certificate or other document confirming birth that is admissible in a court of law and establishes the person's identity;

(4) United States citizenship papers issued to the person;

(5) a United States passport issued to the person;

(6) pre-printed checks containing the person's name that are issued for a financial institution doing business in this state;

(7) official mail addressed to the person by name from a governmental entity;

(8) two other forms of identification that establish the person's identity; or

(9) any other form of identification prescribed by the secretary of state.

Added by Acts 1997, 75th Leg., ch. 1078, § 10, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1349, § 30, eff. Sept. 1, 1997.

Historical and Statutory Notes

1997 Legislation

Section 23 of Acts 1997, 75th Leg., ch. 1078, provides:

"The secretary of state by rule shall prescribe any procedures necessary to implement this Act."

§ 63.011. Repealed by Acts 1997, 75th Leg., ch. 112, § 2, eff. Sept. 1, 1997

Historical and Statutory Notes

Section 3 of Acts 1997, 75th Leg., ch. 112 provides:

"An offense under Section 63.011, Election Code, committed before the effective date of this Act is subject to the law in effect when the offense was committed, and that law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date."

This section was amended by Acts 1997, 75th Leg., ch. 864, § 60. However, § 257 of Acts 1997, 75th Leg., ch. 864 provides:

"This Act is intended only to change terminology involving gender in the Election Code to appropriate gender-neutral terminology. The reenactment of text in this Act to effect this change in terminology does not prevail over a conflicting change in law, including a conflict in gender-neutral terminol-

ogy, made by another Act of the 75th Legislature, Regular Session, 1997, and that conflicting change is given effect with the change in terminology made by this Act."

The repealed section, prohibiting written communication, was derived from:

Acts 1905, 29th Leg., 1st C.S., p. 533, ch. 11, §§ 70, 127.

Rev.Civ.St.1911, arts. 3002 to 3119.

Rev.P.C.1911, art. 213.

Vernon's Ann.Civ.St. art. 3009.

Acts 1951, 52nd Leg., p. 1097, ch. 492, § 94.

Vernon's Ann.P.C. (1925) art. 242.

Acts 1973, 53rd Leg., p. 995, ch. 399, § 5.

V.A.T.S. Election Code, arts. 8.12, 15.51.

Acts 1985, 69th Leg., ch. 211, § 1.

Notes of Decisions

Validity ½

½. Validity

Provision of Texas Election Code which prohibits voters from possessing any written communications which they had not written themselves while they marked ballots impermissibly infringed First and Fourteenth Amendment rights of voters and was unconstitutional; statute created limited burden on rights of voters in light of large numbers of candidates, constitutional amendments, and propositions typically involved in elections, and was not necessary to achieve compelling interest of protecting integrity of elections as anti-electioneering statutes prohibited display of campaign materials in polling place. *Cotham v. Garza*, S.D.Tex.1995, 905 F.Supp. 389.

Interest of State of Texas in protecting citizens' right to vote in elections conducted with integrity and reliability by preventing voter intimidation and

fraud was compelling state interest which would potentially justify under *Anderson* burden on First and Fourteenth Amendment rights of voters created by provision of Texas Election Code which prohibited voters from possessing any written communications which they had not written themselves while they marked ballots. *Cotham v. Garza*, S.D.Tex.1995, 905 F.Supp. 389.

Interest of State of Texas in minimizing time spent in voting booth by voters and aiding orderly and prompt administration of elections was not compelling state interest which would potentially justify under *Anderson* burden on First and Fourteenth Amendment rights of voters created by provision of Texas Election Code which prohibited voters from possessing any written communications which they had not written themselves while they marked ballots; any concerns could be remedied by using additional voting booths. *Cotham v. Garza*, S.D.Tex.1995, 905 F.Supp. 389.

CHAPTER 64. VOTING PROCEDURES

SUBCHAPTER A. VOTING GENERALLY

Section

- 64.001. Voter to Select and Prepare Ballot; Deposit of Stub.
- 64.002. Occupancy of Voting Station.

Section

- 64.009. Voter Unable to Enter Polling Place.
- 64.012. Illegal Voting.

SUBCHAPTER B. ASSISTING VOTER

- 64.033. Reading Ballot to Voter.

SUBCHAPTER A. VOTING GENERALLY

§ 64.001. Voter to Select and Prepare Ballot; Deposit of Stub

(a) After a voter is accepted for voting, the voter shall select a ballot, go to a voting station, and prepare the ballot, except as provided by Subsection (b).

(b) A voter who executes an affidavit in accordance with Section 63.010 shall select a ballot with a stub and, before going to a voting station:

- (1) unclip the stub and envelope from the ballot;
- (2) sign the stub and enclose it in the envelope; and
- (3) seal the envelope and give it to an election officer.

(c) The election officer shall deposit the ballot stub enclosed in its envelope in envelope no. 5.

Amended by Acts 1997, 75th Leg., ch. 1078, § 11, eff. Sept. 1, 1997.

Historical and Statutory Notes

1997 Legislation

Section 23 of Acts 1997, 75th Leg., ch. 1078, provides:

"The secretary of state by rule shall prescribe any procedures necessary to implement this Act."

§ 64.002. Occupancy of Voting Station

(a) Except as otherwise provided by this code, only one person at a time may occupy a voting station.

(b) A child under 18 years of age may accompany the child's parent to a voting station.

Amended by Acts 1993, 73rd Leg., ch. 728, § 16, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 864, § 61, eff. Sept. 1, 1997.

§ 64.003. Marking the Ballot for Candidate on Ballot

Library References

Conduct of elections, ballots, see Brooks, 35
Texas Practice § 11.14.

§ 64.005. Marking the Ballot for Write-In Candidate

Notes of Decisions

Intent 5

else called "Gus" ran in election. *Guerra v. Garza* (App. 13 Dist. 1993) 865 S.W.2d 573, rehearing overruled, writ dismissed w.o.j.

5. Intent

Ballots that had surname "Garza" written anywhere on ballot other than County Attorney's line, and ballots that had "Gues," "Gue," initials "G.G.," "Gus Garcia," or "Mickey Mouse" even if written on County Attorney's line, were not properly counted for County Attorney write-in candidate named "Gustavo 'Gus' Garza"; voters' intent to vote for that candidate was not clearly ascertainable. *Guerra v. Garza* (App. 13 Dist. 1993) 865 S.W.2d 573, rehearing overruled, writ dismissed w.o.j.

Ballots that had "Gus" "Garza," or "Gus Garza" either completely written or partly written on County Attorney's line were properly counted for write-in candidate named "Gustavo 'Gus' Garza," as voters' intent to vote for him was clearly ascertainable; evidence showed that three persons with surname "Garza" ran in election, that two of them had their names preprinted on ballot, that write-in candidate was only such candidate with surname "Garza," that he was called "Gus" and that no one

§ 64.009. Voter Unable to Enter Polling Place

(a) If a voter is physically unable to enter the polling place without personal assistance or likelihood of injuring the voter's health, on the voter's request, an election officer shall deliver a ballot to the voter at the polling place entrance or curb.

(b) The regular voting procedures may be modified by the election officer to the extent necessary to conduct voting under this section.

(c) After the voter is accepted for voting, the voter shall mark the ballot and give it to the election officer who shall deposit it in the ballot box.

(d) On the voter's request, a person accompanying the voter shall be permitted to select the voter's ballot and deposit the ballot in the ballot box.

Amended by Acts 1997, 75th Leg., ch. 864, § 82, eff. Sept. 1, 1997.

Library References

Conduct of elections, conduct at polls, see Brooks, 35 Texas Practice § 11.17.

§ 64.012. Illegal Voting

(a) A person commits an offense if the person:

(1) votes or attempts to vote in an election in which the person knows the person is not eligible to vote;

(2) knowingly votes or attempts to vote more than once in an election; or

(3) knowingly impersonates another person and votes or attempts to vote as the impersonated person.

(b) An offense under this section is a felony of the third degree unless the person is convicted of an attempt. In that case, the offense is a Class A misdemeanor.

Amended by Acts 1997, 75th Leg., ch. 864, § 63, eff. Sept. 1, 1997.

Library References

Other election remedies, election offenses, see Brooks, 35 Texas Practice § 11.26.

SUBCHAPTER B. ASSISTING VOTER

Library References

Conduct of elections, conduct at polls, see
Brooks, 35 Texas Practice § 11.17.

§ 64.031. Eligibility for Assistance

Notes of Decisions

Improper assistance 2

Thompson v. Willis (App. 9 Dist. 1994) 881 S.W.2d 221.

Trial court in election contest was justified in concluding that true outcome of election could not be determined due to fact that members of early voting ballot board had improperly assisted absentee and early voters by overmarking ovals indicating voters' choices and due to fact that exact number of overmarked ballots was unascertainable. Thompson v. Willis (App. 9 Dist. 1994) 881 S.W.2d 221.

2. Improper assistance

Although likely innocent and well-intentioned, overmarking of early and absentee ballots by members of early voting ballot board due to fact that voters had not fully filled in oval for particular candidate constituted improper assistance.

§ 64.033. Reading Ballot to Voter

(a) If a voter is assisted by election officers, one of them shall read the entire ballot to the voter unless the voter tells the officer that the voter desires to vote only on certain offices or measures. In that case, the officer shall read those items on the ballot specified by the voter.

(b) If a voter is assisted by a person of the voter's choice, an election officer shall ask the voter being assisted whether the voter wants the entire ballot read to the voter. If so, the officer shall instruct the person assisting the voter to read the entire ballot to the voter.

Amended by Acts 1997, 75th Leg., ch. 864, § 64, eff. Sept. 1, 1997.

§ 64.036. Unlawful Assistance

Notes of Decisions

Instructions 5
Validity ½
Vote buying 6

choice of candidates. Guerrero v. State (App. 13 Dist. 1991) 820 S.W.2d 378, petition for discretionary review refused.

Penal provisions of § 64.036 are applicable to persons who assist voters under the provisions of § 86.010. Op. Atty. Gen. 1987, No. JM-736.

½. Validity

Activity forbidden by statute prohibiting person who aids voter in filling out ballot from suggesting how voter should vote is not protected political speech under the First Amendment or the Texas Constitution. V.T.C.A., Election Code § 64.036; U.S.C.A. Const. Amend. Guerrero v. State (App. 13 Dist. 1991) 820 S.W.2d 378, petition for discretionary review refused.

Statute prohibiting, while assisting a voter, to suggest by word, sign or gesture how voter should vote, was not unconstitutionally overbroad or vague. V.T.C.A., Election Code § 64.036; U.S.C.A. Guerrero v. State (App. 13 Dist. 1991) 820 S.W.2d 378, petition for discretionary review refused.

This section is not unconstitutionally vague in the context of absentee voting by mail. Op. Atty. Gen. 1987, No. JM-736.

2. Assistance

Assistant who aids disabled or illiterate voters in filling out ballot may not inform or guide voters in

4. Evidence

Evidence that defendant, while assisting elderly voter in filling out absentee ballot, told voter which candidate to vote for and gave her five dollars, was sufficient to support conviction for unlawful assistance to a voter. Guerrero v. State (App. 13 Dist. 1991) 820 S.W.2d 378, petition for discretionary review refused.

In prosecution for unlawful assistance of a voter, prosecutor's references to the area's reputation for political corruption and to widespread political corruption in Mexico was harmless, since such references did not implicate defendant. Guerrero v. State (App. 13 Dist. 1991) 820 S.W.2d 378, petition for discretionary review refused.

5. Instructions

Even if jury charge given in prosecution for unlawful assistance of a voter permitted jury to convict defendant for conduct not prohibited by statute, defendant did not suffer egregious harm from any error, where closing arguments of both

§ 64.036

Note 5

parties defined application of jury charge's language. *Guerrero v. State* (App. 13 Dist. 1991) 820 S.W.2d 378, petition for discretionary review refused.

6. Vote buying

State's characterization of incident in which defendant allegedly gave a voter five dollars while

CONDUCT OF ELECTIONS

Title 6

assisting voter and preparing absentee ballot as "vote buying" was reasonable deduction from the evidence in prosecution for unlawful assistance of a voter. *Guerrero v. State* (App. 13 Dist. 1991) 820 S.W.2d 378, petition for discretionary review refused.

§ 64.037. Unauthorized Assistance Voids Ballot

Notes of Decisions

1. Construction and application

Absentee ballots for school board election cast by voters who received assistance, but who failed to follow mandatory procedures for casting absentee ballots when voter was assisted, should not

have been validated in contest proceedings. *Tiller v. Martinez* (App. 4 Dist. 1998) 974 S.W.2d 769, rehearing overruled, review dismissed w.o.j., rehearing of petition for review denied.

CHAPTER 65. COUNTING VOTES AND PREPARING RETURNS

Section

65.005. Tallying the Votes.
65.007. Tallying Straight-Party Votes.

Section

65.010. Ballots Not Counted.
65.011. Overvoting.

Library References

Tex.Prac., County and Special District Law, ch. 11.

Conduct of elections, returns, see Brooks, 35 Texas Practice § 11.18.

§ 65.005. Tallying the Votes

(a) One member of the counting team shall examine each ballot and clearly announce the name of each candidate for whom a vote has been received or whether a vote has been received for or against a measure. The other members of the counting team shall record the votes on the tally lists as they are announced.

(b) The counting team shall compare the tally lists periodically to determine whether discrepancies exist among them. If a discrepancy is discovered, the ballots shall be recounted and the necessary corrections shall be made on the lists.

(c) On completing the count, each member of the counting team assigned to tally votes shall compute the total number of votes tallied on the list the member has kept and enter the totals on the tally list. After verifying that the three lists are in agreement, each counting officer shall sign the list that the officer has kept.

(d) If a ballot with a signed stub is found, the stub shall be enclosed and sealed in an envelope and deposited in envelope no. 5 before the ballot is examined.

Amended by Acts 1997, 75th Leg., ch. 1078, § 12, eff. Sept. 1, 1997.

§ 65.007. Tallying Straight-Party Votes

(a) In an election in which a single square is provided on the ballot for casting a straight-party vote, the tally lists shall contain spaces for tallying those votes.

(b) Except as provided by Subsection (c) or (d), each straight-party vote shall be tallied for the party receiving the vote instead of being tallied for the individual candidates of the party. The total number of straight-party votes tallied for each party shall be added to the total votes received for each of the party nominees individually.

(c) If a ballot indicates a straight-party vote and a vote for an opponent of one or more of that party's nominees, a vote shall be counted for the opponent and for each of the party's other nominees whether or not any of those nominees have received individual votes.

(d) If a ballot indicates straight-party votes for more than one party, those votes may not be tallied and a vote shall be counted for each candidate receiving an individual vote if no

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§ 65.010

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other individual votes are received in that race. If no candidate receives an individual vote, the portion of the ballot for offices may not be counted.

Amended by Acts 1993, 73rd Leg., ch. 728, § 17, eff. Sept. 1, 1993.

Notes of Decisions

In general 1

1. In general

Ballots that had overlapping pencil and pen marks in boxes indicating straight-party vote, and

that also had write-in candidate's name written in pencil in write-in candidate's space, and "X" written in pencil in box for write-in candidate, were properly counted for that candidate. *Guerra v. Garza* (App. 13 Dist. 1993) 865 S.W.2d 573, rehearing overruled, writ dismissed w.o.j.

§ 65.008. Tallying Write-In Votes

Notes of Decisions

1. In general

Ballots that had overlapping pencil and pen marks in boxes indicating straight-party vote, and that also had write-in candidate's name written in pencil in write-in candidate's space, and "X" writ-

ten in pencil in box for write-in candidate, were properly counted for that candidate. *Guerra v. Garza* (App. 13 Dist. 1993) 865 S.W.2d 573, rehearing overruled, writ dismissed w.o.j.

§ 65.009. Counting Irregularly Marked Ballot

Notes of Decisions

1. In general

Ballots that had overlapping pencil and pen marks in boxes indicating straight-party vote, and that also had write-in candidate's name written in pencil in write-in candidate's space, and "X" written in pencil in box for write-in candidate, were properly counted for that candidate. *Guerra v. Garza* (App. 13 Dist. 1993) 865 S.W.2d 573, rehearing overruled, writ dismissed w.o.j.

Secretary of State has no authority to issue rules governing the counting of ballots that are not marked in strict conformity with law. *Op. Atty. Gen.* 1988, JM-998.

2. Intent

Ballots that had "Gus" "Garza," or "Gus Garza" either completely written or partly written on County Attorney's line were properly counted for write-in candidate named "Gustavo 'Gus' Garza," as voters' intent to vote for him was clearly ascertainable; evidence showed that three persons with surname "Garza" ran in election, that two of them had their names preprinted on ballot, that write-in

candidate was only such candidate with surname "Garza," that he was called "Gus" and that no one else called "Gus" ran in election. *Guerra v. Garza* (App. 13 Dist. 1993) 865 S.W.2d 573, rehearing overruled, writ dismissed w.o.j.

Ballots that had surname "Garza" written anywhere on ballot other than County Attorney's line, and ballots that had "Gues," "Gue," initials "G.G.," "Gus Garcia," or "Mickey Mouse" even if written on County Attorney's line, were not properly counted for County Attorney write-in candidate named "Gustavo 'Gus' Garza"; voters' intent to vote for that candidate was not clearly ascertainable. *Guerra v. Garza* (App. 13 Dist. 1993) 865 S.W.2d 573, rehearing overruled, writ dismissed w.o.j.

An election judge or the trier of fact in an election contest has the duty to determine whether the voter's intent is clearly ascertainable and, if so, to count the ballot in a manner that gives effect to the voter's intent. *Op. Atty. Gen.* 1988, JM-998.

§ 65.010. Ballots Not Counted

(a) The following ballots may not be counted:

- (1) a ballot that is not provided to the voter at the polling place;
 - (2) two or more ballots that are folded together in a manner indicating that they were folded together when deposited in the ballot box;
 - (3) a write-in envelope containing a write-in vote without an attached ballot;
 - (4) a ballot that has not been deposited in the ballot box used for the deposit of marked ballots; or
 - (5) a ballot with an unsigned stub.
- (b) If a ballot is unnumbered or the signature of the presiding judge does not appear on the back of a ballot, the presiding judge shall examine it to determine whether the ballot is not to be counted under Subsection (a)(1).

(c) If a ballot is not counted, an election officer shall indicate on the back of the ballot the reason for not counting it.

Amended by Acts 1993, 73rd Leg., ch. 728, § 18, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1078, § 13, eff. Sept. 1, 1997.

Notes of Decisions

3. Signature of presiding judge

Ballots unsigned by presiding election judge were not invalidated by statute stating that ballots without signature of presiding judge should not be counted, providing it is determined that ballot was

not provided to voter at polling place, where evidence established that number of ballots counted equaled number of names on voting register, and that unsigned ballots were not brought in from any other place. *Simmons v. Jones* (App. 8 Dist. 1992) 838 S.W.2d 298.

§ 65.011. Overvoting

Except as provided by Section 65.007(c) or (d), if a voter marks the ballot for more candidates for an office than the number of persons to be elected for that office, none of the votes may be counted for that office.

Amended by Acts 1993, 73rd Leg., ch. 728, § 19, eff. Sept. 1, 1993.

CHAPTER 66. DISPOSITION OF RECORDS AND SUPPLIES AFTER ELECTION

SUBCHAPTER A. GENERAL PROVISIONS

Section	
66.003.	Envelopes for Distribution of Records.

SUBCHAPTER B. ASSEMBLING RECORDS FOR DISTRIBUTION

66.021.	Assembling Election Records.
66.023.	Contents of Envelope No. 2.
66.0241.	Contents of Envelope No. 4.
66.0242.	Contents of Envelope No. 5.
66.025.	Contents of Ballot Box No. 3.
66.026.	Contents of Ballot Box No. 4.

Section

SUBCHAPTER C. DISPOSITION OF RECORDS AND SUPPLIES

66.051.	Distribution of Election Records.
66.057.	Regulating Public Inspection of Certain Election Records.
66.058.	Preservation of Precinct Election Records.
66.059.	Retrieving Erroneously Placed Election Records.
66.060.	Delivery and Preservation of Key to Ballot Box No. 3.
66.062.	Returning Equipment and Supplies.
66.063.	Renumbered.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. GENERAL PROVISIONS

§ 66.003. Envelopes for Distribution of Records

(a) Five envelopes shall be furnished to each polling place for use in assembling and distributing the precinct election records.

(b) The envelopes shall be labeled and addressed as follows:

- (1) "Envelope No. 1," addressed to the presiding officer of the local canvassing authority;
- (2) "Envelope No. 2," addressed to the general custodian of election records;
- (3) "Envelope No. 3," addressed to the presiding judge;
- (4) "Envelope No. 4," addressed to the voter registrar; and
- (5) "Envelope No. 5," addressed to the general custodian of election records.

Amended by Acts 1987, 70th Leg., ch. 54, § 12(b), eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1078, § 14, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation
The 1987 amendment, to conform this section to Acts 1985, 69th Leg., Ch. 966 [see italicized note under §§ 18.001 and 66.063, main volume], added subsec. (b)(4) relating to envelope No. 4, and repealed Acts 1985, 69th Leg., Ch. 966.

SUBCHAPTER B. ASSEMBLING RECORDS FOR DISTRIBUTION

§ 66.021. Assembling Election Records

(a) On completing the election returns for the precinct, the presiding judge shall assemble the precinct election records and place them in the appropriate envelopes and ballot boxes for distribution.

(b) The judge shall seal envelopes no. 1, no. 2, no. 4, and no. 5 and lock ballot boxes no. 3 and no. 4 as soon as they are ready for distribution.

Amended by Acts 1987, 70th Leg., ch. 54, § 12(b), eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1078, § 15, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation
The 1987 amendment, to conform this section to Acts 1985, 69th Leg., Ch. 966 [see italicized note under §§ 18.001 and 66.063, main volume], inserted in subsec. (b) the reference to envelope No. 4, and repealed Acts 1985, 69th Leg., Ch. 966.

§ 66.023. Contents of Envelope No. 2

Envelope no. 2 must contain:

- (1) a copy of the precinct returns;
- (2) a tally list;
- (3) the original of the poll list;
- (4) the signature roster;
- (5) the precinct early voting list;
- (6) any affidavits completed at the polling place except affidavits required to be placed in envelope no. 4; and
- (7) any certificates of appointment of watchers.

Amended by Acts 1987, 70th Leg., ch. 54, § 12(b), eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, § 2.50; Acts 1991, 72nd Leg., ch. 554, § 21, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation
For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.
Section 2.80 of Acts 1991, 72nd Leg., ch. 203 provides:
"This article is intended only to change the terminology involving 'absentee voting' to appropriate terminology using 'early voting.' The reenactment of text in this article to effect this change in terminology does not prevail over a conflicting change in law made by another Act of the 72nd Legislature, Regular Session, 1991, and that conflicting change is given effect with the change in terminology made by this article."

§ 66.0241. Contents of Envelope No. 4

Envelope no. 4 must contain:

- (1) the precinct list of registered voters;
- (2) the registration correction list;
- (3) the registration omissions list;
- (4) any statements of residence executed under Section 63.0011; and
- (5) any affidavits executed under Section 63.007 or 63.010.

Added by Acts 1987, 70th Leg., ch. 54, § 12(b), eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 916, § 24, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 797, § 40, eff. Sept. 1, 1995.

§ 66.0242. Contents of Envelope No. 5

Envelope no. 5 must contain the ballot stubs.

Added by Acts 1997, 75th Leg., ch. 1078, § 16, eff. Sept. 1, 1997.

§ 66.025. Contents of Ballot Box No. 3

(a) Ballot box no. 3 must contain:

- (1) the voted ballots;
- (2) a copy of the precinct returns;
- (3) a tally list; and
- (4) a copy of the poll list.

(b) The copy of the poll list may be placed in a container other than ballot box no. 3 on approval by the secretary of state if the secretary determines that placement in the other container is more suitable for a particular election.

Amended by Acts 1987, 70th Leg., ch. 472, § 18, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 500, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

Acts 1987, 70th Leg., ch. 472, § 18 and Acts 1987, 70th Leg., ch. 500, § 1 both designated the

contents provision as subsec. (a) and added subsec. (b).

§ 66.026. Contents of Ballot Box No. 4

Ballot box no. 4 must contain:

- (1) the original of the ballot register;
- (2) the register of spoiled ballots;
- (3) any spoiled ballots;
- (4) any defectively printed ballots;
- (5) any envelope containing cancellation requests and canceled ballots; and
- (6) any other unused ballots.

Amended by Acts 1993, 73rd Leg., ch. 728, § 20, eff. Sept. 1, 1993.

SUBCHAPTER C. DISPOSITION OF RECORDS AND SUPPLIES

§ 66.051. Distribution of Election Records

(a) The presiding judge shall deliver envelope no. 1 in person to the presiding officer of the local canvassing authority. If the presiding officer of the local canvassing authority is unavailable, the envelope shall be delivered to the general custodian of election records who shall then deliver it to the local canvassing authority before the time set for convening the local canvass.

(b) The presiding judge shall deliver envelope no. 2, envelope no. 5, ballot box no. 3, and ballot box no. 4 and its key in person to the general custodian of election records.

(c) The presiding judge shall retain envelope no. 3.

(d) The presiding judge shall deliver envelope no. 4 in person to the voter registrar. If the voter registrar is unavailable, the envelope shall be delivered to the general custodian of election records, who shall deliver it to the voter registrar on the next regular business day.

Amended by Acts 1987, 70th Leg., ch. 54, § 12(b), eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 728, § 21, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1078, § 17, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment, to conform this section to Acts 1985, 69th Leg., Ch. 966 [see italicized note

under §§ 18.001 and 66.023, main volume], added subsec. (d) relating to delivery of envelope No. 4 to

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§ 66.058

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the voter registrar, and repealed Acts 1985, 69th Leg., Ch. 966.

§ 66.057. Regulating Public Inspection of Certain Election Records

(a) The election returns for a particular precinct that are delivered to the general custodian of election records do not become public information until the custodian completes the unofficial tabulation of the results for that precinct.

(b) The general custodian of election records or the custodian's designee shall be present at all times when the records delivered in ballot box no. 4 are inspected.

(c) The election records in envelope no. 3 become public information when delivery of the precinct election records is completed.

Amended by Acts 1997, 75th Leg., ch. 864, § 65, eff. Sept. 1, 1997.

§ 66.058. Preservation of Precinct Election Records

(a) Except as otherwise provided by this code, the precinct election records shall be preserved by the authority to whom they are distributed for 60 days after election day.

(b) The voted ballots and ballot stubs shall be preserved securely in a locked room in the locked ballot box or sealed envelope, as applicable, in which they are delivered to the general custodian of election records. Except as permitted by this code, a ballot box containing voted ballots or an envelope containing ballot stubs may not be opened during the preservation period.

(c) If during the preservation period an authorized entry is made into a ballot box containing voted ballots or an envelope containing ballot stubs, when the purpose for the entry is fulfilled, the box or envelope shall be relocked or resealed, as applicable, and the box and key or envelope returned to the custodian.

(d) A custodian of a ballot box containing voted ballots or an envelope containing ballot stubs commits an offense if, during the preservation period prescribed by Subsection (a), the custodian:

(1) makes an unauthorized entry into the box or envelope; or

(2) fails to prevent another person from handling the box or envelope in an unauthorized manner or from making an unauthorized entry into the box or envelope.

(e) An offense under Subsection (d) is a Class A misdemeanor.

(f) The records in ballot box no. 4 may be preserved in that box or by any other method chosen by the custodian. If the records are removed from the box, they may not be commingled with any other election records kept by the custodian.

(g) The precinct election records in an election involving a federal office shall be preserved by the authority to whom they are distributed for at least 22 months after election day in accordance with federal law. The secretary of state shall instruct the affected authorities on the actions necessary for compliance with federal law.

(h) The ballot stubs shall be destroyed after expiration of the prescribed preservation period, subject to an extension of the period under Section 1.013. The ballot stubs are confidential information and are not subject to public inspection before they are destroyed.

Amended by Acts 1997, 75th Leg., ch. 1078, § 18, eff. Sept. 1, 1997.

Historical and Statutory Notes

1997 Legislation

Section 23 of Acts 1997, 75th Leg., ch. 1078, provides:

"The secretary of state by rule shall prescribe any procedures necessary to implement this Act."

Library References

Conduct of elections, returns, see Brooks, 35 Texas Practice § 11.18.

§ 66.059. Retrieving Erroneously Placed Election Records

(a) On written application by the presiding officer of the local canvassing authority or the presiding judge of the election precinct, a district judge of the county in which a ballot box containing voted ballots or an envelope containing ballot stubs is in custody may order the box or envelope opened to retrieve an election record that was erroneously placed in the box or envelope.

(b) The district judge shall post a notice of the date, hour, and place for opening the box or envelope on the bulletin board used for posting notices of the meetings of the governing body of the political subdivision served by the general custodian of election records. The notice must remain posted continuously for the 24 hours immediately preceding the hour set for opening the box or envelope.

(c) Any interested person may observe the opening of the box or envelope.

(d) The district judge shall issue the orders necessary to safeguard the contents of a ballot box or envelope opened under this section.

Amended by Acts 1997, 75th Leg., ch. 1078, § 19, eff. Sept. 1, 1997.

§ 66.060. Delivery and Preservation of Key to Ballot Box No. 3

(a) The presiding judge shall deliver the key to ballot box no. 3 in person to the following authority:

(1) the sheriff, for an election ordered by the governor or a county authority or for a primary election, except that in a year in which the office of sheriff is regularly on the ballot the presiding judge shall deliver the key to the county judge, and if both those offices are on the same ballot because of the filling of an unexpired term the key shall be delivered to the county auditor or to a designated member of the commissioners court who is not on the ballot and who is appointed by the court if the county does not have a county auditor;

(2) the chief of police or city marshal, for an election ordered by a city authority; or

(3) the constable of the justice precinct in which the office of the political subdivision's governing body is located, or if the office of constable is vacant, the sheriff of the county in which the governing body's office is located, for an election ordered by an authority of a political subdivision other than a county or city.

(b) The ballot box key shall be delivered at the same time as the precinct election records.

(c) The custodian of the key to ballot box no. 3 shall keep the key for the period for preserving the precinct election records except for the time the key is temporarily out of the custodian's custody in accordance with this code.

(d) A person commits an offense if the person is the custodian of the key to a ballot box containing voted ballots and, during the period for keeping the key, the person knowingly relinquishes custody of the key except as permitted by law. An offense under this subsection is a Class B misdemeanor.

(e) After the period for keeping a key to ballot box no. 3 expires, the key's custodian shall return the key to the custodian of the ballot box.

Amended by Acts 1989, 71st Leg., ch. 430, § 1, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 864, § 66, eff. Sept. 1, 1997.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment, in subd. (a)(1) added the exception.

§ 66.062. Returning Equipment and Supplies

(a) At the same time the precinct election records are delivered, the unused election supplies shall be delivered to the authority responsible for distributing the election supplies.

(b) The presiding judge shall follow the directions of the authority responsible for distributing the election supplies regarding the storage or return after the election of ballot boxes no. 1 and no. 2, the keys to those boxes, voting booths, and other election equipment. Renumbered from § 66.063 and amended by Acts 1987, 70th Leg., ch. 54, § 12(b), eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment deleted provisions formerly constituting this section and renumbered the provisions formerly constituting § 66.063 as § 66.062.

Acts 1985, 69th Leg., ch. 966 [see italicized notes following §§ 66.062 and 66.063, main volume] was repealed by Acts 1987, 70th Leg., ch. 54, § 14(b).

§ 66.063. Renumbered as § 66.062 by Acts 1987, 70th Leg., ch. 54, § 12(b), eff. Sept. 1, 1987

Historical and Statutory Notes

Acts 1985, 69th Leg., ch. 966, [see italicized note, main volume] was repealed by Acts 1987, 70th Leg., ch. 54, § 14(b).

CHAPTER 67. CANVASSING ELECTIONS

Section		Section	
67.003.	Time for Local Canvass.	67.013.	Procedure for Canvass by Governor.
67.004.	Procedure for Local Canvass.	67.014.	Determining Official Result of Election Canvassed at State Level.
67.010.	County Returns Canvassed by Governor.	67.015.	State Election Register.
67.011.	County Returns Canvassed by Legislature.	67.016.	Certificate of Election.
67.012.	Time for Canvass by Governor.	67.017.	Reporting Precinct Results to Secretary of State.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Library References

Conduct of elections, canvass, see Brooks, 35 Texas Practice § 11.19.

§ 67.003. Time for Local Canvass

Each local canvassing authority shall convene to conduct the local canvass at the time set by the canvassing authority's presiding officer:

- (1) on the seventh day after election day for the general election for state and county officers; or
- (2) not earlier than the third day or later than the sixth day after election day for an election other than the general election for state and county officers.

Amended by Acts 1993, 73rd Leg., ch. 728, § 22, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1349, § 31, eff. Sept. 1, 1997.

§ 67.004. Procedure for Local Canvass

(a) At the time set for convening the canvassing authority for the local canvass, the presiding officer of the canvassing authority shall deliver the sealed precinct returns to the authority. The authority shall open the returns for each precinct and canvass them as provided by this section. Two members of the authority constitute a quorum for purposes of canvassing an election.

(b) The canvassing authority shall prepare a tabulation stating for each candidate and for and against each measure:

- (1) the total number of votes received in each precinct; and
- (2) the sum of the precinct totals tabulated under Subdivision (1).

(c) The canvassing authority may prepare the tabulation as a separate document or may enter the tabulation directly in the local election register maintained for the authority. The authority shall attach or include as part of the tabulation the report of early voting votes by precinct received under Section 87.1231.

(d) The canvassing authority may compare the precinct returns with the corresponding tally list. If a discrepancy is discovered between the vote totals shown on the returns and those shown on the tally list for a precinct, the presiding judge of the precinct shall examine the returns and tally list and make the necessary corrections on the returns.

(e) On completion of the canvass, the presiding officer of the canvassing authority shall deliver the tabulation to the custodian of the local election register unless it is entered directly in the election register. The custodian shall preserve the tabulation for the period for preserving the precinct election records.

(f) On completion of the canvass, the presiding officer of the canvassing authority shall deliver the precinct returns, tally lists, and early voting precinct report used in the canvass to the general custodian of election records. The custodian shall preserve them for the period for preserving the precinct election records.

Amended by Acts 1989, 71st Leg., ch. 114, § 10, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 203, §§ 1.01, 2.51; Acts 1991, 72nd Leg., ch. 554, § 22, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 728, § 23, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1349, § 32, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

Section 3.01 of Acts 1991, 72nd Leg., ch. 203 provides:

“(a) Except as otherwise provided by this section and by Section 1.12 of Article 1 of this Act, this Act takes effect September 1, 1991.

“(b) This Act does not take effect until it is approved or precleared under the federal Voting Rights Act (42 U.S.C. Secs. 1971, 1973, et seq.). An objection to any provision of this Act interposed under the federal Voting Rights Act does not affect the validity of the remainder of this Act.

“(c) Subsection (b), Section 84.011, Election Code, as added by Article 1 of this Act, applies only to official application forms for an absentee ballot to be voted by mail furnished by the secretary of state on or after September 1, 1993. An official application form for an absentee ballot to be voted by mail that was furnished by the secretary of state before that date remains valid.”

Acts 1991, 72nd Leg., ch. 203 was approved or precleared under the federal Voting Rights Act (42 U.S.C. Secs. 1971, 1973, et seq.)

Section 2.80 of Acts 1991, 72nd Leg., ch. 203 provides:

“This article is intended only to change the terminology involving ‘absentee voting’ to appropriate terminology using ‘early voting.’ The reenactment of text in this article to effect this change in terminology does not prevail over a conflicting change in law made by another Act of the 72nd Legislature, Regular Session, 1991, and that conflicting change is given effect with the change in terminology made by this article.”

Section 51 of Acts 1991, 72nd Leg., ch. 554 provides:

“This Act is intended only to change the terminology involving ‘absentee voting’ to appropriate terminology using ‘early voting.’ The reenactment of text in this Act to effect this change in terminology does not prevail over a conflicting change in law made by another Act of the 72nd Legislature, Regular Session, 1991, and that conflicting change is given effect with the change in terminology made by this Act.”

§ 67.010. County Returns Canvassed by Governor

(a) The county election returns for an election for a statewide office other than governor or lieutenant governor, a statewide measure, a district office, or president and vice-president of the United States shall be canvassed by the governor.

(b) When this code refers to the presiding officer of the final canvassing authority, the secretary of state is considered to be the presiding officer when the final canvassing authority is the governor.

(c) The canvass of county returns shall be conducted in accordance with this chapter except as otherwise provided by this code.

Amended by Acts 1987, 70th Leg., ch. 54, § 18(a), eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 168, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment, to conform this section to Acts 1985, 69th Leg., ch. 479, § 160 and to codify V.A.T.S. Election Code, art. 9.29a, added subsec. (e).

1989 Legislation

The 1989 amendment rewrote the section which formerly read:

“(a) The county election returns for an election for a statewide office other than governor or lieutenant governor, a statewide measure, a district office, or president and vice-president of the United States shall be canvassed by the state board of canvassers.

“(b) The state board of canvassers consists of:

“(1) the secretary of state, as presiding officer;

“(2) the governor; and

“(3) a citizen of the state appointed by the governor with the advice and consent of the senate.

“(c) The citizen member serves a two-year term beginning on February 15 of each odd-numbered year. The member is entitled to the same allowances for travel expenses as those granted to state employees.

“(d) The canvass of county returns shall be conducted in accordance with this chapter except as otherwise provided by this code.

“(e) The state board of canvassers is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the board is abolished September 1, 1989.”

Prior Laws:

P.D. 3648.

G.L. vol. 3, p. 104.

Acts 1848, p. 104.

Rev.Civ.St. 1879, arts. 1706, 1710.

G.L. vol. 9, p. 357.

G.L. vol. 10, p. 1079.

Rev.Civ.St.1895, arts. 1754, 1758, 1815.

Acts 1897, p. 24.

Rev.Civ.St.1911, arts. 3031, 3036, 3180, 3181.

Acts 1933, 43rd Leg., p. 762, ch. 225, § 8.

Vernon's Ann.Civ.St. arts. 3031, 3034, 3068, 3083.

Acts 1951, 52nd Leg., p. 1097, ch. 492, arts. 117, 120, 157, 157a.

Acts 1963, 58th Leg., p. 1138, ch. 442, §§ 13, 14.

Acts 1977, 65th Leg., p. 1856, ch. 735, § 2.171.

Acts 1981, 67th Leg., p. 536, ch. 219, § 1.

V.A.T.S. Election Code, arts. 8.35, 8.38, 9.29, 9.29a.

Acts 1985, 69th Leg., ch. 479, § 160.

§ 67.011. County Returns Canvassed by Legislature

(a) The county election returns for an election for the office of governor or lieutenant governor shall be canvassed by the legislature and the official result declared by the speaker of the house of representatives in accordance with Article IV, Section 3, of the Texas Constitution.

(b) If a county's election returns are incomplete or missing, the legislature may substitute the secretary of state's tabulation for that county or may obtain the necessary information from the county. On request of the legislature, the secretary of state or the county shall promptly transmit the information to the legislature by the most expeditious means available.

(c) On completion of the canvass, the speaker of the house of representatives shall deliver the county returns to the secretary of state, who shall retain them for the period for preserving the precinct election records.

Amended by Acts 1993, 73rd Leg., ch. 728, § 24, eff. Sept. 1, 1993.

§ 67.012. Time for Canvass by Governor

(a) The governor shall conduct the state canvass not earlier than the 15th or later than the 30th day after election day at the time set by the secretary of state.

(b) The secretary of state shall post, on the bulletin board used for posting notice of meetings of state governmental bodies, a notice of the date, hour, and place of the canvass at least 72 hours before the canvass is conducted.

Amended by Acts 1987, 70th Leg., ch. 54, § 6(a), eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 163, § 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 728, § 25, eff. Sept. 1, 1993.

Historical and Statutory Notes

1987 Legislation

The 1987 amendatory act to conform this section to Acts 1985, 69th Leg., ch. 310 [see italicized note,

main volume], substituted "30th day" for "21st

§ 67.012

CONDUCT OF ELECTIONS

Title 6

day”, and § 14(b) repealed Acts 1985, 69th Leg., ch. 310.

1989 Legislation

The 1989 amendment in the section heading substituted “governor” for “state board” and re-wrote the section which formerly read:

“The state board of canvassers shall convene to conduct the state canvass not earlier than the 15th or later than the 30th day after election day at the time set by the board’s presiding officer.”

§ 67.013. Procedure for Canvass by Governor

(a) At the time set for the state canvass, the secretary of state shall deliver the county returns to the governor.

(b) The secretary of state shall prepare a tabulation stating for each candidate and for and against each measure required to be canvassed by the governor:

- (1) the total number of votes received in each county; and
- (2) the sum of the county totals tabulated under Subdivision (1).

(c) At the canvass of an election in which the office of governor or lieutenant governor is voted on, the secretary of state shall prepare a separate tabulation on the candidates for governor and lieutenant governor, indicating for each candidate the information required by Subsection (b).

(d) The governor shall certify the tabulations.

(e) The secretary of state shall retain the county election returns used in the canvass and the tabulations for the period for preserving the precinct election records.

Amended by Acts 1989, 71st Leg., ch. 163, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment rewrote the section.

§ 67.014. Determining Official Result of Election Canvassed at State Level

The official result of an election canvassed by the governor or by the legislature is determined from the canvass of the county returns conducted by that authority.

Amended by Acts 1989, 71st Leg., ch. 163, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment substituted “governor” for “state board of canvassers”.

§ 67.015. State Election Register

(a) An election register shall be maintained for the governor.

(b) Except as provided by Subsection (e), for each election the election register shall contain in tabulated form the information required to appear in the tabulations of the county results prepared by the secretary of state.

(c) The secretary of state is the custodian of the election register for the governor.

(d) After each canvass conducted by the governor, the secretary of state shall make the appropriate entries in the election register.

(e) If a discrepancy exists between the legislature’s canvass of the election for governor or lieutenant governor and the register entries pertaining to either of those offices that are made from the secretary of state’s tabulation, the secretary shall make the entries in the register necessary to make it correspond to the legislature’s canvass.

(f) The election register shall be preserved as a permanent record of the state.

Amended by Acts 1989, 71st Leg., ch. 163, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

1989 Legislation to the state board of canvassers throughout the
The 1989 amendment substituted references to section.
the governor and secretary of state for references

§ 67.016. Certificate of Election

(a) After the completion of a canvass, the presiding officer of the local canvassing authority shall prepare a certificate of election for each candidate who is elected to an office for which the official result is determined by that authority's canvass.

(b) The governor shall prepare a certificate of election for each candidate who is elected to an office for which the official result is determined by the canvass conducted by the governor.

(c) A certificate of election must contain:

- (1) the candidate's name;
- (2) the office to which the candidate is elected;
- (3) a statement of election to an unexpired term, if applicable;
- (4) the date of the election;
- (5) the signature of the officer preparing the certificate; and

(6) any seal used by the officer preparing the certificate to authenticate documents that the officer executes or certifies.

(d) After the canvass of a presidential election, the secretary of state shall prepare a certificate of election for each presidential elector candidate who is elected.

(e) The authority preparing a certificate of election shall promptly deliver it to the person for whom it is prepared.

(f) A certificate of election may not be issued to a person who has been declared ineligible to be elected to the office.

(g) This section does not apply to the offices of governor and lieutenant governor.

Amended by Acts 1989, 71st Leg., ch. 163, § 2, eff. Sept. 1, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment in subsec. (b) substituted "governor" for "state board of canvassers".

§ 67.017. Reporting Precinct Results to Secretary of State

(a) After each election for a statewide office or the office of United States representative, state senator, or state representative, the county clerk shall prepare a report of the number of votes, including early voting votes, received in each county election precinct for each candidate for each of those offices. In a presidential election year, the report must include the number of votes received in each precinct for each set of candidates for president and vice-president of the United States.

(b) The county clerk shall deliver the report to the secretary of state not later than the 30th day after election day.

(c) The report may be:

- (1) a transcribed or photographic copy of the precinct returns;
- (2) a transcribed or photographic copy of the tabulation prepared by the local canvassing authority; or
- (3) in any other form approved by the secretary of state.

(d) The secretary of state shall preserve a report received under this section for 10 years unless the secretary prepares a written tabulation of the information contained in the report received. In that case, the secretary shall preserve the original report for two years and the tabulation for 10 years after receipt of the original report.

(e) After the applicable preservation period prescribed by Subsection (d) expires, the secretary of state shall transfer the report or tabulation to the state library.

Amended by Acts 1987, 70th Leg., ch. 54, § 2(c), eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 114, § 11, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 203, § 2.52; Acts 1991, 72nd Leg., ch. 554, § 23, eff. Sept. 1, 1991.

Historical and Statutory Notes

1987 Legislation

The 1987 amendatory act, to conform this section to Acts 1985, 69th Leg., ch. 560, [see italicized note in main volume] in subsec. (a) inserted "or the office of United States representative, state senator, or state representative," and substituted "each of those offices" for " a statewide office", and repealed Acts 1985, 69th Leg., ch. 560.

1989 Legislation

The 1989 amendment in the first sentence in subsec. (a) inserted "including absentee votes", and rewrote subsec. (b) which formerly provided for delivery of a general election report not later than 70 days after election day and a special election report not later than 30 days after election day.

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

Section 2.80 of Acts 1991, 72nd Leg., ch. 203 provides:

"This article is intended only to change the terminology involving 'absentee voting' to appropriate terminology using 'early voting.' The reenactment of text in this article to effect this change in terminology does not prevail over a conflicting change in law made by another Act of the 72nd Legislature, Regular Session, 1991, and that conflicting change is given effect with the change in terminology made by this article."

**CHAPTER 68. TABULATION OF UNOFFICIAL RESULTS
OF CERTAIN RACES BY SECRETARY OF STATE**

**SUBCHAPTER B. DUTIES OF LOCAL
ELECTION OFFICIALS FOR
CERTAIN RACES**

**Section SUBCHAPTER C. ELECTIONS
ADVISORY COMMITTEE**

- Section 68.033. Counting of Early Voting Ballots.
- 68.034. Transmission of Results to Secretary of State.

- 68.051. Membership.
- 68.052. Chair and Meetings.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. CONDUCT OF TABULATION

§ 68.001. Duty to Tabulate Generally

Historical and Statutory Notes

1987 Legislation

Acts 1987, 70th Leg., 2nd C.S., ch. 24, art. 2, § 5, in subsec. (a), deleted a reference to member, State Board of Education, from the list of offices but failed to take effect as a result of the 1987 referendum.

Effect of Acts 1987, 70th Leg., 2nd C.S., ch. 24 and 1987 election, see note following V.T.C.A. Education Code, § 11.21.

**SUBCHAPTER B. DUTIES OF LOCAL ELECTION
OFFICIALS FOR CERTAIN RACES**

§ 68.033. Counting of Early Voting Ballots

The early voting ballot board shall count the early voting ballots periodically throughout the day.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.53; Acts 1991, 72nd Leg., ch. 554, § 24, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 68.034. Transmission of Results to Secretary of State

(a) The county clerk shall transmit periodically, by telephone or other electronic means, to the secretary of state the results for the races being tabulated by the secretary. The results shall be transmitted continuously until complete.

(b) The county clerk shall transmit the complete or partial results of the early voting for the appropriate races at 7 p.m. on election day. If only partial results are available, the results shall be transmitted periodically until complete.

(c) Costs of transmission of the results may be paid by the state.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.54; Acts 1991, 72nd Leg., ch. 554, § 25, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

SUBCHAPTER C. ELECTIONS ADVISORY COMMITTEE

§ 68.051. Membership

(a) Not later than February 1 of each odd-numbered year, the lieutenant governor, speaker of the house of representatives, and secretary of state shall each appoint six persons to serve on an elections advisory committee in connection with the tabulation and reporting of election results under this chapter.

(b) Each member of the committee serves a two-year term beginning on February 1 of odd-numbered years.

(c) Appointments to the committee shall be made without regard to race, creed, sex, religion, and national origin.

(d) Instead of making one of the required appointments, each appointing officer or the officer's designee may serve on the committee.

(e) Each appointing officer shall allocate at least four of the officer's appointments among members of the various media organizations covering elections in this state.

(f) The following persons or their designees shall also serve on the committee:

(1) the president of the Texas Association of Broadcasters;

(2) the president of the Texas Press Association;

(3) the president of the Texas Daily Newspaper Association; and

(4) the chief state executive officers of the Associated Press and United Press International.

Amended by Acts 1997, 75th Leg., ch. 864, § 67, eff. Sept. 1, 1997.

§ 68.052. Chair and Meetings

(a) The secretary of state shall designate a chair and vice chair of the committee from among the media organization membership.

(b) Meetings of the committee shall be held at the call of the chair.

Amended by Acts 1997, 75th Leg., ch. 864, § 68, eff. Sept. 1, 1997.

TITLE 7. EARLY VOTING

WESTLAW Computer Assisted Legal Research

WESTLAW supplements your legal research in many ways. WESTLAW allows you to

- update your research with the most current information
- expand your library with additional resources
- retrieve direct history, precedential history and parallel citations with the Insta-Cite service.

For more information on using WESTLAW to supplement your research, see the WESTLAW Electronic Research Guide, which follows the Preface.

Title 7 was amended by Acts 1991, 72nd Leg., ch. 554, § 1

Library References

Conduct of elections, absentee voting, see
Brooks, 35 Texas Practice § 11.16.

SUBTITLE A. EARLY VOTING

CHAPTER 81. GENERAL PROVISIONS

Section		Section	
81.001.	Early Voting Required.	81.004.	Location of Public Election Records.
81.002.	Applicability of Other Code Provisions.	81.005.	Common or Contract Carrier.
81.003.	Substitution of Electronic System Ballots for Paper Ballots.		

Library References

Tex. Prac., County and Special District Law, ch.
11.

§ 81.001. Early Voting Required

(a) In each election in this state, early voting shall be conducted by personal appearance at an early voting polling place and by mail.

(b) A reference in a law outside this code to "absentee voting" means "early voting."

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.03; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

Section 51 of Acts 1991, 72nd Leg., ch. 554 provides:

"This Act is intended only to change the terminology involving 'absentee voting' to appropriate

terminology using 'early voting.' The reenactment of text in this Act to effect this change in terminology does not prevail over a conflicting change in law made by another Act of the 72nd Legislature, Regular Session, 1991, and that conflicting change is given effect with the change in terminology made by this Act."

Library References

Conduct of elections, absentee voting, .see
Brooks, 35 Texas Practice § 11.16.

§ 81.002. Applicability of Other Code Provisions

The other titles of this code apply to early voting except provisions that are inconsistent with this title or that cannot feasibly be applied to early voting.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.03; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 81.003. Substitution of Electronic System Ballots for Paper Ballots

In an election in which an electronic voting system is used in regular voting but not for all or part of the early voting, the electronic system ballots prepared for use in regular voting may be used for early voting, if practicable, at the discretion of the authority responsible for having the official ballot prepared for the election.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.03; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 81.004. Location of Public Election Records

Election records for which the early voting clerk is custodian and that are public information shall be kept:

(1) for an election in which a county clerk or city secretary is the early voting clerk, at the early voting clerk's main business office; or

(2) for any other election, at a location designated by the authority appointing the clerk.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.03; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 81.005. Common or Contract Carrier

A common or contract carrier may not be used to perform an act in accordance with this title unless the carrier is a bona fide, for profit carrier, the primary business of which is transporting or delivering property for compensation and the business practices of which are reasonable and prudent according to the usual standards for the business in which it is engaged.

Added by Acts 1997, 75th Leg., ch. 1381, § 1, eff. Sept. 1, 1997.

Historical and Statutory Notes

1997 Legislation

Section 26 of Acts 1997, 75th Leg., ch. 1381, provides:

“(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this

section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

“(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.”

CHAPTER 82. ELIGIBILITY FOR EARLY VOTING

Section

82.001. Absence From County of Residence.
82.002. Disability.
82.003. Age.

Section

82.004. Confinement in Jail.
82.005. Eligibility for Early Voting by Personal Appearance.
82.006. Renumbered.

Library References

Conduct of elections, absentee voting, see Brooks, 35 Texas Practice § 11.16.

§ 82.001. Absence From County of Residence

(a) Subject to Subsection (b), a qualified voter is eligible for early voting by mail if the voter expects to be absent from the county of the voter's residence on election day and during the regular hours for conducting early voting at the main early voting polling place for that part of the period for early voting by personal appearance remaining after the voter's early voting ballot application is submitted to the early voting clerk.

(b) If a voter's early voting ballot application is submitted on or after the first day of the period for early voting by personal appearance, the voter is ineligible for early voting by mail unless the voter is absent from the county when the application is submitted and satisfies the requirements prescribed by Subsection (a).

Amended by Acts 1987, 70th Leg., ch. 472, § 19, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, § 2.05; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

Notes of Decisions

2. Validity of vote

Absentee voter cannot, after the election, impeach his vote by testifying that he was not entitled under the law to cast an absentee ballot; accordingly, an absentee voter may not testify

after the election contrary to the facts stated in his application for an absentee ballot. *Tiller v. Martinez* (App. 4 Dist. 1998) 974 S.W.2d 769, rehearing overruled, review dismissed w.o.j., rehearing of petition for review denied.

§ 82.002. Disability

(a) A qualified voter is eligible for early voting by mail if the voter has a sickness or physical condition that prevents the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring the voter's health.

(b) Expected or likely confinement for childbirth on election day is sufficient cause to entitle a voter to vote under Subsection (a).

Amended by Acts 1987, 70th Leg., ch. 472, § 19, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, § 2.05; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, § 69, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 82.003. Age

A qualified voter is eligible for early voting by mail if the voter is 65 years of age or older on election day.

Amended by Acts 1987, 70th Leg., ch. 472, § 19, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, § 2.05; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

Section 2.80 of Acts 1991, 72nd Leg., ch. 203 provides:

"This article is intended only to change the terminology involving 'absentee voting' to appro-

priate terminology using 'early voting.' The reenactment of text in this article to effect this change in terminology does not prevail over a conflicting change in law made by another Act of the 72nd Legislature, Regular Session, 1991, and that conflicting change is given effect with the change in terminology made by this article."

§ 82.004. Confinement in Jail

(a) A qualified voter is eligible for early voting by mail if, at the time the voter's early voting ballot application is submitted, the voter is confined in jail:

- (1) serving a misdemeanor sentence for a term that ends on or after election day;
- (2) pending trial after denial of bail;
- (3) without bail pending an appeal of a felony conviction; or
- (4) pending trial or appeal on a bailable offense for which release on bail before election day is unlikely.

(b) A voter confined in jail who is eligible for early voting is not entitled to vote by personal appearance unless the authority in charge of the jail, in the authority's discretion, permits the voter to do so.

Amended by Acts 1987, 70th Leg., ch. 472, § 19, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991. Renumbered from § 82.005 and amended by Acts 1991, 72nd Leg., ch. 203, § 1.02; Acts 1997, 75th Leg., ch. 864, § 70, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

A former § 82.004, which related to eligibility for early voting by mail for voters forbidden by religious conviction to vote, was deleted by Acts 1991, 72nd Leg., ch. 203, § 1.02, and was derived from Acts 1987, 70th Leg., ch. 472, § 19, and Acts 1991, 72nd Leg., ch. 554, § 1.

§ 82.005. Eligibility for Early Voting by Personal Appearance

Any qualified voter is eligible for early voting by personal appearance.

Amended by Acts 1987, 70th Leg., ch. 472, § 19, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991. Renumbered from § 82.006 and amended by Acts 1991, 72nd Leg., ch. 203, § 1.02.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg.,

ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

A former § 82.005 was renumbered as § 82.004.

Library References

Jail, inmate rights, see Brooks, 35 Texas Practice § 20.70.

§ 82.006. Renumbered as § 82.005 by Acts 1991, 72nd Leg., ch. 203, § 1.02

CHAPTER 83. OFFICER CONDUCTING EARLY VOTING

SUBCHAPTER A. EARLY VOTING CLERK

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SUBCHAPTER A. EARLY VOTING CLERK

§ 83.001. **Early Voting Clerk Generally**

- (a) The early voting clerk shall conduct the early voting in each election.
 - (b) The clerk is an officer of the election in which the clerk serves.
 - (c) The clerk has the same duties and authority with respect to early voting as a presiding election judge has with respect to regular voting, except as otherwise provided by this title.
- Amended by Acts 1991, 72nd Leg., ch. 203, § 2.06; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see notes following § 67.004.

§ 83.002. **County Clerk as Early Voting Clerk**

The county clerk is the early voting clerk for the county in:

- (1) the general election for state and county officers and any other countywide election held at county expense;
- (2) a primary election; and

(3) a special election ordered by the governor.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.06; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 83.003. Clerk for Less-Than-Countywide Elections Held at County Expense

(a) In a less-than-countywide election ordered by the commissioners court, county judge, county board of school trustees, or any other county authority and held at county expense, the county clerk is the early voting clerk unless the authority appoints a person other than the county clerk.

(b) To be eligible for appointment as early voting clerk under this section, a person must meet the requirements for eligibility for service as a presiding election judge, except that the appointee must be a qualified voter of the county and is not required to be a qualified voter of any other particular territory.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.06; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 83.004. Clerk for Elections Ordered by County Authority Not Held at County Expense

(a) In an election ordered by the commissioners court, county judge, county board of school trustees, or any other county authority and not held at county expense, the authority ordering the election shall appoint the early voting clerk.

(b) If the county clerk is appointed as early voting clerk under this section, the county clerk shall serve in that capacity, and the authority responsible for paying the expenses of the election shall reimburse the county for the time spent by the county clerk as the early voting clerk and by the county clerk's deputies as deputy early voting clerks.

(c) To be eligible for appointment as early voting clerk under this section, a person other than the county clerk must meet the requirements for eligibility for service as a presiding election judge, except that the appointee must be a qualified voter of the county and is not required to be a qualified voter of any other particular territory.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.06; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 83.005. Clerk for City Elections

The city secretary is the early voting clerk for an election ordered by an authority of a city.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.06; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 83.006. Clerk for Elections of Other Political Subdivisions

(a) In an election ordered by an authority of a political subdivision other than a county or city, the authority ordering the election shall appoint the early voting clerk.

(b) To be eligible for appointment as early voting clerk under this section, a person must meet the requirements for eligibility for service as a presiding election judge, except that:

(1) an appointee must be a qualified voter of the political subdivision and is not required to be a qualified voter of any other particular territory; and

(2) in an election in which an officer of the political subdivision is a candidate, an appointee's status as an employee of the political subdivision does not make the appointee ineligible for appointment as the clerk.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.06; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see notes following § 67.004.

§ 83.007. Clerk for Other Elections

(a) In an election for which this code does not provide for an early voting clerk, the authority ordering the election shall appoint the early voting clerk.

(b) To be eligible for appointment as early voting clerk under this section, a person must meet the requirements for eligibility for service as a presiding election judge, except that the appointee must be a qualified voter of the territory covered by the election and is not required to be a qualified voter of any other particular territory.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.06; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 83.008. Additional Clerks for Certain Elections

(a) In an election on the creation, organization, functioning, or existence of one or more political subdivisions that affects more than one political subdivision, more than one early voting clerk may be appointed.

(b) An area within the territory covered by the election may not be served by more than one clerk.

(c) Each clerk shall serve the one or more political subdivisions designated by the authority appointing the clerk.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.06; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 83.009. Employee of Political Subdivision Serving as Clerk

An employee of a political subdivision may serve as early voting clerk in an election affecting the political subdivision if the political subdivision's governing body approves the appointment.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.06; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see notes following § 67.004.

§ 83.010. Public Notice of Clerk's Mailing Address

An election order and the election notice must state the early voting clerk's official mailing address, except for an election in which a county clerk or city secretary is the early voting clerk under Section 83.002 or 83.005.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.06; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see notes following § 67.004.

§ 83.011. Office Hours on Election Day

The early voting clerk's office shall remain open for early voting activities during the hours the polls are required to be open for voting on election day.

Added by Acts 1991, 72nd Leg., ch. 203, § 1.03.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see notes following § 67.004.

[Sections 83.012 to 83.030 reserved for expansion]

SUBCHAPTER B. DEPUTY CLERK

§ 83.031. Deputy Early Voting Clerk Generally

(a) Deputy early voting clerks may be appointed as provided by this subchapter to assist the early voting clerk.

(b) A deputy is an officer of the election in which the deputy serves.

(c) A deputy early voting clerk has the same authority as the early voting clerk in conducting early voting, subject to the early voting clerk's supervision.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.06; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 83.032. Deputy for County Clerk or City Secretary

(a) In an election in which a county clerk or a city secretary is the early voting clerk, the county clerk or city secretary by written order may appoint one or more of that officer's

§ 83.032

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permanent deputies as deputy early voting clerks. The clerk or secretary may appoint temporary deputies to serve as deputy early voting clerks in accordance with the law applicable to the appointment of deputies generally.

(b) For a temporary deputy to be eligible for appointment as a deputy early voting clerk under this section, the temporary deputy must meet the requirements for eligibility for service as a presiding election judge, except that:

(1) an appointee is not required to be a qualified voter of any particular territory other than the county, in the case of an appointment by a county clerk, or the city, in the case of an appointment by a city secretary; and

(2) in an election in which the early voting clerk is a candidate, an appointee's status as an employee of the clerk does not make the appointee ineligible for appointment as a deputy early voting clerk.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.06; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 83.033. Deputy for Other Clerks

(a) In an election in which a person other than a county clerk or a city secretary is the early voting clerk, the authority appointing the clerk, by written order, may appoint one or more deputy early voting clerks.

(b) To be eligible for appointment as a deputy early voting clerk under this section, a person must meet the requirements for eligibility for appointment as the early voting clerk.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.06; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 83.034. Employee of Political Subdivision Serving as Deputy

An employee of a political subdivision may serve as deputy early voting clerk in an election affecting the political subdivision if the political subdivision's governing body approves the appointment.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.06; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

SUBCHAPTER C. COMPENSATION

§ 83.051. Compensation of County Clerk or City Secretary

A county clerk or a city secretary is not entitled to receive additional compensation for serving as early voting clerk.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.06; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 83.052. Compensation of Other Clerks and Their Deputies

An early voting clerk who is not a county clerk or city secretary and the deputy early voting clerks appointed to assist the clerk are entitled to compensation in an amount fixed by the authority ordering the election.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.06; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 83.053. Service Without Compensation by Public Employee

(a) An employee of the authority ordering an election who is appointed as early voting clerk or deputy early voting clerk may be appointed to serve without additional compensation.

(b) An employee of a political subdivision who is appointed as early voting clerk or deputy early voting clerk for an election affecting the political subdivision may be appointed to serve without additional compensation if the political subdivision's governing body approves appointment on that basis.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.06; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see notes following § 67.004.

CHAPTER 84. APPLICATION FOR BALLOT

SUBCHAPTER A. APPLICATION FOR BALLOT

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84.034.	Notice of Denial.
84.035.	Ballot Sent to Applicant.
84.036.	Disposition of Returned Ballot.
84.037.	Preservation of Documents.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. APPLICATION FOR BALLOT

§ 84.001. Application Required

(a) To be entitled to vote an early voting ballot by mail, a person who is eligible for early voting must make an application for an early voting ballot to be voted by mail as provided by this title.

(b) An application must be in writing and signed by the applicant.

(c) An applicant is not required to use an official application form.

(d) An applicant may not use an application form that is furnished to the applicant unless the application form is printed or stamped with the name and official title of the early voting clerk as addressee and the clerk's official mailing address.

(e) An applicant for a ballot to be voted by mail may apply for ballots for the main election and any resulting runoff election on the same application. The timeliness of the application for both elections is determined in relation to the main election. However, if the application is not timely for the main election, the timeliness of the application for the runoff election is determined in relation to that election.

(f) A person who has not made an application as provided by this title is not entitled to receive an early voting ballot to be voted by mail.

Amended by Acts 1987, 70th Leg., ch. 472, § 20, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, § 2.07; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1349, § 33, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1381, § 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 890, § 1, eff. Sept. 1, 1999.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 84.002. Contents of Application

(a) An early voting ballot application must include:

(1) the applicant's name and the address at which the applicant is registered to vote;

(2) for an application for a ballot to be voted by mail on the ground of absence from the county of residence, the address outside the applicant's county of residence to which the ballot is to be mailed;

(3) for an application for a ballot to be voted by mail on the ground of age or disability, the address of the hospital, nursing home or other long-term care facility, or retirement center, or of a person related to the applicant within the second degree by affinity or the third degree by consanguinity, as determined under Chapter 573, Government Code, if the applicant is living at that address and that address is different from the address at which the applicant is registered to vote;

(4) for an application for a ballot to be voted by mail on the ground of confinement in jail, the address of the jail or of a person related to the applicant within the degree described by Subdivision (3);

(5) for an application for a ballot to be voted by mail on any ground, an indication of each election for which the applicant is applying for a ballot; and

(6) an indication of the ground of eligibility for early voting.

(b) An application for a ballot to be voted by mail on the ground of absence from the county of residence must indicate that the applicant satisfies the requirements prescribed by Section 82.001.

Amended by Acts 1987, 70th Leg., ch. 472, § 21, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 203, § 1.04; Acts 1997, 75th Leg., ch. 565, § 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1381, § 3, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

§ 84.003. Signing Application by Witness

An early voting ballot application signed for the applicant by a witness other than the early voting clerk or a deputy must indicate the witness's relationship to the applicant or, if unrelated, indicate that fact.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.07; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 84.004. Unlawfully Witnessing Application

(a) A person commits an offense if, in the same election, the person signs an early voting ballot application as a witness for more than one applicant.

(b) It is an exception to the application of Subsection (a) that the person signed early voting ballot applications for more than one applicant:

(1) as an early voting clerk or deputy early voting clerk; or

(2) and the person is related to the additional applicants as a parent, grandparent, spouse, child, or sibling.

(c) A violation of this section does not affect the validity of an application involved in the offense.

(d) Each application signed by the witness in violation of this section constitutes a separate offense.

(e) An offense under this section is a Class B misdemeanor.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.07; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 84.0041. Providing False Information on Application

(a) A person commits an offense if the person knowingly provides false information on an application for an early voting ballot.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1987, 70th Leg., ch. 472, § 22, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 203, § 2.07; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 565, § 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1381, § 4, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

1997 Legislation

Section 7 of Acts 1997, 75th Leg., ch. 565 provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this

§ 84.0041

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section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect

when the offense was committed, and the former law is continued in effect for that purpose."

For application provision of Acts 1997, 75th Leg., ch. 1381, see notes following V.T.C.A., Elections Code § 81.005.

Cross References

Punishment, Class A misdemeanor, see V.T.C.A., Penal Code § 12.21.

§ 84.005. Application Components

Each document that contains information required for an early voting ballot application and that is submitted to the early voting clerk and any envelope in which an application is submitted are part of the early voting ballot application.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.07; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 84.006. Repealed by Acts 1997, 75th Leg., ch. 1349, § 77, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1381, § 25, eff. Sept. 1, 1997

Historical and Statutory Notes

The repealed section, relating to applications for ballots voted by personal appearance, was derived from:

- Acts 1905, 29th Leg., 1st C.S., p. 520, ch. 11. Rev.Civ.St.1911, art. 2939.
- Acts 1917, 35th Leg., 1st C.S., p. 62, ch. 40.
- Acts 1920, 36th Leg., 4th C.S., p. 10, ch. 6.
- Acts 1921, 37th Leg., p. 217, ch. 113.
- Acts 1923, 38th Leg., p. 318, ch. 149.
- Acts 1931, 42nd Leg., p. 180, ch. 105.
- Acts 1933, 43rd Leg., p. 5, ch. 4.
- Acts 1935, 44th Leg., p. 100, ch. 300, § 1.
- Acts 1935, 44th Leg., 2nd C.S., p. 1700, ch. 437, § 1.
- Acts 1945, 49th Leg., p. 48, ch. 30, § 1.

Vernon's Ann.Civ.St. art. 2956.

- Acts 1951, 52nd Leg., p. 1097, ch. 492, § 37.
- Acts 1957, 55th Leg., p. 100, ch. 49, § 1.
- Acts 1959, 56th Leg., p. 1055, ch. 483, §§ 1, 2.
- Acts 1963, 58th Leg., p. 1017, ch. 424, §§ 14 to 18.
- Acts 1965, 59th Leg., p. 777, ch. 368, § 3.
- Acts 1965, 59th Leg., p. 1552, ch. 678, §§ 5 to 9.
- Acts 1967, 60th Leg., p. 1871, ch. 723, § 17.
- V.A.T.S. Election Code, art. 5.05, subd. 3(b).
- Acts 1985, 69th Leg., ch. 211, § 1.
- Acts 1991, 72nd Leg., ch. 203, § 2.07.
- Acts 1991, 72nd Leg., ch. 554, § 1.

§ 84.007. Submitting Application for Ballot Voted by Mail: General Rule

(a) Except as provided by Sections 84.008 and 84.009, an application for a ballot to be voted by mail must be submitted as provided by this section.

(b) An application must be submitted to the early voting clerk by:

- (1) mail;
- (2) common or contract carrier; or
- (3) telephonic facsimile machine, if the applicant is absent from the county and if a machine is available in the clerk's office.

(c) An application must be submitted on or after the 60th day before election day and before the close of regular business in the early voting clerk's office or 12 noon, whichever is later, on the seventh day before election day unless that day is a Saturday, Sunday, or legal

state or national holiday, in which case the last day is the first preceding regular business day.

(d) An application is considered to be submitted at the time of its receipt by the clerk.

Amended by Acts 1987, 70th Leg., ch. 472, § 23, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 203, § 1.05; Acts 1993, 73rd Leg., ch. 728, § 26, eff. Sept. 1, 1993.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

§ 84.008. Submitting Application for Ballot Voted by Mail: Personal Delivery

(a) An applicant for a ballot to be voted by mail may submit the application by delivering it in person to the early voting clerk if the application is submitted not later than the close of regular business in the clerk's office on the day before the first day of the period for early voting by personal appearance.

(b) This section does not apply to an application submitted under Chapter 101, 102, or 103.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.07; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, § 71, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 84.009. Submitting Application for Ballot Voted by Mail: Confinement in Jail

(a) On request of the applicant, an application for a ballot to be voted by mail on the ground of confinement in jail may be submitted to the early voting clerk, at the discretion of the authority in charge of the jail, by personal delivery by the jail authority or by a designated subordinate of the authority.

(b) An application submitted under this section may not be submitted before the 20th day before election day.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.07; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

Library References

Jail, inmate rights, see Brooks, 35 Texas Practice § 20.70.

§ 84.010. Preservation of Application

Each early voting ballot application shall be preserved after the election for the period for preserving the precinct election records.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.07; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 84.011. Official Application Form

(a) The officially prescribed application form for an early voting ballot must include:

(1) immediately preceding the signature space the statement: "I certify that the information given in this application is true, and I understand that giving false information in this application is a crime.";

(2) a statement informing the applicant of the offense prescribed by Section 84.004;

(3) spaces for entering an applicant's voter registration number and county election precinct of registration, with a statement informing the applicant that failure to furnish that information does not invalidate the application; and

(4) on an application for a ballot to be voted by mail:

(A) a space for an applicant applying on the ground of absence from the county of residence to indicate the date on or after which the applicant can receive mail at the address outside the county;

(B) a space for indicating the fact that an applicant whose application is signed by a witness cannot make the applicant's mark and a space for indicating the relationship or lack of relationship of the witness to the applicant;

(C) a space for entering an applicant's telephone number, with a statement informing the applicant that failure to furnish that information does not invalidate the application;

(D) a space or box for an applicant applying on the ground of age or disability to indicate that the address to which the ballot is to be mailed is the address of a facility or relative described by Section 84.002(a)(3), if applicable;

(E) a space or box for an applicant applying on the ground of confinement in jail to indicate that the address to which the ballot is to be mailed is the address of a relative described by Section 84.002(a)(4), if applicable;

(F) a space for entering the name of any person assisting the applicant;

(G) a statement informing the applicant of the condition prescribed by Section 81.005; and

(H) a statement informing the applicant of the requirement prescribed by Section 86.003(c).

(b) The officially prescribed application form for an early voting ballot to be voted by mail must be at least eight inches by nine inches in size and be printed in at least six-point type.

Amended by Acts 1987, 70th Leg., ch. 472, § 24, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 203, § 1.06; Acts 1997, 75th Leg., ch. 565, § 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 864, § 72, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1381, § 5, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

§ 84.012. Clerk to Mail Application Form on Request

The early voting clerk shall mail without charge an appropriate official application form for an early voting ballot to each applicant requesting the clerk to send the applicant an application form.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.07; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, § 73, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1381, § 6, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

1997 Legislation

Section 257 of Acts 1997, 75th Leg., ch. 864 provides:

"This Act is intended only to change terminology involving gender in the Election Code to appropri-

ate gender-neutral terminology. The reenactment of text in this Act to effect this change in terminology does not prevail over a conflicting change in law, including a conflict in gender-neutral terminology, made by another Act of the 75th Legislature, Regular Session, 1997, and that conflicting change is given effect with the change in terminology made by this Act."

§ 84.013. Application Forms Furnished by Secretary of State

The secretary of state shall maintain a supply of the official application forms for ballots to be voted by mail and shall furnish the forms in reasonable quantities without charge to individuals or organizations requesting them for distribution to voters.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.07; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

SUBCHAPTER B. CANCELING APPLICATION
FOR BALLOT TO BE VOTED BY MAIL

§ 84.031. Cancellation of Application

(a) An application for an early voting ballot to be voted by mail that has been submitted to the early voting clerk may be canceled only as provided by this subchapter.

(b) A person whose application is canceled, if otherwise eligible, may vote in the same manner as if the application had not been submitted.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.08; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 84.032. Request for Cancellation

(a) A person desiring to cancel the person's application for a ballot to be voted by mail must submit a request for the cancellation to an election officer as provided by this section.

(b) A request must:

- (1) be in writing and signed by the applicant;
- (2) specify the election for which the application was made; and
- (3) except as provided by Subsection (c) or (d), be received by the early voting clerk:

(A) not later than the third day before election day; and

(B) if an early voting ballot sent to the applicant is returned to the clerk as a marked ballot, before the marked ballot's arrival at the address on the carrier envelope.

(c) An applicant may submit a request after the close of early voting by personal appearance by appearing in person and:

- (1) returning the ballot to be voted by mail to the early voting clerk; or
- (2) executing an affidavit that the applicant has not received the ballot to be voted by mail.

(d) An applicant may also submit a request by appearing in person and returning the ballot to be voted by mail or presenting a notice received under Section 86.006(e) to:

- (1) the early voting clerk or deputy early voting clerk at any polling place that is open for early voting by personal appearance; or
- (2) the presiding election judge on election day at the applicant's precinct polling place.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.08; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 728, § 27, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1381, § 7, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 84.033. Action on Request

(a) The election officer shall review each cancellation request to determine whether it complies with Section 84.032.

(b) If the request complies, the early voting clerk shall cancel the application and enter on the application "canceled" and the date of cancellation.

(c) If the request complies, the presiding election judge shall enter on the returned ballot or the notice, as applicable, "canceled," place it and the request in an envelope, and deposit the envelope in ballot box no. 4. The applicant's application is considered to be canceled.

(d) If the request does not comply, the election officer shall deny the request and enter on the request "denied" and the date of and reason for the denial. The presiding election judge shall place the request in an envelope and deposit the envelope in ballot box no. 4.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.08; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 728, § 27, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1381, § 8, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 84.034. Notice of Denial

Immediately after denying a cancellation request, the election officer shall notify the applicant of the denial. The notice must state the reason for the denial.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.08; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 728, § 27, eff. Sept. 1, 1993.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 84.035. Ballot Sent to Applicant

If the early voting clerk cancels an application by an applicant to whom an early voting ballot has been sent, the clerk shall:

- (1) remove the applicant's name from the early voting roster; and
- (2) make any other entries in the records and take any other action necessary to prevent the ballot from being counted if returned.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.08; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 84.036. Disposition of Returned Ballot

If an early voting ballot sent to an applicant whose application is canceled is returned to the early voting clerk as a marked ballot, the ballot shall be treated as a marked ballot not timely returned.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.08; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 84.037. Preservation of Documents

The early voting clerk shall preserve each cancellation request for the period for preserving the precinct election records. If the application is canceled, the clerk shall attach it to the cancellation request and preserve it with the request.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.08; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

CHAPTER 85. CONDUCT OF VOTING BY PERSONAL APPEARANCE

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WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. TIME AND PLACE FOR VOTING

§ 85.001. Early Voting Period

(a) The period for early voting by personal appearance begins on the 17th day before election day and continues through the fourth day before election day, except as otherwise provided by this section.

(b) For a special runoff election for the office of state senator or state representative or for a runoff primary election, the period begins on the 10th day before election day.

(c) If the date prescribed by Subsection (a) or (b) for beginning the period is a Saturday, Sunday, or legal state holiday, the period begins:

(1) on the next regular business day; or

(2) on that Saturday or Sunday if early voting is ordered to be conducted on that day under Section 85.006.

(d) If because of the date for which an election is ordered it is not possible to begin early voting by personal appearance on the prescribed date, the early voting period shall begin on the earliest date practicable after the prescribed date as set by the authority ordering the election.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.09; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 115, § 1, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see notes following § 67.004.

Library References

Conduct of elections, absentee voting, see Brooks, 35 Texas Practice § 11.16.

§ 85.002. Main Early Voting Polling Place

(a) Early voting by personal appearance for each election shall be conducted at the main early voting polling place.

(b) In an election in which a county clerk or city secretary is the early voting clerk under Section 83.002 or 83.005, the main early voting polling place shall be located in any room selected by the early voting clerk in the building that houses the main business office of the county clerk or city secretary, as applicable. However, if the commissioners court or city governing body determines that locating the polling place in that building is impracticable, the commissioners court or city governing body may designate a different location in the city in which the business office is located that is as near as practicable to the business office.

(c) In an election in which a county clerk is the early voting clerk under Section 83.003 or 83.004, the authority authorized to appoint the clerk shall designate the location of the main early voting polling place. The location must be in the territory covered by the election or in any room selected by the clerk in the building that houses the county clerk's main business office, whether or not the office is located in the territory covered by the election. However, if the commissioners court determines that locating the polling place in that building is impracticable, the commissioners court may designate a different location in the city in which the business office is located that is as near as practicable to the business office.

(d) In an election in which a person other than a county clerk or city secretary is early voting clerk, the authority appointing the clerk shall designate the location of the main early voting polling place. The location must be in the territory covered by the election.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.09; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see notes following § 67.004.

§ 85.003. Voters Served by Main Polling Place

Any person entitled to vote an early voting ballot by personal appearance may do so at the main early voting polling place.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.09; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see notes following § 67.004.

§ 85.004. Public Notice of Main Polling Place Location

The election order and the election notice must state the location of the main early voting polling place.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.09; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see notes following § 67.004.

§ 85.005. Regular Days and Hours for Voting

(a) Except as provided by Subsection (c), in an election in which a county clerk or city secretary is the early voting clerk under Section 83.002 or 83.005, early voting by personal appearance at the main early voting polling place shall be conducted on the weekdays of the early voting period and during the hours that the county clerk's or city secretary's main business office is regularly open for business.

(b) In an election to which Subsection (a) does not apply, early voting by personal appearance at the main early voting polling place shall be conducted at least eight hours each weekday of the early voting period that is not a legal state holiday unless the territory covered by the election has fewer than 1,000 registered voters. In that case, the voting shall be conducted at least three hours each day. The authority ordering the election, or the county clerk if that person is the early voting clerk, shall determine which hours the voting is to be conducted.

(c) In a county with a population of 100,000 or more, the voting in a primary election or the general election for state and county officers shall be conducted at the main early voting polling place for at least 12 hours on each weekday of the last week of the early voting period, and the voting in a special election ordered by the governor shall be conducted at the main early voting polling place for at least 12 hours on each of the last two days of the early voting period. Voting shall be conducted in accordance with this subsection in those elections in a county with a population under 100,000 on receipt by the early voting clerk of a written request for the extended hours submitted by at least 15 registered voters of the county. The request must be submitted in time to enable compliance with Section 85.067.

Amended by Acts 1989, 71st Leg., ch. 1142, § 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 203, § 1.07; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the notes following § 67.004.

Cross References

Registrar's office hours, see V.T.C.A., Election Code § 12.004.

§ 85.006. Voting on Saturday or Sunday

(a) Except as provided by Subsection (b), the authority ordering an election may order early voting by personal appearance at the main early voting polling place to be conducted on one or more Saturdays or Sundays during the early voting period.

(b) In an election in which a county clerk or city secretary is the early voting clerk under Section 83.002 or 83.005, only the early voting clerk may order voting on a Saturday or Sunday. The clerk must do so by written order.

(c) The authority ordering voting on a Saturday or Sunday shall determine the hours during which voting is to be conducted.

(d) The authority authorized to order early voting on a Saturday or Sunday under Subsection (a) or (b) shall order the voting under the applicable subsection on receipt of a written request submitted by at least 15 registered voters of the territory covered by the election. The request must be submitted in time to enable compliance with Section 85.007. The authority is not required to order the voting on a particular date specified by the request but shall order the voting on at least one Saturday if a Saturday is requested and on at least one Sunday if a Sunday is requested.

(e) In a primary election or the general election for state and county officers in a county with a population of 100,000 or more, the early voting clerk shall order personal appearance voting at the main early voting polling place to be conducted for at least 12 hours on the last Saturday and for at least five hours on the last Sunday of the early voting period. The early voting clerk shall order voting to be conducted at those times in those elections in a county with a population under 100,000 on receipt of a written request for those hours submitted by at least 15 registered voters of the county. The request must be submitted in time to enable compliance with Section 85.007. This subsection supersedes any provision of this subchapter to the extent of any conflict.

Amended by Acts 1987, 70th Leg., ch. 472, § 25, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 1142, § 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 203, § 1.08; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the notes following § 67.004.

§ 85.007. Public Notice of Time for Voting

(a) The election order and the election notice must state:

(1) the date that early voting will begin if under Section 85.001(d) the early voting period is to begin later than the prescribed date;

(2) the regular dates and hours that voting will be conducted under Section 85.005(b); and

(3) the dates and hours that voting on Saturday or Sunday is ordered to be conducted under Section 85.006(a).

(b) The early voting clerk shall post notice for each election stating the dates and hours that voting on a Saturday or Sunday is ordered to be conducted under Section 85.006(b).

(c) Notice under Subsection (b) shall be posted continuously for at least 72 hours immediately preceding the first hour that the voting to which the notice pertains will be conducted. The notice shall be posted on the bulletin board used for posting notice of meetings of the commissioners court if the early voting clerk is the county clerk, or of the city governing body if the early voting clerk is the city secretary.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.09; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see notes following § 67.004.

§ 85.008. Days and Hours for Voting: Election in Certain Cities

(a) This section applies only to a city with a population of more than 450,000 in which all members of the governing body are elected on an at-large basis.

(b) Notwithstanding and in addition to other applicable provisions of this code, in an election in which the city secretary is the early voting clerk under Section 83.005, early voting by personal appearance shall be conducted on the corresponding days and for the same number of hours that the voting is required to be conducted in the general election for state and county officers in the county in which a majority of the population of the city is located.

Added by Acts 1997, 75th Leg., ch. 172, § 1, eff. Sept. 1, 1997.

SUBCHAPTER B. POLLING PLACE PROCEDURE

§ 85.031. Accepting Voter

(a) For each person entitled to vote an early voting ballot by personal appearance, the early voting clerk shall follow the procedure for accepting a regular voter on election day, with the modifications necessary for the conduct of early voting.

(b) On accepting a voter, the clerk shall indicate beside the voter's name on the list of registered voters or registration omissions list, as applicable, that the voter is accepted to vote by personal appearance unless the form of either list makes it impracticable to do so, and the clerk shall enter the voter's name on the poll list.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.09; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1349, § 34, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1381, § 9, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the notes following § 67.004.

§ 85.0311. Early Voting Clerk to Sign Ballots

(a) The early voting clerk's initials shall be placed on the back of each ballot to be used at the polling place.

(b) The early voting clerk shall enter the initials on each ballot or a deputy early voting clerk shall stamp a facsimile of the initials on each ballot.

Added by Acts 1997, 75th Leg., ch. 1381, § 10, eff. Sept. 1, 1997.

§ 85.032. Security of Early Voting Ballot Box

(a) The procedure for rotating two ballot boxes applicable to a precinct polling place does not apply to an early voting polling place. Once locked for use in an election, the early voting ballot box may not be unlocked except as provided by this subtitle.

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

(c) During the period for early voting by personal appearance, the early voting clerk shall keep the key to one of the locks to the early voting ballot box, and the custodian of keys to ballot boxes for preserving voted ballots after the election shall keep the key to the second lock.

(d) Each custodian shall retain possession of the key entrusted to the custodian until it is delivered to the early voting ballot board under Subchapter B, Chapter 87¹.

(e) A sealed case may be used for transferring voted early voting ballots in accordance with procedures approved by the secretary of state.

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

Amended by Acts 1989, 71st Leg., ch. 562, § 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 203, § 2.09; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, § 74, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1381, § 11, eff. Sept. 1, 1997.

¹ Section 87.021 et seq.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see notes following § 67.004.

Cross References

Ballot boxes, delivery to early voting ballot board, see V.T.C.A., Election Code § 87.021.

Counting ballots and preparing returns, see V.T.C.A., Election Code § 87.062.

Preparation of early voting ballots, delivery to counting station, see V.T.C.A., Election Code § 87.101.

§ 85.033. Security of Voting Machine

At the close of early voting each day, the early voting clerk shall secure each voting machine used for early voting in the manner prescribed by the secretary of state so that its unauthorized operation is prevented. The clerk shall unsecure the machine before the beginning of early voting the following day.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.09; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see notes following § 67.004.

§ 85.034. Voter Unable to Enter Polling Place

(a) Early voting by personal appearance by a voter who is voting outside the early voting polling place under Section 64.009 shall be conducted in accordance with this section if voting at the early voting polling place is by voting machine or voting device unless the early voting clerk chooses to transport a voting device to the voter.

(b) The early voting clerk shall furnish each accepted voter with the early voting ballot used for voting by mail and the official ballot envelope.

(c) The voter must mark the ballot and seal it in the envelope.

(d) Immediately after sealing the ballot envelope, the voter must give it to the clerk. Before depositing the envelope in the ballot box, the clerk shall indicate on the envelope that the ballot was voted outside the polling place under this section.

(e) The secretary of state may provide for the use of envelopes or other containers instead of ballot boxes in which to deposit ballots voted under this section.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.09; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see notes following § 67.004.

§ 85.035. Assisting Voter

A person voting an early voting ballot by personal appearance who is assisted in preparing the ballot by election officers under Subchapter B, Chapter 64,¹ may be assisted by a single officer.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.09; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

¹ Section 64.031 et seq.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see notes following § 67.004.

§ 85.036. Electioneering Prohibited

(a) Except as provided by Subsection (b), during the time an early voting polling place is open for the conduct of early voting, a person may not electioneer for or against any candidate, measure, or political party in or within a certain distance from the building or structure in which the early voting polling place is located, as follows:

(1) for a building containing the main early voting polling place, a person may not electioneer in the room in which the polling place is located or within 30 feet of the entrance to the room in which the polling place is located;

(2) for a building that is also used as a precinct polling place, a person may not electioneer within 100 feet of an outside door through which a voter may enter the building in which the polling place is located; and

(3) for any other structure, a person may not electioneer within 30 feet of the entrance to the voting area.

(b) For a county courthouse, subcourthouse, or courthouse annex, a person may not electioneer in the building or within 30 feet of an outside door through which a voter may enter the building in which the polling place is located if the commissioners court issues an order to that effect. The order must be recorded in the commissioners court's minutes not later than the 10th day before the date early voting is to be conducted in the building.

(c) During the early voting period, the early voting clerk shall keep continuously posted:

(1) at the entrance to the room or area, as applicable, in which the early voting polling place is located, a sign on which is printed in large letters "Early Voting Polling Place"; and

(2) at the outer limits of the area within which electioneering is prohibited, a sign on which is printed in large letters "Distance Marker. No electioneering between this point and the entrance to the early voting polling place."

(d) A person commits an offense if the person electioneers in violation of Subsection (a) or (b).

(e) An offense under this section is a Class C misdemeanor.

(f) Sections 61.003 and 61.004 do not apply to early voting polling places.

Amended by Acts 1991, 72nd Leg., ch. 203, § 1.09; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 498, § 1, eff. Sept. 1, 1993.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the notes following § 67.004.

Library References

Electioneering and loitering near polling place, complaints, informations and indictments, see McCormick et al., 7 Texas Practice § 34.01 (10th ed.).

§ 85.037. Bystanders Excluded; Unlawful Presence of Candidate

Section 61.001 applies to an early voting polling place except that the period for which the conduct is proscribed is during the time the polling place is open for the conduct of early voting.

Added by Acts 1997, 75th Leg., ch. 1350, § 4, eff. Sept. 1, 1997.

SUBCHAPTER C. BRANCH EARLY VOTING POLLING PLACE

§ 85.061. Permanent Branch Polling Place

(a) In a countywide election in which the county clerk is the early voting clerk under Section 83.002, an early voting polling place shall be located at each branch office that is regularly maintained for conducting general clerical functions of the county clerk, except as provided by Subsection (b).

(b) In an election in which a temporary branch polling place is established under Section 85.062(a)(1) or (d), the commissioners court may provide by resolution, order, or other official action that any one or more of the county clerk's regularly maintained branch clerical offices are not to be branch early voting polling places in the election.

(c) In this subchapter, "permanent branch polling place" means an early voting polling place established under this section.

Amended by Acts 1991, 72nd Leg., ch. 203, § 1.10; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

§ 85.062. Temporary Branch Polling Place

(a) Except as provided by Subsection (d) or (e), one or more early voting polling places other than the main early voting polling place may be established by:

(1) the commissioners court, for an election in which the county clerk is the early voting clerk; or

(2) the governing body of the political subdivision served by the authority ordering the election, for an election in which a person other than the county clerk is the early voting clerk.

(b) A polling place established under this section may be located, subject to Subsection (d), at any place in the territory served by the early voting clerk and may be located in any stationary structure as directed by the authority establishing the branch office. The polling place may be located in a movable structure in the general election for state and county officers, general primary election, or runoff primary election. Ropes or other suitable objects may be used at the polling place to ensure compliance with Section 62.004. Persons who are not expressly permitted by law to be in a polling place shall be excluded from the polling place to the extent practicable.

(c) In any election, the location of a polling place established under this section shall be fixed at one place for the duration of the period that voting is required to be conducted at the polling place.

(d) In a primary election, the general election for state and county officers, or a special election to fill a vacancy in the legislature or in congress:

(1) the commissioners court of a county with a population of 400,000 or more shall establish one or more early voting polling places other than the main early voting polling

place in each state representative district containing territory covered by the election, except that the polling place or places shall be established in the state senatorial or congressional district, as applicable, in a special election to fill a vacancy in the office of state senator or United States representative;

(2) the commissioners court of a county with a population of 120,000 or more but less than 400,000 shall establish one or more early voting polling places other than the main early voting polling place in each commissioners precinct containing territory covered by the election; and

(3) the commissioners court of a county with a population of 100,000 or more but less than 120,000 shall establish one or more early voting polling places as described by Subdivision (2) in each precinct for which the commissioners court receives in time to enable compliance with Section 85.067 a written request for that action submitted by at least 15 registered voters of that precinct.

(e) In an election covered by Subsection (d), a temporary branch polling place that is movable may be established only with the approval of the county clerk. If a movable temporary branch polling place is established on the request of a political party, each other political party whose nominee for governor in the most recent gubernatorial general election received more than 10 percent of the total number of votes received by all candidates for governor in the election is entitled to establishment of such a polling place. The election officers serving a polling place covered by this subsection must be affiliated or aligned with different political parties to the extent possible. The secretary of state, after consulting the state chair of each affected political party, shall prescribe the procedures necessary to implement this subsection.

(f) In a countywide election, the total number of permanent branch polling places and temporary branch polling places open for voting at the same time in a commissioners precinct may not exceed twice the number of permanent branch and temporary branch polling places open at that time in another commissioners precinct.

(g) In this subchapter, "temporary branch polling place" means an early voting polling place established under this section.

Amended by Acts 1991, 72nd Leg., ch. 203, §§ 1.11, 1.12; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1349, § 35, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1350, § 5, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1381, § 12, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

§ 85.063. Days and Hours for Voting: Permanent Branch

Early voting by personal appearance at each permanent branch polling place shall be conducted on the same days and during the same hours as voting is conducted at the main early voting polling place.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.11; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 85.064. Days and Hours for Voting: Temporary Branch in Populous County

(a) This section applies only to an election in which the territory served by the early voting clerk is situated in a county with a population of 100,000 or more. In an election in which the territory served by the clerk is situated in more than one county, this section applies if the sum of the populations of the counties is 100,000 or more.

(b) Early voting by personal appearance at each temporary branch polling place established under Section 85.062(d) shall be conducted on the days that voting is required to be conducted at the main early voting polling place under Section 85.005. The authority establishing the temporary branch polling place shall determine the hours during which the voting is to be conducted on those days. The authority shall order voting to be conducted for the same number of hours that voting is required to be conducted on those days at the main early voting polling place under Section 85.005 on receipt of a written request for those hours submitted by at least 15 registered voters of the county. The request must be submitted in time to enable compliance with Section 85.067.

(c) Early voting by personal appearance at a temporary branch polling place other than a temporary branch polling place established under Section 85.062(d) may be conducted on any one or more days and during any hours of the period for early voting by personal appearance, as determined by the authority establishing the branch.

(d) The authority authorized under Section 85.006 to order early voting on a Saturday or Sunday may also order, in the manner prescribed by that section, early voting to be conducted on a Saturday or Sunday at any one or more of the temporary branch polling places. In addition, the early voting clerk of a county covered by Section 85.006(e) shall order such voting in accordance with that subsection at each temporary branch polling place established under Section 85.062(d).

Amended by Acts 1989, 71st Leg., ch. 1142, § 3, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 203, § 1.13; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1349, § 36, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

§ 85.065. Days and Hours for Voting: Temporary Branch in Less Populous County

(a) This section applies only to an election in which the territory served by the early voting clerk is situated in a county with a population under 100,000. In an election in which the territory served by the clerk is situated in more than one county, this section applies if the sum of the populations of the counties is under 100,000.

(b) Voting at a temporary branch polling place may be conducted on any one or more days and during any hours of the period for early voting by personal appearance, as determined by the authority establishing the branch. The authority authorized under Section 85.006 to order early voting on a Saturday or Sunday may also order, in the manner prescribed by that section, early voting to be conducted on a Saturday or Sunday at any one or more of the temporary branch polling places.

(c) The schedules for conducting voting are not required to be uniform among the temporary branch polling places.

Amended by Acts 1989, 71st Leg., ch. 1142, § 4, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 203, § 1.14; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

§ 85.066. Voters Served by Branch Polling Place

(a) Except as provided by Subsection (b), any voter who is entitled to vote an early voting ballot by personal appearance may do so at any branch polling place in the territory served by the early voting clerk.

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(b) For a countywide election in a county with a population of more than 2.5 million and a primary election in a county with a population of more than 1 million in which temporary branch polling places are established under Section 85.062(d)(1), the commissioners court may limit voting at a temporary branch polling place to the voters of particular state representative districts. To the extent practicable, the state representative districts shall be grouped so that the temporary branch polling places in each group serve substantially equal numbers of voters. A maximum of four groups of state representative districts may be established under this subsection.

Amended by Acts 1991, 72nd Leg., ch. 203, § 1.15; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1987 Legislation

Acts 1985, 69th Leg., ch. 869 [see italicized note, main volume] was repealed by Acts 1987, 70th Leg., ch. 54, § 7(b).

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 85.067. Public Notice of Branch Voting Schedule

(a) The early voting clerk shall post for each election a schedule stating:

(1) the location of each permanent and temporary branch polling place at which voting will be conducted and the election precincts served by each branch polling place; and

(2) except as provided by Subsection (b), the dates and hours that temporary branch voting will be conducted.

(b) The schedule is not required to include dates and hours for which public notice is posted under Section 85.068.

(c) The schedule shall be posted continuously for a period beginning not later than the fifth day before the first day of the period for early voting by personal appearance and ending on the last day of that period. The schedule may be amended after the beginning of early voting by personal appearance to include notice of additional temporary branch polling place locations, dates, and hours, but any amendment must be made not later than the fifth day before the date the voting is scheduled to begin at the additional temporary branch.

(d) The schedule shall be posted on the bulletin board used for posting notice of meetings of the governing body of the political subdivision served by the authority ordering the election or, if the early voting clerk is the county clerk or city secretary, meetings of the commissioners court or city governing body, as applicable.

(e) The early voting clerk shall make copies of the schedule available to the public in reasonable quantities without charge during the posting period.

Amended by Acts 1987, 70th Leg., ch. 54, § 7(a), eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, § 1.16; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

§ 85.068. Public Notice of Additional Voting Time Ordered by Clerk

(a) The early voting clerk shall post notice for each election stating any dates and the hours that voting on Saturday or Sunday will be conducted under Section 85.064(d) or 85.065(b), if the early voting clerk is a county clerk or city secretary under Section 83.002 or 83.005.

(b) The notice is not required to include the dates and hours that appear in the branch office voting schedule posted under Section 85.067.

(c) The notice shall be posted as provided by Section 85.007(c).

Amended by Acts 1989, 71st Leg., ch. 1142, § 5, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 203, § 1.17; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

§ 85.069. Election Officers Serving Branch Polling Place

(a) The early voting clerk shall designate for each branch polling place a deputy early voting clerk as the election officer in charge of the polling place.

(b) The composition of the set of election officers serving a branch polling place must provide representation for each political party conducting a primary election in the county.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.11; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1349, § 37, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 85.070. Delivery of Applications to Main Polling Place

Each early voting ballot application submitted at a branch polling place shall be delivered by an election officer to the main polling place not later than 1 p.m. on the day after the date the application is submitted.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.11; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 85.071. Delivery of Ballots to Main Polling Place

(a) During the period for early voting by personal appearance, the ballots voted at a branch polling place, other than those cast on a voting machine, shall be:

- (1) retained securely at the branch polling place in a locked room accessible only to election officers; or
- (2) delivered by an election officer or designated law enforcement officer to the main early voting polling place at the close of voting each day.

(b) The unvoted ballots at the branch polling place, other than voting machine ballots, shall be retained or delivered with the voted ballots but in a separate locked container.

(c) All voted and unvoted ballots shall be delivered by an election officer or designated law enforcement officer to the main polling place at the close of voting on the last day of voting at the branch polling place.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.11; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 85.072. Branch Daily Register

(a) Each day early voting is conducted at a branch polling place, an election officer in charge of the branch shall prepare a register listing the voters who cast ballots at the branch that day.

(b) The register must include for each voter the information necessary for entering the voter's name on the early voting roster for the election.

(c) The election officer preparing the register shall deliver it to the early voting clerk at the close of each day's voting at the branch polling place.

(d) The early voting clerk shall preserve each daily register for the period for preserving the precinct election records.

(e) A current copy of the register shall be kept at the branch polling place during the period voting is conducted there.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.11; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

CHAPTER 86. CONDUCT OF VOTING BY MAIL

Section		Section	
86.001.	Reviewing Application and Providing Ballot.	86.007.	Deadline for Returning Marked Ballot.
86.002.	Additional Balloting Materials.	86.008.	Defective Application.
86.003.	Method of Providing Ballot to Voter: Required Address.	86.009.	Providing Corrected Ballot to Voter.
86.004.	Time for Providing Ballot to Voter.	86.010.	Assisting Voter.
86.005.	Marking and Sealing Ballot.	86.011.	Action by Clerk on Return of Ballot.
86.006.	Method of Returning Marked Ballot.	86.012.	Official Ballot Envelope.
		86.013.	Official Carrier Envelope.
		86.014.	Public Inspection of Early Voting Records.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

§ 86.001. Reviewing Application and Providing Ballot

(a) The early voting clerk shall review each application for a ballot to be voted by mail.

(b) If the applicant is entitled to vote an early voting ballot by mail, the clerk shall provide an official ballot to the applicant as provided by this chapter.

(c) Except as provided by Section 86.008, if the applicant is not entitled to vote by mail, the clerk shall reject the application, enter on the application "rejected" and the reason for and date of rejection, and deliver written notice of the reason for the rejection to the applicant at both the residence address and mailing address on the application. A ballot may not be provided to an applicant whose application is rejected.

(d) If the application does not include the applicant's correct voter registration number or county election precinct of residence, the clerk shall enter the appropriate information on the application before providing a ballot to the applicant.

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(e) If the applicant does not have an effective voter registration for the election, the clerk shall reject the application unless the clerk can determine from the voter registrar that the applicant has submitted a voter registration application and the registration will be effective on election day.

(f) If the clerk receives an application for an election for which the clerk is not serving as early voting clerk, the clerk shall reject the application for that election and notify the applicant of the rejection in accordance with Section 86.008.

(g) If a ballot is provided to the applicant, the clerk shall indicate beside the applicant's name on the list of registered voters that a ballot to be voted by mail was provided to the applicant and the date of providing the ballot unless the form of the list makes it impracticable to do so.

Amended by Acts 1987, 70th Leg., ch. 472, § 26, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, § 2.12; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1381, § 13, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 86.002. Additional Balloting Materials

(a) The early voting clerk shall provide an official ballot envelope and carrier envelope with each ballot provided to a voter. If the voter's name appears on the list of registered voters with the notation "S", or a similar notation, or the residence address on the voter's early voting ballot application is not the same as the voter's residence address on the list of registered voters, the clerk shall provide a form for a statement of residence to the voter.

(b) Before providing the balloting materials to the voter, the clerk shall enter on the carrier envelope the identity and date of the election.

(c) The clerk shall enter on a carrier envelope the voter's name in printed form, a notation that a statement of residence is enclosed, if applicable, and any other information the clerk determines necessary for proper processing of the ballot.

(d) The secretary of state shall prescribe instructions to be printed on the balloting materials for the execution and return of a statement of residence. The instructions must include an explanation of the circumstances under which the ballot must be rejected with respect to the statement.

(e) If the clerk determines that the carrier envelope and other balloting materials will weigh more than one ounce when returned by mail to the clerk, the clerk shall include with the balloting materials a notice of the amount of first class postage that will be required for the return by mail of the carrier envelope and enclosed materials.

Amended by Acts 1987, 70th Leg., ch. 54, § 8(b), eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 472, § 27, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, § 2.12; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 916, § 25, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 797, § 41, eff. Sept. 1, 1995.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 86.003. Method of Providing Ballot to Voter: Required Address

(a) The balloting materials for voting by mail shall be provided to the voter by mail. A ballot provided by any other method may not be counted.

(b) Subject to Subsection (c), the balloting materials shall be addressed to the applicable address specified in the voter's application. The election officer providing the ballot may not knowingly mail the materials to an address other than that prescribed by this section.

(c) The address to which the balloting materials must be addressed is the address at which the voter is registered to vote unless the ground for voting by mail is:

(1) absence from the county of residence, in which case the address must be an address outside the voter's county of residence;

(2) confinement in jail, in which case the address must be the address of the jail or of a relative described by Section 84.002(a)(4); or

(3) age or disability and the voter is living at a hospital, nursing home or other long-term care facility, or retirement center, or with a relative described by Section 84.002(a)(3), in which case the address must be the address of that facility or relative.

(d) If the applicable address specified in a voter's application is an address other than that prescribed by Subsection (c), the voter's application shall be rejected in accordance with Section 86.001(c).

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.12; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 565, § 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1381, § 14, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 86.004. Time for Providing Ballot to Voter

The balloting materials for voting by mail shall be mailed to voters as soon as practicable after the ballots become available but not earlier than the 45th day before election day.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.12; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1987 Legislation

Acts 1985, 69th Leg., ch. 942 [see italicized note, main volume], was repealed by Acts 1987, 70th Leg., ch. 54, § 8(e).

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 86.005. Marking and Sealing Ballot

(a) A voter must mark a ballot voted by mail in accordance with the instructions on the ballot envelope.

(b) A voter may mark the ballot at any time after receiving it.

(c) After marking the ballot, the voter must place it in the official ballot envelope and then seal the ballot envelope, place the ballot envelope in the official carrier envelope and then seal the carrier envelope, and sign the certificate on the carrier envelope.

(d) Failure to use the official ballot envelope does not affect the validity of the ballot.

(e) After the carrier envelope is sealed by the voter, it may not be opened except as provided by Chapter 87.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.12; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 86.006. Method of Returning Marked Ballot

(a) A marked ballot voted under this chapter must be returned to the early voting clerk in the official carrier envelope. The carrier envelope may be delivered in another envelope and must be delivered by mail or by common or contract carrier.

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(b) Except as provided by Subsection (c), a carrier envelope may not be returned in an envelope or package containing another carrier envelope.

(c) The carrier envelopes of persons who are registered to vote at the same address may be returned in the same envelope or package.

(d) Each carrier envelope that is delivered by a common or contract carrier must be accompanied by an individual delivery receipt for that particular carrier envelope that indicates the date, hour, and address at which the carrier envelope was received by the carrier unless the carrier does not routinely issue a receipt, in which case the secretary of state shall prescribe appropriate procedures for accounting for the delivery. A delivery of carrier envelopes is prohibited by a common or contract carrier if the delivery originates from the address of:

- (1) the headquarters of a political party or a candidate in the election;
- (2) a candidate in the election unless the address is the residence of the early voter;
- (3) a specific-purpose or general-purpose political committee involved in the election; or
- (4) an entity that requested that the election be held, unless the delivery is a forwarding to the early voting clerk.

(e) A ballot returned in violation of this section may not be counted. If the early voting clerk determines that the ballot was returned in violation of this section, the clerk shall make a notation on the carrier envelope and treat it as a ballot not timely returned in accordance with Section 86.011(c). If the ballot is returned before the end of the period for early voting by personal appearance, the early voting clerk shall promptly mail or otherwise deliver to the voter a written notice informing the voter that:

- (1) the voter's ballot will not be counted because of a violation of this code; and
- (2) the voter may vote if otherwise eligible at an early voting polling place or the election day precinct polling place on presentation of the notice.

Amended by Acts 1987, 70th Leg., ch. 431, § 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 472, § 28, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, § 1.18; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1381, § 15, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation
For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

§ 86.007. Deadline for Returning Marked Ballot

(a) Except as provided by Subsection (d), a marked ballot voted by mail must arrive at the address on the carrier envelope before the time the polls are required to close on election day.

(b) If the early voting clerk cannot determine whether a ballot arrived before the deadline, the ballot is considered to have arrived at the time the place at which the carrier envelopes are deposited was last inspected for removal of returned ballots. The clerk shall check for returned ballots, at least once before the deadline, after the normal delivery time on the last day at the place at which the carrier envelopes are deposited.

(c) A marked ballot that is not timely returned may not be counted.

(d) A marked ballot voted by mail that arrives after the time prescribed by Subsection (a) shall be counted if:

- (1) the ballot was cast from an address outside the United States;
- (2) the carrier envelope was placed for delivery before the time the ballot is required to arrive under Subsection (a); and
- (3) the ballot arrives at the address on the carrier envelope not later than:
 - (A) the fifth day after the date of the general election for state and county officers; or
 - (B) the second day after the date of an election other than the general election for state and county officers.

(e) A delivery under Subsection (d)(2) is timely, except as otherwise provided by this title, if the carrier envelope or, if applicable, the envelope containing the carrier envelope:

- (1) is properly addressed with postage or handling charges prepaid;
- (2) is sent from an address outside the United States; and
- (3) bears a cancellation mark of a recognized postal service or a receipt mark of a common or contract carrier or a courier indicating a time before the deadline.

(f) If the envelope does not bear the cancellation mark or receipt mark as required by Subsection (e)(3), a delivery under Subsection (d)(1) is presumed to be timely if the other requirements under this section are met. Section 1.006 does not apply to Subsection (d)(3)(A).

(g) The secretary of state shall prescribe procedures as necessary to implement Subsection (d).

Amended by Acts 1987, 70th Leg., ch. 472, § 29, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, § 2.12; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1349, § 38, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 86.008. Defective Application

(a) If on reviewing an application for a ballot to be voted by mail that was received on or before the 12th day before election day the early voting clerk determines that the application does not fully comply with the applicable requirements prescribed by this title, the clerk shall mail or otherwise deliver an official application form to the applicant.

(b) The clerk shall include with the application form mailed or delivered to the applicant a written notice containing:

- (1) a brief explanation of each defect in the noncomplying application;
- (2) a statement informing the voter that the voter is not entitled to vote an early voting ballot unless the application complies with all legal requirements; and
- (3) instructions for submitting the second application.

(c) If an application that does not fully comply with the applicable requirements prescribed by this title is received after the 12th day before election day and before the end of the period for early voting by personal appearance, the clerk shall mail or otherwise deliver a notice to the voter containing the information prescribed by Subdivisions (1) and (2) of Subsection (b), including a statement that the application was late, if applicable.

(d) Notwithstanding any other provisions of this code, the clerk may deliver in person to the voter a second application if the defective original application is timely and may receive, before the deadline, the corrected application in person from the voter. If a procedure authorized by this subsection is used, it must be applied uniformly to all applications covered by this subsection. The clerk shall enter a notation on the application indicating any information added by the clerk under this subsection. A poll watcher is entitled to accompany the clerk and observe the procedures under this subsection. The secretary of state may prescribe any other procedures necessary to implement this subsection including requirements for posting notice of any deliveries.

Amended by Acts 1987, 70th Leg., ch. 472, § 30, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, § 2.12; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, § 75, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 86.009. Providing Corrected Ballot to Voter

(a) If, after a ballot to be voted by mail is provided to a voter, the official ballot is changed in a way that affects the choices available to the voter in the election or the validity of the ballot provided to the voter if cast, the early voting clerk shall mail a corrected ballot and corresponding balloting materials to the voter unless in the clerk's opinion there is not sufficient time for the voter to timely return the corrected ballot to the clerk.

(b) The clerk shall include with the balloting materials provided to the voter a written notice containing:

- (1) a brief explanation of the reason for providing another ballot; and
- (2) an instruction to destroy the defective ballot if it has not already been returned to the clerk.

(c) Before mailing the corrected ballot to the voter, the clerk shall place a notation on the carrier envelope indicating that the ballot is a corrected ballot being provided under this section. The clerk shall also indicate on the voter's application that the voter was provided a corrected ballot.

(d) The clerk shall prepare a list containing the name of each voter who is provided a corrected ballot under this section. The clerk shall preserve the list for the period for preserving the precinct election records.

(e) A voter's defective ballot that is timely returned to the clerk as a marked ballot shall be treated as:

- (1) a marked ballot not timely returned if the corrected ballot is timely returned as a marked ballot; or
- (2) as the voter's ballot for the election if the corrected ballot is not timely returned.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.12; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, § 76, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 86.010. Assisting Voter

(a) A voter casting a ballot by mail who would be eligible under Section 64.031 to receive assistance at a polling place may select a person as provided by Section 64.032(c) to assist the voter in preparing the ballot.

(b) Assistance rendered under this section is limited to that authorized by this code at a polling place.

(c) The person assisting the voter must sign a written oath prescribed by Section 64.034.

(d) If a voter is assisted in violation of Subsection (a) or (b), the voter's ballot may not be counted.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.12; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1381, § 16, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

Notes of Decisions

1. Construction and application

Votes are void and should not be counted if the evidence shows that procedural statutory require-

ments were not followed in the casting of absentee ballots, even if the election judge rejected ballots

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§ 86.012

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for signature discrepancy. *Tiller v. Martinez* (App. 4 Dist. 1998) 974 S.W.2d 769, rehearing overruled, review dismissed w.o.j., rehearing of petition for review denied.

Absentee ballots for school board election cast by voters who received assistance, but who failed to follow mandatory procedures for casting absentee ballots when voter was assisted, should not

have been validated in contest proceedings. *Tiller v. Martinez* (App. 4 Dist. 1998) 974 S.W.2d 769, rehearing overruled, review dismissed w.o.j., rehearing of petition for review denied.

Penal provisions of § 64.036 are applicable to persons who assist voters under the provisions of § 86.010. Op.Atty.Gen.1987, No. JM-736.

§ 86.011. Action by Clerk on Return of Ballot

(a) The early voting clerk shall determine whether the return of a voter's official carrier envelope for a ballot voted by mail is timely.

(b) If the return is timely, the clerk shall enclose the carrier envelope and the voter's early voting ballot application in a jacket envelope.

(c) If the return is not timely, the clerk shall enter the time of receipt on the carrier envelope and retain it for the period for preserving the precinct election records. The clerk shall destroy the unopened envelope and its contents after the preservation period.

(d) Notwithstanding any other provisions of this code, if the clerk receives a timely carrier envelope that does not fully comply with the applicable requirements prescribed by this title, the clerk may deliver the carrier envelope in person or by mail to the voter and may receive, before the deadline, the corrected carrier envelope from the voter, or the clerk may notify the voter of the defect by telephone and advise the voter that the voter may come to the clerk's office in person to correct the defect or cancel the voter's application to vote by mail and vote on election day. If the procedures authorized by this subsection are used, they must be applied uniformly to all carrier envelopes covered by this subsection. A poll watcher is entitled to observe the procedures under this subsection. The secretary of state may prescribe any other procedures necessary to implement this subsection including requirements for posting notice of any deliveries.

Amended by Acts 1987, 70th Leg., ch. 472, § 31, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, § 1.19; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, § 77, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 87.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 87.004.

§ 86.012. Official Ballot Envelope

(a) "Ballot Envelope" must be printed on the face of each officially prescribed ballot envelope for a ballot to be voted by mail.

(b) The following textual material, as prescribed by the secretary of state, must be printed on the face of each official ballot envelope and may be continued on the reverse side if necessary:

- (1) instructions for marking the ballot and returning the marked ballot to the early voting clerk;
- (2) the deadline for returning the marked ballot to the clerk;
- (3) limitations on assistance to the voter; and
- (4) criminal penalties for unlawful assistance in preparing the ballot.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.12; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 87.004.

§ 86.013. Official Carrier Envelope

(a) "Carrier Envelope for Early Voting Ballot," the name and official title of the early voting clerk as addressee, and the clerk's official mailing address must be printed on the face of each official carrier envelope for a ballot to be voted by mail.

(b) Spaces for indicating the identity and date of the election must appear on the reverse side of the official carrier envelope.

(c) A certificate in substantially the following form must be printed on the reverse side of the official carrier envelope in a manner that requires the voter to sign across the flap of the envelope:

"I certify that the enclosed ballot expresses my wishes independent of any dictation or undue persuasion by any person.

Signature of voter
By: _____
Signature of person assisting voter, if applicable (see Ballot Envelope for restrictions and penalties)

Printed name of person assisting voter, if applicable

Residence address of person assisting voter, if applicable"

(d) The following textual material, as prescribed by the secretary of state, must be printed on the reverse side of the official carrier envelope or on a separate sheet accompanying the carrier envelope when it is provided:

- (1) the prohibition prescribed by Section 86.006(b);
- (2) the conditions for delivery by common or contract carrier prescribed by Sections 81.005 and 86.006; and
- (3) the requirements for the legal execution and delivery of the carrier envelope.

(e) The following notice must be printed on the reverse side of the official carrier envelope, near the space provided for the voter's signature: "This envelope must be sealed by the voter before it leaves the voter's hands. Do not sign this envelope unless the ballot has been marked by you or at your direction."

(f) The oath of a person assisting a voter must be included on the official carrier envelope. Amended by Acts 1991, 72nd Leg., ch. 203, § 1.20; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1381, § 17, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg.,

ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

1997 Legislation

For application provision of Acts 1997, 75th Leg., ch. 1381, see notes following V.T.C.A., Elections Code § 81.005.

Notes of Decisions

Signatures 2

2. Signatures

Witnesses who sign carrier envelope on behalf of voters who submit absentee ballots must sign wit-

nesses' names and print name and address and may not simply sign voters' names in signature space reserved for voters. *Alvarez v. Espinoza* (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

§ 86.014. Public Inspection of Early Voting Records

(a) A copy of an application for a ballot to be voted by mail may be obtained from the early voting clerk:

(1) 72 hours after the time a ballot is mailed to the voter; or

(2) 48 hours after the time a ballot is mailed to the voter if the mailing occurs on the fourth day before election day.

(b) Originals of the applications and carrier envelopes are not available for public inspection until those materials are delivered to the general custodian of election records after the election.

Added by Acts 1987, 70th Leg., ch. 472, § 32, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 208, § 2.12; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 565, § 5, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1381, § 18, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 208, see Historical and Statutory Notes following § 87.004.

Notes of Decisions

Time of release 1

open to public and their release is not subject to provision of Election Code § 61.007 that names of persons voting may not be revealed until after polls close on election day. Op.Atty.Gen.1992, No. DM-168.

1. Time of release

Names of persons voting by personal appearance during early voting period for election are

CHAPTER 87. PROCESSING EARLY VOTING RESULTS

SUBCHAPTER A. EARLY VOTING
BALLOT BOARD

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MANUALLY COUNTED
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87.061.	Authority Responsible for Counting Ballots.
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MECHANICAL VOTING
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87.081.	Authority Responsible for Processing Voting Machine Results.
87.082.	Registering Votes by Mail on Machine.
87.083.	Processing Results.
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Section

SUBCHAPTER F. PROCESSING BALLOTS COUNTED AT CENTRAL COUNTING STATION

- 87.101. Preparation of Ballots; Delivery to Counting Station.
- 87.102. Duplicating Paper Ballots for Automatic Counting.
- 87.103. Counting Ballots and Preparing Returns.
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SUBCHAPTER G. MISCELLANEOUS PROVISIONS

- 87.121. Early Voting Rosters.
- 87.122. Precinct Early Voting List.
- 87.1221. Disposition of Ballot Transmittal Form.
- 87.123. Delivering Other Records and Supplies.
- 87.1231. Early Voting Votes Reported by Precinct.
- 87.124. Preservation of Early Voting Election Records Generally.
- 87.125. Counting of Certain Late Ballots Voted by Mail.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. EARLY VOTING BALLOT BOARD

§ 87.001. Board Created; Jurisdiction

An early voting ballot board shall be created in each election to process early voting results from the territory served by the early voting clerk.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.14; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 87.002. Composition of Board

(a) The early voting ballot board consists of a presiding judge and at least two other members.

(b) Except as provided by Subsection (d), the presiding judge is appointed in the same manner as a presiding election judge. Except as provided by Subsection (c), the other members are appointed by the presiding judge in the same manner as the precinct election clerks.

(c) In the general election for state and county officers, each county chair of a political party with nominees on the general election ballot shall submit to the county election board a list of names of persons eligible to serve on the early voting ballot board. The county election board shall appoint at least one person from each list to serve as a member of the early voting ballot board. The same number of members must be appointed from each list.

(d) In addition to the members appointed under Subsection (c), the county election board shall appoint the presiding judge from the list provided under that subsection by the political party whose nominee for governor received the most votes in the county in the most recent gubernatorial general election.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.14; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1381, § 19, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 87.003. Eligibility for Board Membership

To be eligible for appointment to the early voting ballot board, a person must meet the requirements for eligibility for service as a presiding election judge, except that the appointee must be a qualified voter of the territory served by the early voting clerk and is not required to be a qualified voter of any other particular territory.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.14; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 87.004. Board Composed of Precinct Election Officers

In an election other than the general election for state and county officers or a primary election, the authority ordering the election may direct by resolution, order, or other official action that the precinct election officers serving one of the election precincts also serve as the early voting ballot board for the election. In that case, the presiding election judge of the precinct serves as the board's presiding officer.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.14; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 87.005. Compensation of Members

(a) Members of the early voting ballot board are entitled to the same compensation as presiding election judges, except as provided by Subsection (b).

(b) If the board concludes its work in less than 10 hours, the members may be paid greater compensation than that regularly payable for the amount of time worked, but not to exceed the amount payable for 10 hours' work.

(c) Precinct officers serving as board members under Section 87.004 may not be compensated for both positions.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.14; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

SUBCHAPTER B. DELIVERING MATERIALS TO BOARD

§ 87.021. Ballots and Other Materials Delivered to Board

The early voting clerk shall deliver to the early voting ballot board:

(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;

- (2) the jacket envelopes containing the early voting ballots voted by mail;
- (3) the poll lists prepared in connection with early voting by personal appearance;
- (4) the list of registered voters used in conducting early voting; and
- (5) a ballot transmittal form that includes a statement of the number of early voting ballots voted by mail that 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.

Amended by Acts 1989, 71st Leg., ch. 562, § 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 203, § 1.21; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

<p>1991 Legislation For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.</p>	<p>For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.</p>
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§ 87.022. Time of Delivery: General Rule

Except as provided by Section 87.0221, 87.023, or 87.024, the materials shall be delivered to the early voting ballot board under this subchapter during the time the polls are open on election day, or as soon after the polls close as practicable, at the time or times specified by the presiding judge of the board.

Amended by Acts 1991, 72nd Leg., ch. 203, § 1.22; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

<p>1991 Legislation For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.</p>	<p>For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.</p>
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§ 87.0221. Time of Delivery: Paper Ballots

(a) In an election in which regular paper ballots are used for early voting, the materials may be delivered to the board between the end of the period for early voting by personal appearance and the closing of the polls on election day, or as soon after closing as practicable, at the time or times specified by the presiding judge of the board.

(b) The early voting clerk shall post notice of each delivery of materials under this section that is to be made before the time for opening the polls on election day. The notice shall be posted at the main early voting polling place continuously for at least 24 hours immediately preceding the delivery.

(c) At least 24 hours before each delivery, the early voting clerk shall notify the county chair of each political party having a nominee on the ballot of the time the delivery is to be made.

Added by Acts 1991, 72nd Leg., ch. 203, § 1.23. Amended by Acts 1997, 75th Leg., ch. 864, § 78, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation
For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 87.023. Time of Delivery: Automatically Counted Ballots

(a) In an election in which early voting ballots are to be counted by automatic tabulating equipment at a central counting station, the ballots to be automatically counted may be delivered to the board between the end of the period for early voting by personal appearance and the closing of the polls on election day, or as soon after closing as practicable, at intervals specified by the presiding judge of the board.

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§ 87.0241

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(b) The early voting clerk shall post notice of each delivery of ballots under this section that is to be made before the time for opening the polls on election day. The notice shall be posted at the main early voting polling place continuously for at least 24 hours immediately preceding the delivery.

(c) At least 24 hours before the first delivery of ballots covered by Subsection (b), the early voting clerk shall notify the county chair of each political party having a nominee on the ballot of the time the first delivery is to be made.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.15; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, § 79, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 87.024. Time of Delivery: Voting Machine Election

(a) In an election in which early voting votes by personal appearance are cast on voting machines, the jacket envelopes containing the early voting ballots voted by mail may be delivered to the board between the end of the period for early voting by personal appearance and the closing of the polls on election day, or as soon after closing as practicable, at a time specified by the presiding judge of the board.

(b) The early voting clerk shall post notice of the delivery of materials under this section that is to be made before the time for opening the polls on election day. The notice shall be posted at the main early voting polling place continuously for at least 24 hours immediately preceding the delivery.

(c) At least 24 hours before the delivery, the early voting clerk shall notify the county chair of each political party having a nominee on the ballot of the time the delivery is to be made.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.15; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, § 80, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 87.0241. Processing Ballots Before Polls Open

(a) The early voting ballot board may determine whether to accept early voting ballots voted by mail in accordance with Section 87.041 at any time after the ballots are delivered to the board.

(b) The board may not count early voting ballots until:

(1) the polls open on election day; or

(2) in a county with a population of 100,000 or more, the end of the period for early voting by personal appearance.

Added by Acts 1991, 72nd Leg., ch. 203, § 1.23. Amended by Acts 1997, 75th Leg., ch. 1349, § 39, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 87.025. Delivering Second Ballot Box Key to Board

On request of the presiding officer of the early voting ballot board, the custodian of the key to the second lock on the early voting ballot boxes shall deliver the custodian's key for each box to the presiding officer.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.15; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, § 81, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 87.026. Bystanders Excluded

Except as permitted by this code, a person may not be in the meeting place of an early voting ballot board during the time of the board's operations.

Added by Acts 1987, 70th Leg., ch. 472, § 33, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 203, § 2.15; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1989 Legislation

A former section 87.026 as added by Acts 1987, 70th Leg., ch. 54, § 9(a) was repealed by Acts 1989, 71st Leg., ch. 2, § 7.05 eff. Aug. 28, 1989 to conform to its implied repeal by Acts 1987, 70th Leg., ch. 472, § 33 which added another § 87.026 and § 87.027.

For subject matter of former § 87.026, see, now § 87.027.

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 87.027. Signature Verification Committee

(a) A signature verification committee may be appointed in any election. The early voting clerk is the authority responsible for determining whether a signature verification committee is to be appointed. If the clerk determines that a committee is to be appointed, the clerk shall issue a written order calling for the appointment. Section 87.0271 supersedes this section to the extent of a conflict.

(b) The following authority is responsible for appointing the members of a signature verification committee:

- (1) the county election board, in an election for which the board is established;
- (2) the county chair, in a primary election; and
- (3) the governing body of the political subdivision, in an election ordered by an authority of a political subdivision other than a county.

(c) Not later than the fifth day after the date the early voting clerk issues the order calling for the appointment of a signature verification committee, the appropriate authority shall appoint the members of the committee and designate one of the appointees as chair. The authority shall fill a vacancy on the committee by appointment as soon as possible after the vacancy occurs. The early voting clerk shall post notice of the name and residence address of each appointee. The notice must remain posted continuously for the period beginning the day after the date of the appointment and ending on the last day of the committee's operation in the election.

(d) The early voting clerk shall determine the number of members who are to compose the signature verification committee and shall state that number in the order calling for the committee's appointment. A committee must consist of not fewer than five members and, in elections in which party alignment is indicated on the ballot, must be balanced as equally as possible by members of each political party required to nominate candidates by primary election.

(e) To be eligible to serve on a signature verification committee, a person must be a qualified voter:

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- (1) of the county, in a countywide election ordered by the governor or a county authority or in a primary election;
- (2) of the part of the county in which the election is held, for an election ordered by the governor or a county authority that does not cover the entire county of the person's residence; or
- (3) of the political subdivision, in an election ordered by an authority of a political subdivision other than a county.
- (f) The early voting clerk shall determine the place, day or days, and hours of operation of the signature verification committee and shall state that information in the order calling for the committee's appointment. A committee may not begin operating before the 20th day before election day.

(g) The early voting clerk shall post a copy of the order calling for the appointment of the signature verification committee. The copy must remain posted continuously for at least 10 days before the first day the committee meets.

(h) If a signature verification committee is appointed for the election, the early voting clerk shall deliver the jacket envelopes containing the early voting ballots voted by mail to the committee instead of to the early voting ballot board. Deliveries may be made only during the period of the committee's operation at times scheduled in advance of delivery by the early voting clerk. The clerk shall post notice of the time of each delivery. The notice must remain posted continuously for at least two days before the date of the delivery.

(i) The signature verification committee shall compare the signature on each carrier envelope certificate, except those signed for a voter by a witness, with the signature on the voter's ballot application to determine whether the signatures are those of the same person. The committee may also compare the signatures with the signature on the voter's registration application to confirm that the signatures match but may not use the registration application signature to determine that the signatures do not match. A determination under this subsection that the signatures do not match must be made by a majority vote of the committee's membership. The committee shall place the jacket envelopes, carrier envelopes, and applications of voters whose signatures do not match in separate containers from those of voters whose signatures match. The committee chair shall deliver the sorted materials to the early voting ballot board at the time specified by the board's presiding judge but within the period permitted for the early voting clerk's delivery of early voting ballots to the board.

(j) If a signature verification committee is appointed, the early voting ballot board shall follow the same procedure for accepting the early voting ballots voted by mail as in an election without a signature verification committee, except that the board may not determine whether a voter's signatures on the carrier envelope certificate and ballot application match if the committee has determined that the signatures match. If the committee has determined that the signatures do not match, the board may make a determination that the signatures match by a majority vote of the board's membership.

(k) Postings required by this section shall be made on the bulletin board used for posting notice of meetings of the commissioners court, in an election for which the county election board is established or a primary election, or of the governing body of the political subdivision in other elections.

Added by Acts 1987, 70th Leg., ch. 472, § 33, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 203, § 1.24; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, § 82, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1381, § 20, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

Prior to amendment by the 72nd Legislature this section read:

"(a) A signature verification committee may be appointed in any election. The absentee voting clerk is the authority responsible for determining whether a signature verification committee is to be appointed. If the clerk determines that a committee is to be appointed, the clerk shall issue a written order calling for the appointment.

"(b) The following authority is responsible for appointing the members of a signature verification committee:

"(1) the county election board, in an election for which the board is established;

"(2) the county chairman, in a primary election; and

"(3) the governing body of the political subdivision, in an election ordered by an authority of a political subdivision other than a county.

"(c) Not later than the fifth day after the date the absentee voting clerk issues the order calling for the appointment of a signature verification committee, the appropriate authority shall appoint the members of the committee and designate one of the appointees as chairman. The authority shall fill a vacancy on the committee by appointment as soon as possible after the vacancy occurs. The absentee voting clerk shall post notice of the name and residence address of each appointee. The notice must remain posted continuously for the period beginning the day after the date of the appointment and ending on the last day of the committee's operation in the election.

"(d) The absentee voting clerk shall determine the number of members who are to compose the signature verification committee and shall state that number in the order calling for the committee's appointment. A committee must consist of not fewer than five nor more than 15 members and, in elections in which party alignment is indicated on the ballot, must be balanced as equally as possible by members of each political party required to nominate candidates by primary election.

"(e) To be eligible to serve on a signature verification committee, a person must be a qualified voter:

"(1) of the county, in a countywide election ordered by the governor or a county authority or in a primary election;

"(2) of the part of the county in which the election is held, for an election ordered by the governor or a county authority that does not cover the entire county of the person's residence; or

"(3) of the political subdivision, in an election ordered by an authority of a political subdivision other than a county.

"(f) The absentee voting clerk shall determine the place, day or days, and hours of operation of the signature verification committee and shall state that information in the order calling for the committee's appointment. A committee may not begin operating before the 10th day before election day.

"(g) The absentee voting clerk shall post a copy of the order calling for the appointment of the signature verification committee. The copy must remain posted continuously for at least 10 days before the first day the committee meets.

"(h) If a signature verification committee is appointed for the election, the absentee voting clerk shall deliver the jacket envelopes containing the absentee ballots voted by mail to the committee instead of to the absentee ballot board. Deliveries may be made only during the period of the committee's operation at times scheduled in advance of delivery by the absentee voting clerk. The clerk shall post notice of the time of each delivery. The notice must remain posted continuously for at least two days before the date of the delivery.

"(i) The signature verification committee shall compare the signature on each carrier envelope certificate, except those signed for a voter by a witness, with the signature on the voter's ballot application to determine whether the signatures are those of the same person. The committee shall place the jacket envelopes, carrier envelopes, and applications of voters whose signatures do not match in separate containers from those of voters whose signatures match. The committee chairman shall deliver the sorted materials to the absentee ballot board at the time specified by the board's presiding judge but within the period permitted for the absentee voting clerk's delivery of absentee ballots to the board.

"(j) If a signature verification committee is appointed, the absentee ballot board shall follow the same procedure for accepting the absentee ballots voted by mail as in an election without a signature verification committee, except that the board may not determine whether a voter's signatures on the carrier envelope certificate and ballot application match if the committee has determined that the signatures match.

"(k) Postings required by this section shall be made on the bulletin board used for posting notice of meetings of the commissioners court, in an election for which the county election board is established or a primary election, or of the governing body of the political subdivision in other elections."

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

Prior Laws:

Acts 1985, 69th Leg., ch. 482, § 1.
V.A.T.S. Election Code, art. 5.05, subd. 6a.

Notes of Decisions

Appointments 2
Committee membership 1

1. Committee membership

Members of signature verification committee for political party primary election did not need to have handwriting training to be qualified; only

eligibility requirement was that committee member be qualified voter in area covered by election. *Alvarez v. Espinoza* (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

2. Appointments

Election Code violations that occurred when presiding judge of both early voting ballot board and

signature verification committee for political party primary election had been appointed by election clerk, rather than by political party chairman, and in failing to make written and posted appointment to signature verification committee did not affect outcome of primary runoff election for county commissioners court and did not provide basis for setting aside outcome. *Alvarez v. Espinoza* (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied,

writ dismissed w.o.j., rehearing of writ of error overruled.

Law presumes that early voting ballot board acted properly in rejecting and accepting absentee ballots; to overcome presumption, challenger must show by clear and satisfactory evidence that board erred. *Alvarez v. Espinoza* (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

§ 87.0271. Committee Requirements Specific to General Election for State and County Officers

(a) A signature verification committee shall be appointed in the general election for state and county officers on receipt by the early voting clerk of a written request for the committee submitted by at least 15 registered voters of the county. Except as provided by this section, Section 87.027 applies to the committee.

(b) If a signature verification committee is appointed under this section, each county chair of a political party with nominees on the general election ballot shall submit to the county election board a list of names of persons eligible to serve on the committee. The county election board shall appoint at least two persons from each list to serve as members of the committee. The same number of members must be appointed from each list.

(c) In addition to the members appointed under Subsection (b), the county election board shall appoint the chair of the committee from the list provided under that subsection by the political party whose nominee for governor received the most votes in the county in the most recent gubernatorial general election.

Added by Acts 1997, 75th Leg., ch. 1381, § 21, eff. Sept. 1, 1997.

SUBCHAPTER C. ACCEPTING EARLY VOTING BALLOT VOTED BY MAIL

§ 87.041. Accepting Voter

(a) The early voting ballot board shall open each jacket envelope for an early voting ballot voted by mail and determine whether to accept the voter's ballot.

(b) A ballot may be accepted only if:

(1) the carrier envelope certificate is properly executed;

(2) neither the voter's signature on the ballot application nor the signature on the carrier envelope certificate is determined to have been executed by a person other than the voter, unless signed by a witness;

(3) the voter's ballot application states a legal ground for early voting by mail;

(4) the voter is registered to vote, if registration is required by law;

(5) the address to which the ballot was mailed to the voter, as indicated by the application, was outside the voter's county of residence, if the ground for early voting is absence from the county of residence; and

(6) for a voter to whom a statement of residence form was required to be sent under Section 86.002(a), the statement of residence is returned in the carrier envelope and indicates that the voter satisfies the residence requirements prescribed by Section 63.0011.

(c) If a ballot is accepted, the board shall enter the voter's name on the poll list unless the form of the list makes it impracticable to do so. The names of the voters casting ballots by mail shall be listed separately on the poll list from those casting ballots by personal appearance.

(d) A ballot shall be rejected if any requirement prescribed by Subsection (b) is not satisfied. In that case, the board shall indicate the rejection by entering "rejected" on the carrier envelope and on the corresponding jacket envelope.

(e) In making the determination under Subsection (b)(2), the board may also compare the signatures with the signature on the voter's registration application to confirm that the

signatures match but may not use the registration application signature to determine that the signatures do not match.

Amended by Acts 1987, 70th Leg., ch. 472, § 34, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, § 1.25; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 797, § 42, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1381, § 22, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

Acts 1985, 69th Leg., ch. 482 [see italicized note, main volume] was repealed by Acts 1987, 70th Leg., ch. 54, § 9(b).

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

Notes of Decisions

Signatures 3

3. Signatures

Record supported determination that challenged signatures on absentee ballot applications and on envelopes in which those ballots had been submitted by mail were not identical or sufficiently similar to compel conclusion that same person signed both applications and carrier envelopes. *Alvarez v. Espinoza* (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

Even if witnesses who signed voters' names on carrier envelopes for absentee ballots had signed voters' names with voters' knowledge and consent,

those ballots had to be rejected for discrepancy in signatures between envelope and ballot. *Alvarez v. Espinoza* (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

Trier of fact in election contest need not accept testimony of voter or other witnesses that voter signed both absentee ballot and carrier envelope in which ballot was submitted if signatures clearly appear to be different and signatures had been rejected on that basis by early voting ballot board; trier of fact may compare signatures and decide validity on its own. *Alvarez v. Espinoza* (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

§ 87.042. Disposition of Accepted Ballot

(a) The early voting ballot board shall open each carrier envelope containing an accepted ballot without defacing the certificate on the carrier envelope and remove the ballot envelope from the carrier envelope.

(b) Except as provided by Subsection (c), the board shall place the ballot envelope containing an accepted ballot in the ballot box containing the early voting ballots voted by personal appearance.

(c) The ballot envelope may be placed in a separate container if the procedure for counting the early voting votes cast by personal appearance is different from that for counting the votes cast by mail.

(d) An accepted ballot that was not returned in the official ballot envelope shall be treated as an accepted ballot that was returned in the ballot envelope.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.17; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 87.043. Disposition of Rejected Ballot

(a) The early voting ballot board shall place the carrier envelopes containing rejected ballots in an envelope and shall seal the envelope. More than one envelope may be used if necessary.

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(b) The envelope for the rejected ballots must indicate the date and identity of the election and must be labeled "rejected early voting ballots" and signed by the board's presiding judge.

(c) A board member shall deliver the envelope containing the rejected ballots to the general custodian of election records to be preserved for the period for preserving the precinct election records. The envelope may not be placed in the box containing the voted ballots.

Amended by Acts 1987, 70th Leg., ch. 54, § 8(c), eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, § 2.17; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1987 Legislation

The 1987 amendatory act, to conform this section to Acts 1985, 69th Leg., ch. 942, [see italicized note, main volume] added the second sentence in subsec. (c), and repealed Acts 1985, 69th Leg., ch. 942.

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 87.0431. Notice of Rejected Ballot

Not later than the 10th day after election day, the presiding judge of the early voting ballot board shall deliver written notice of the reason for the rejection of a ballot to the voter at the residence address on the ballot application.

Added by Acts 1991, 72nd Leg., ch. 203, § 1.26.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 87.044. Disposition of Application

(a) The early voting ballot board shall place each application for a ballot voted by mail in its corresponding jacket envelope. If the voter's ballot was accepted, the board shall also place the carrier envelope in the jacket envelope. However, if the jacket envelope is to be used in a subsequent election, the carrier envelope shall be retained elsewhere.

(b) A board member shall deliver the jacket envelope, carrier envelope, and application in a container other than that used for the voted ballots to the general custodian of election records, to be retained for the period for preserving the precinct election records.

Amended by Acts 1987, 70th Leg., ch. 54, § 8(d), eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, § 2.17; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1987 Legislation

The 1987 amendatory act, to conform this section to Acts 1985, 69th Leg., ch. 942, [see italicized note, main volume] inserted in subsec. (b) "in a container other than that used for the voted ballots", and repealed Acts 1985, 69th Leg., ch. 942.

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

SUBCHAPTER D. PROCESSING MANUALLY COUNTED BALLOTS

§ 87.061. Authority Responsible for Counting Ballots

The early voting ballot board shall count the early voting ballots that are to be counted manually.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.18; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 87.004.

§ 87.062. Counting Ballots and Preparing Returns

(a) On the direction of the presiding judge, the early voting ballot board, in accordance with Section 85.032(b), shall open the container for the early voting ballots that are to be counted by the board, remove the contents from the container, and remove any ballots enclosed in ballot envelopes from their envelopes.

(b) The board shall count the ballots and prepare the returns in accordance with the procedure applicable to paper ballots cast at a precinct polling place.

(c) The results of all early voting ballots counted by the board under this subchapter shall be included in the same return.

Amended by Acts 1989, 71st Leg., ch. 562, § 3, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 203, § 2.18; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 87.004.

§ 87.063. Disposition of Ballots and Other Items

(a) Except as provided by Subsection (b), the presiding judge of the early voting ballot board shall deliver the early voting ballots counted by the board, early voting election returns, other early voting election records, and ballot box keys, to the appropriate authorities in accordance with the procedures applicable to distribution of corresponding items from a precinct polling place using paper ballots.

(b) If part of the early voting ballots are counted by automatic tabulating equipment at a central counting station, instead of delivering a copy of the early voting election returns and other early voting election records to the canvassing authority and to the general custodian of election records, those records shall be delivered to the presiding judge of the central counting station.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.18; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 87.004.

SUBCHAPTER E. PROCESSING MECHANICAL VOTING MACHINE RESULTS

§ 87.081. Authority Responsible for Processing Voting Machine Results

The early voting votes registered on a mechanical voting machine and the early voting write-in votes recorded on the machine shall be processed by the early voting ballot board.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.19; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 87.082. Registering Votes by Mail on Machine

(a) At the discretion of the presiding judge, the early voting ballot board may register the early voting votes cast by mail on a mechanical voting machine.

(b) The determination of whether to accept the ballots voted by mail may be made before election day but the votes may not be registered on a machine until election day.

(c) The early voting votes cast by mail may not be registered on a mechanical voting machine on which early voting votes were cast by personal appearance unless the early voting ballot board has read and entered on the returns the votes cast on the machine by personal appearance.

Amended by Acts 1991, 72nd Leg., ch. 203, § 1.27; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

§ 87.083. Processing Results

(a) On the direction of the presiding judge, the early voting ballot board shall process the election results for each mechanical voting machine used for early voting in accordance with the procedure applicable to mechanical voting machines used at a precinct polling place.

(b) The results of all early voting votes processed by the board under this subchapter shall be included in the same return. The results of any manually counted early voting ballots shall also be included in the return.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.19; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 87.084. Disposition of Returns and Other Items

(a) Except as provided by Subsection (b), the presiding judge of the early voting ballot board shall deliver the early voting election returns containing the mechanical voting machine results, other early voting records, and voting machine keys to the appropriate authorities in accordance with the procedures applicable to distribution of corresponding items from a precinct polling place using mechanical voting machines.

(b) If part of the early voting ballots are counted by automatic tabulating equipment at a central counting station, instead of delivering a copy of the early voting election returns and other early voting election records to the canvassing authority and to the general custodian of election records, those records shall be delivered to the presiding judge of the central counting station.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.19; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

**SUBCHAPTER F. PROCESSING BALLOTS COUNTED
AT CENTRAL COUNTING STATION**

§ 87.101. Preparation of Ballots; Delivery to Counting Station

(a) On the direction of the presiding judge, the early voting ballot board, in accordance with Section 85.032(b), shall open the container for the early voting electronic system ballots that are to be counted by automatic tabulating equipment at a central counting station, remove the ballots from the container, and remove any ballots enclosed in ballot envelopes from their envelopes.

(b) On the direction of the presiding judge, the early voting ballot board may prepare the ballots for delivery to the central counting station at any time after they are received and shall deliver them in accordance with the procedure applicable to electronic system ballots cast at a precinct polling place.

Amended by Acts 1989, 71st Leg., ch. 562, § 4, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 203, § 2.20; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 87.102. Duplicating Paper Ballots for Automatic Counting

(a) The authority adopting an electronic voting system in which ballots are counted at a central counting station may direct by resolution, order, or other official action that the early voting regular paper ballots cast in an election be duplicated as electronic system ballots for automatic counting at the central counting station.

(b) Early voting ballots that are to be duplicated under this section shall be delivered to the central counting station as prescribed by Section 87.101 and shall be treated in the same manner as damaged electronic system ballots that are duplicated for automatic counting.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.20; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 87.103. Counting Ballots and Preparing Returns

(a) The early voting electronic system ballots counted at a central counting station shall be tabulated separately from the ballots cast at precinct polling places and shall be separately reported on the returns.

(b) The early voting returns prepared at the central counting station must include any early voting results obtained by the early voting ballot board under Subchapters D and E.¹

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.20; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

¹ Sections 87.061 et seq. and 87.081 et seq.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 87.104. Disposition of Early Voting Ballot Board Returns and Other Records

Early voting returns or other early voting election records to be delivered to the central counting station under Section 87.063(b) or 87.084(b) shall be delivered to the appropriate authorities with the counting station records.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.20; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

SUBCHAPTER G. MISCELLANEOUS PROVISIONS

§ 87.121. Early Voting Rosters

(a) The early voting clerk shall maintain for each election a roster listing each person who votes an early voting ballot by personal appearance and a roster listing each person to whom an early voting ballot to be voted by mail is sent.

(b) For each person listed, the applicable roster must include:

- (1) the person's name, address, and voter registration number;
- (2) an identification of the person's county election precinct of registration; and
- (3) the date of voting or the date the ballot was mailed to the person, as applicable.

(c) Each roster shall be updated daily.

(d) Each roster may be maintained in any form approved by the secretary of state.

(e) The clerk shall preserve each roster after the election for the period for preserving the precinct election records.

(f) Information on the roster for a person to whom an early voting mail ballot has been sent is not available for public inspection, except to the voter seeking to verify that the information pertaining to the voter is accurate, until:

- (1) 72 hours after the time a ballot is mailed to the voter; or
- (2) 48 hours after the time a ballot is mailed to the voter if the mailing occurs on the fourth day before election day.

Amended by Acts 1991, 72nd Leg., ch. 203, § 1.23; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 565, § 6, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 864, § 83, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1381, § 23, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

Notes of Decisions

Release of information 2

open to public and their release is not subject to provision of Election Code § 61.007 that names of persons voting may not be revealed until after polls close on election day. Op.Atty.Gen.1992, No. DM-168.

2. Release of information

Names of persons voting by personal appearance during early voting period for election are

§ 87.122. Precinct Early Voting List

(a) For each election precinct in the territory served by the early voting clerk, the clerk shall prepare a list containing the name, address, and voter registration number of each person registered in the precinct who votes an early voting ballot by personal appearance and to whom an early voting ballot to be voted by mail is sent.

(b) If an election precinct is situated in more than one county election precinct, the list must indicate each voter's county election precinct of residence.

(c) The clerk shall deliver the list to the presiding judge of the election precinct not later than the day before election day.

(d) The clerk shall preserve a copy of each precinct early voting list prepared for the general election for state and county officers for two years after election day.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.21; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 87.1221. Disposition of Ballot Transmittal Form

(a) The presiding judge of the early voting ballot board shall enter on the ballot transmittal form the following information:

- (1) the number of personal appearance ballots received;
- (2) the number of mail ballots received;
- (3) the number of mail ballots accepted;
- (4) the number of mail ballots rejected; and
- (5) the number of ballots counted or delivered to the central counting station, as applicable.

(b) A board member shall deliver the transmittal form to the general custodian of election records to be preserved for the period for preserving the precinct election records.

Added by Acts 1991, 72nd Leg., ch. 203, § 1.29.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 87.123. Delivering Other Records and Supplies

Not later than the second day after election day, the early voting clerk shall deliver:

(1) the early voting records and supplies, other than those required to be delivered to the early voting ballot board, to the authority to whom the corresponding precinct election records are delivered after the election; and

(2) the applications for early voting ballots voted by personal appearance to the general custodian of election records, to be retained for the period for preserving the precinct election records.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.21; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 87.1231. Early Voting Votes Reported by Precinct

(a) Not later than the time of the local canvass, the early voting clerk shall deliver to the local canvassing authority a report of the total number of early voting votes for each candidate or measure by election precinct. The report may reflect the total for votes by mail and the total for votes by personal appearance.

(b) The early voting clerk may not report vote totals under Subsection (a) for an election precinct in which fewer than five votes are cast during the early voting period.

Added by Acts 1989, 71st Leg., ch. 114, § 12, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 203, § 1.80; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1349, § 40, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

Prior to amendment by the 72nd Legislature, this section read:

“Not later than the time of the local canvass, the absentee voting clerk shall deliver to the local canvassing authority a report of the total number of absentee votes for each candidate or measure by election precinct.”

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

Cross References

Local canvass procedure, report of early voting votes, see V.T.C.A., Election Code § 67.004.

§ 87.124. Preservation of Early Voting Election Records Generally

The early voting election returns, voted early voting ballots, and other early voting election records shall be preserved after the election in the same manner as the corresponding precinct election records.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.21; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 87.125. Counting of Certain Late Ballots Voted by Mail

(a) The early voting ballot board shall convene to count ballots voted by mail described by Section 86.007(d) on:

- (1) the sixth day after the date of a general election; or
- (2) the fifth day after the date of a primary or special election.

(b) On counting the ballots under Subsection (a), the early voting ballot board shall report the results to the local canvassing authority for the election.

Added by Acts 1997, 75th Leg., ch. 1349, § 41, eff. Sept. 1, 1997.

CHAPTER 88. CHALLENGE OF PERSON VOTING BY MAIL

Section		Section	
88.001.	Challenge Authorized.	88.003.	Disposing of Challenge.
88.002.	Initiating Challenge.	88.004.	Notice of Outcome to Voter.

§ 88.001. Challenge Authorized

The eligibility to vote of a person voting an early voting ballot by mail may be challenged as provided by this chapter by:

- (1) the early voting clerk;
- (2) a member of the early voting ballot board;
- (3) a watcher observing the early voting ballot board; or
- (4) a registered voter who is eligible to vote in the election.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.22; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 88.002. Initiating Challenge

(a) A person other than a member of the early voting ballot board may challenge a voter under this chapter by filing with the presiding judge of the early voting ballot board a written statement of the challenge as provided by this section.

(b) To be effective, a statement must:

- (1) state the challenger's full name and the ground for the challenge;
- (2) state the challenger's residence address if the challenger is in the class described by Section 88.001(3) or (4);
- (3) be signed by the challenger; and
- (4) be filed before the challenged voter's ballot is accepted.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.22; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 88.003. Disposing of Challenge

(a) The procedure for disposing of a challenge under this chapter is the same as the procedure prescribed by this code for disposing of a challenge to a voter at a polling place, except as provided by this section.

(b) The presiding judge of the early voting ballot board shall determine the challenge.

(c) A challenge shall be determined only on the basis of information in governmental records unless the voter appears in person to respond to the challenge.

(d) If information in a governmental record is a basis for a challenge, a copy of the record certified by its custodian may be introduced instead of the original record. If the original record is not readily available and a certified copy is not introduced by the challenger, the presiding judge may overrule the challenge.

(e) In this chapter, "governmental record" means a document:

- (1) filed, prepared, or preserved under this code; or

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(2) belonging to, received by, or kept by the state, a political subdivision, or any branch or agency of the state or a political subdivision, for information.

(f) The presiding judge shall attach the challenger's written statement to the challenged voter's ballot application and indicate on the statement the disposition of the challenge and the date of that action. The statement is part of the application.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.22; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

Notes of Decisions

Early voting 1

ballots should have been counted need not show qualifications of rejected voters; rejections were unrelated to voters' qualifications, merely their eligibility to submit early ballots by mail. Alvarez v. Espinoza (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

1. Early voting

If absentee ballots were improperly rejected on grounds that voters were not eligible to cast their ballots early by mail, contestant who claims that

§ 88.004. Notice of Outcome to Voter

(a) If as a result of a challenge under this chapter a ballot is not accepted, the presiding judge of the early voting ballot board shall deliver written notice of the result of the challenge, including the reason for the result, to the challenged voter.

(b) If the notice is delivered by mail, it shall be sent to the voter's residence address.

(c) The notice shall be delivered not later than the 10th day after election day.

Amended by Acts 1991, 72nd Leg., ch. 203, § 1.31; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 728, § 28, eff. Sept. 1, 1993.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

Notes of Decisions

Necessity of notice 1

ing voters notice of rejection that would allow them to appear before board and counter information upon which board rejected votes or to make other arrangements to vote. Alvarez v. Espinoza (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

1. Necessity of notice

Early mail-in ballots submitted by voters could not be rejected, on postelection challenge based on information before early voting board, without giv-

SUBTITLE B. SPECIAL FORMS OF EARLY VOTING

CHAPTER 101. VOTING BY RESIDENT FEDERAL POSTCARD APPLICANT

Section		Section	
101.001.	Eligibility.	101.005.	Applying for More Than One Election in Same Application.
101.002.	General Conduct of Voting.	101.006.	FPCA Voter Registration.
101.003.	Form and Contents of Application.	101.007.	Method of Providing Ballot; Required Address.
101.004.	Submitting Application.		

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Section		Section	
101.008.	Return of Voted Ballot.	101.010.	Noting FPCA Registration on Early Voting Roster.
101.009.	Noting FPCA Registration on Poll List.	101.011.	Excluding FPCA Registrant From Precinct Early Voting List.
		101.012.	Official Carrier Envelope.

§ 101.001. Eligibility

A person is eligible for early voting by mail as provided by this chapter if:

(1) the person is qualified to vote in this state or, if not registered to vote in this state, would be qualified if registered; and

(2) the person is:

(A) a member of the armed forces of the United States, or the spouse or a dependent of a member;

(B) a member of the merchant marine of the United States, or the spouse or a dependent of a member; or

(C) domiciled in this state but temporarily living outside the territorial limits of the United States and the District of Columbia.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.24; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 101.002. General Conduct of Voting

Voting under this chapter shall be conducted and the results shall be processed as provided by Subtitle A¹ for early voting by mail, except as otherwise provided by this chapter.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.24; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

¹ Section 81.001 et seq.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 101.003. Form and Contents of Application

(a) An application for a ballot to be voted under this chapter must:

(1) be submitted on an official federal postcard application form; and

(2) include the information necessary to indicate that the applicant is eligible to vote in the election for which the ballot is requested.

(b) In this chapter, "federal postcard application" means an application for a ballot to be voted under this chapter submitted on the official federal form prescribed under the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et seq.).

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.24; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1349, § 42, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 101.004. Submitting Application

(a) A federal postcard application must be submitted by mailing it to the early voting clerk for the election who serves the election precinct of the applicant's residence.

(b) A federal postcard application may be submitted at any time during the calendar year in which the election for which a ballot is requested occurs, but not later than the deadline for submitting a regular application for a ballot to be voted by mail.

(c) A federal postcard application requesting a ballot for an election to be held in January or February may be submitted in the preceding calendar year but not earlier than the earliest date for submitting a regular application for a ballot to be voted by mail.

(d) A timely application that is addressed to the wrong early voting clerk shall be forwarded to the proper early voting clerk not later than the day after the date it is received by the wrong clerk.

(e) An applicant who otherwise complies with applicable requirements is entitled to receive a full ballot to be voted by mail under this chapter if:

(1) the applicant submits a federal postcard application to the early voting clerk on or before the 30th day before election day; and

(2) the application contains the information that is required for registration under Title 2.

(f) The applicant is entitled to receive only a federal ballot to be voted by mail under Chapter 114 if:

(1) the applicant submits the federal postcard application to the early voting clerk after the 30th day before election day and before the sixth day before election day; and

(2) the application contains the information that is required for registration under Title 2.

(g) An applicant who submits a federal postcard application to the early voting clerk on or after the sixth day before election day is not entitled to receive a ballot by mail for that election.

(h) If the applicant submits the federal postcard application within the time prescribed by Subsection (f)(1) and is a registered voter at the address contained on the application, the applicant is entitled to receive a full ballot to be voted by mail under this chapter.

(i) For purposes of determining the date a federal postcard application is submitted to the early voting clerk, an application is considered to be submitted on the date it is placed and properly addressed in the United States mail. The date indicated by the post office cancellation mark is considered to be the date the application was placed in the mail unless proven otherwise. For purposes of an application made under Subsection (e):

(1) an application that does not contain a cancellation mark is considered to be timely if it is received by the early voting clerk on or before the 22nd day before election day; and

(2) if the 30th day before the date of an election is a Saturday, Sunday, or legal state or national holiday, an application is considered to be timely if it is submitted to the early voting clerk on or before the next regular business day.

(j) If the early voting clerk determines that an application that is submitted before the time prescribed by Subsection (e)(1) does not contain the information that is required for registration under Title 2, the clerk shall notify the applicant of that fact. If the applicant submits the missing information before the time prescribed by Subsection (e)(1), the applicant is entitled to receive a full ballot to be voted by mail under this chapter. If the applicant submits the missing information after the time prescribed by Subsection (e)(1), the applicant is entitled to receive a full ballot to be voted by mail for the next election that occurs:

(1) in the same calendar year; and

(2) at least 30 days after the date the information is submitted.

Amended by Acts 1991, 72nd Leg., ch. 203, § 1.32; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1349, § 43, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, § 5.10, eff. Sept. 1, 1999.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

§ 101.005. Applying for More Than One Election in Same Application

(a) A person may apply with a single federal postcard application for a ballot for any one or more elections in which the early voting clerk to whom the application is submitted conducts early voting.

(b) An application that does not identify the election for which a ballot is requested shall be treated as if it requests a ballot for:

(1) each general election in which the clerk conducts early voting; and

(2) the general primary election if the application indicates party preference and is submitted to the early voting clerk for the primary.

(c) An application shall be treated as if it requests a ballot for a runoff election that results from an election for which a ballot is requested.

(d) An application requesting a ballot for more than one election shall be preserved for the period for preserving the precinct election records for the last election for which the application is effective.

Amended by Acts 1989, 71st Leg., ch. 2, § 7.06, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 203, § 2.24; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 101.006. FPCA Voter Registration

(a) The submission of a federal postcard application that complies with the applicable requirements by an unregistered applicant constitutes registration by the applicant only for the purpose of voting in the election for which a ballot is requested.

(b) In this chapter, "FPCA registrant" means a person registered to vote under this section.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.24; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 101.007. Method of Providing Ballot; Required Address

(a) The balloting materials provided under this chapter shall be airmailed to the voter free of United States postage, as provided by the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et seq.), in an envelope labeled "Official Election Balloting Material - via Airmail." The secretary of state shall provide early voting clerks with instructions on compliance with this subsection.

(b) The address to which the balloting materials are sent to a voter must be:

(1) an address outside the county of the voter's residence; or

(2) an address in the United States for forwarding or delivery to the voter at a location outside the United States.

(c) If the address to which the balloting materials are to be sent is within the county served by the early voting clerk, the federal postcard application must indicate that the balloting materials will be forwarded or delivered to the voter at a location outside the United States. Amended by Acts 1991, 72nd Leg., ch. 203, § 1.33; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1349, § 44, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

§ 101.008. Return of Voted Ballot

A ballot voted under this chapter may be returned to the early voting clerk by mail, common or contract carrier, or courier.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.24; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 101.009. Noting FPCA Registration on Poll List

For each FPCA registrant accepted to vote, a notation shall be made beside the voter's name on the early voting poll list indicating that the voter is an FPCA registrant.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.24; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 101.010. Noting FPCA Registration on Early Voting Roster

The entry on the early voting roster pertaining to a voter under this chapter who is an FPCA registrant must include a notation indicating that the voter is an FPCA registrant.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.24; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 101.011. Excluding FPCA Registrant From Precinct Early Voting List

A person to whom a ballot is provided under this chapter is not required to be included on the precinct early voting list if the person is an FPCA registrant.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.24; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 101.012. Official Carrier Envelope

The officially prescribed carrier envelope for voting under this chapter shall be prepared so that it can be mailed free of United States postage, as provided by the Federal Voting Assistance Act of 1955,¹ and must contain the label prescribed by Section 101.007(a) for the envelope in which the balloting materials are sent to a voter. The secretary of state shall provide early voting clerks with instructions on compliance with this section.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.24; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

¹ 42 U.S.C.A. § 1973cc et seq.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

CHAPTER 102. LATE VOTING BY DISABLED VOTER

Section		Section	
102.001.	Eligibility.	102.006.	Method of Returning Marked Ballot; Deadline.
102.002.	Contents of Application.	102.007.	Processing Results.
102.003.	Submitting Application.	102.008.	Entry on Early Voting Roster.
102.004.	Reviewing Application and Providing Balloting Materials.	102.009.	Entry on Precinct Early Voting List.
102.005.	Marking and Sealing Ballot.	102.010.	Repealed.

§ 102.001. Eligibility

(a) A qualified voter is eligible to vote a late ballot as provided by this chapter if the voter has a sickness or physical condition described by Section 82.002 that originates on or after the day before the last day for submitting an application for a ballot to be voted by mail.

(b) In this chapter, "late ballot" means a ballot voted under this chapter.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.26; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 102.002. Contents of Application

An application for a late ballot must comply with the applicable provisions of Section 84.002 and must include or be accompanied by a certificate of a licensed physician or chiropractor or accredited Christian Science practitioner in substantially the following form:

"This is to certify that I know that _____ has a sickness or physical condition that will prevent him or her from appearing at the polling place for an election to be held on the _____ day of _____, 19____, without a likelihood of needing personal assistance or of injuring his or her health and that the sickness or physical condition originated on or after _____

"Witness my hand at _____, Texas, this _____ day of _____, 19____.

(signature of physician, chiropractor, or practitioner)"

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.26; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

Notes of Decisions

Medical certificates 1

1. Medical certificates

This section's requirement that application for late absentee ballot be accompanied by certificate of licensed physician, chiropractor, or accredited Christian Science practitioner was mandatory, given its requiring that vote not be counted if application procedures were not followed. *Kelley v. Scott* (App. 8 Dist. 1987) 733 S.W.2d 312, dismissed.

Election could be declared void as result of invalidation of late absentee ballot, on ground that

application for ballot was not accompanied by certificate of licensed physician, chiropractor, or accredited Christian Science practitioner, without attempting to determine for whom vote was cast, where election involved one-vote margin; irregularity materially affected outcome. *Kelley v. Scott* (App. 8 Dist. 1987) 733 S.W.2d 312, dismissed.

Evidence of fraud was not necessary to set aside late absentee ballot, where application for late absentee ballot was not accompanied by certificate of license physician, chiropractor, or accredited Christian Science practitioner. *Kelley v. Scott* (App. 8 Dist. 1987) 733 S.W.2d 312, dismissed.

§ 102.003. Submitting Application

(a) An application for a late ballot must be submitted in person to the early voting clerk at the main early voting polling place by a representative of the applicant. However, if the early voting ballots voted by mail are processed at a location other than the main early voting polling place, the early voting clerk may require the application to be submitted at that location.

(b) An application may be submitted after the last day of the period for early voting by personal appearance and before 2 p.m. on election day.

(c) To be eligible to serve as an applicant's representative, a person:

(1) must be at least 18 years of age;

(2) must not be employed by or related within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to a candidate whose name appears on the ballot; and

(3) must not have served in the election as the representative for another applicant.

Amended by Acts 1991, 72nd Leg., ch. 203, § 1.34; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 561, § 17, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, § 5.95(27), eff. Sept. 1, 1995.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

§ 102.004. Reviewing Application and Providing Balloting Materials

(a) An application submitted under this chapter shall be reviewed and the applicant's registration status verified by the early voting clerk in the same manner as for early voting by mail.

(b) The clerk shall provide the balloting materials for voting an early voting ballot by mail to the representative who submits the voter's application. Before providing the materials, the

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clerk shall enter the representative's name and residence address on the application and secure the representative's signature beside the name.

(c) The voter's representative shall deliver the balloting materials in person to the voter.

(d) A late ballot provided to a voter by any method other than that prescribed by this section may not be counted.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.26; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 102.005. Marking and Sealing Ballot

A late ballot must be marked and sealed by the voter in the same manner as an early voting ballot voted by mail.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.26; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 102.006. Method of Returning Marked Ballot; Deadline

(a) A marked late ballot must be delivered to the early voting clerk in person by the representative who submitted the voter's application. The ballot must be delivered in the official carrier envelope. A ballot returned by any other method may not be counted.

(b) The clerk shall enter the representative's name and residence address on a returned carrier envelope and secure the representative's signature beside the name.

(c) The deadline for returning a marked late ballot is the same as that for an early voting ballot voted by mail.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.26; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 102.007. Processing Results

The results of voting under this chapter shall be processed in accordance with the procedures applicable to processing early voting ballots voted by mail.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.26; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 102.008. Entry on Early Voting Roster

The early voting roster must include the name of each person to whom a late ballot is provided with a notation indicating that the ballot was a late ballot under this chapter.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.26; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 102.009. Entry on Precinct Early Voting List

The precinct early voting list must contain the name of each person to whom a late ballot has been provided as of the time of delivery of the list.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.26; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 102.010. Repealed by Acts 1991, 72nd Leg., ch. 203, § 1.37

Historical and Statutory Notes

Prior to repeal, this section was amended by Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

CHAPTER 103. LATE VOTING BECAUSE OF DEATH IN IMMEDIATE FAMILY

Section		Section	
103.001.	Eligibility.	103.004.	Voting Procedure; Processing Results.
103.002.	Form and Contents of Application.	103.005.	Entry on Early Voting Roster.
103.003.	Submitting Application.	103.006.	Entry on Precinct Early Voting List.

§ 103.001. Eligibility

(a) A qualified voter is eligible to vote a late ballot as provided by this chapter if:

(1) the voter will be absent from the county of residence on election day because of the death of a person related to the voter within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code; and

(2) the death occurs on or after the day before the last day of the period for early voting by personal appearance.

(b) In this chapter, "late ballot" means a ballot voted under this chapter.

Amended by Acts 1991, 72nd Leg., ch. 203, § 1.35; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 561, § 18, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 728, § 29, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, § 5.95(27), eff. Sept. 1, 1995.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

§ 103.002. Form and Contents of Application

An application for a late ballot must:

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(1) be in the form of an affidavit; and

(2) include, in addition to the information required by the applicable provisions of Section 84.002, the date of death of the decedent and a statement of the relationship of the voter to the decedent.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.28; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 103.003. Submitting Application

(a) An application for a late ballot must be submitted in person by the applicant to the early voting clerk at the main early voting polling place. However, if the early voting ballots voted by mail are processed at a location other than the main early voting polling place, the early voting clerk may require the application to be submitted at that location.

(b) An application may be submitted after the last day of the period for early voting by personal appearance and before the close of business on the day before election day.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.28; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 103.004. Voting Procedure; Processing Results

(a) On submission of an application to the early voting clerk, the clerk shall review the application and verify the applicant's registration status in accordance with the procedure applicable to early voting by mail.

(b) The voting shall be conducted with the balloting materials for early voting by mail.

(c) The voter must mark and seal the ballot in the same manner as if early voting by mail except that the certificate on the carrier envelope need not be completed.

(d) On sealing the carrier envelope, the voter must give it to the clerk, who shall note on the envelope that the ballot is voted under this chapter.

(e) The results shall be processed in accordance with the procedures applicable to processing early voting ballots voted by mail.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.28; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 103.005. Entry on Early Voting Roster

The early voting roster must include the name of each person voting a late ballot with a notation indicating that the late ballot was voted under this chapter.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.28; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 103.006. Entry on Precinct Early Voting List

The precinct early voting list must contain the name of each person who has voted a late ballot as of the time of delivery of the list.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.28; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

CHAPTER 104. VOTING ON ELECTION DAY BY DISABLED VOTER FROM VOTING SYSTEM PRECINCT

Section		Section	
104.001.	Eligibility.	104.004.	Voting Procedure.
104.002.	Form and Contents of Application.	104.005.	Processing Results.
104.003.	Time and Place for Voting.	104.006.	Entry on Early Voting Roster.

§ 104.001. Eligibility

A qualified voter in whose precinct polling place voting is conducted by voting machine or voting device is eligible to vote by the early voting procedure provided by this chapter if the voter has a sickness or physical condition that prevents the voter from voting in the regular manner without personal assistance or a likelihood of injuring the voter's health.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 104.002. Form and Contents of Application

An application for a ballot voted under this chapter must:

- (1) be in the form of an affidavit; and
- (2) include, in addition to the information required by the applicable provisions of Section 84.002, a statement that the applicant has not previously voted in the election.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 104.003. Time and Place for Voting

Voting under this chapter shall be conducted on election day, beginning at 8 a.m. and concluding at 2 p.m., at the main early voting polling place, except that the voting shall begin

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at 7 a.m. and conclude at 7 p.m. in an election in which mechanical voting machines are used. However, if the early voting ballots voted by mail are processed at a location other than the main early voting polling place, the early voting clerk may require the voting to be conducted at that location.

Amended by Acts 1989, 71st Leg., ch. 1157, § 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 104.004. Voting Procedure

(a) On submission of an application to the early voting clerk, the clerk shall review the application and verify the applicant's registration status in accordance with the procedure applicable to early voting by mail.

(b) The voting shall be conducted with the balloting materials for early voting by mail.

(c) The voter must mark and seal the ballot in the same manner as if voting by mail except that the certificate on the carrier envelope need not be completed.

(d) On sealing the carrier envelope, the voter must give it to the clerk, who shall note on the envelope that the ballot is voted under this chapter.

(e) If the voter is physically unable to enter the early voting polling place without personal assistance or a likelihood of injuring the voter's health, the clerk shall deliver the balloting materials to the voter at the polling place entrance or curb.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, § 84, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 104.005. Processing Results

The results of voting under this chapter shall be processed in accordance with the procedures applicable to processing early voting ballots voted by mail.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 104.006. Entry on Early Voting Roster

The early voting roster must include the name of each person voting under this chapter with a notation indicating that the person voted under this chapter.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

CHAPTER 105. VOTING BY MILITARY PERSONNEL

Section		Section	
105.001.	Electronic Transmission of Completed Ballot.	105.002.	State Write-in Ballot.

Chapter 105, Voting by Military Personnel, consisting of §§ 105.001 and 105.002, was added by Acts 1997, 75th Leg., ch. 1349, § 45.

Another Chapter 105, Voting on Election Day by Person on Space Flight, consisting of §§ 105.001, 105.002, added by Acts 1997, 75th Leg., ch. 842, § 1, was renumbered as Chapter 106, consisting of §§ 106.001, 106.002 by Acts 1999, 76th Leg., ch. 62, § 19.01(16).

§ 105.001. Electronic Transmission of Completed Ballot

(a) The secretary of state shall prescribe procedures to allow a person who is casting an early voting ballot by mail to return the ballot by telephonic facsimile machine or similar electronic means if the person:

(1) is a member of the armed forces of the United States who is on active duty overseas, or the spouse or a dependent of the member; and

(2) is casting the ballot from an area:

(A) in which members of the armed forces are eligible to receive hostile fire pay or imminent danger pay; or

(B) that has been designated by the president of the United States as a combat zone.

(b) The procedures must:

(1) provide for verification of the voter;

(2) provide for the security of the transmission; and

(3) require the early voting clerk to maintain a record of each ballot received under this section.

(c) A ballot transmitted under this section or by mail may not be counted if the ballot has previously been transmitted to the early voting clerk by electronic means under this section.

Added by Acts 1997, 75th Leg., ch. 1349, § 45, eff. Sept. 1, 1997.

Historical and Statutory Notes

Another § 105.001, Applicability, as added by Acts 1997, 75th Leg., ch. 842, § 1, was renumbered as § 106.001 by Acts 1999, 76th Leg., ch. 62, § 19.01(16).

§ 105.002. State Write-in Ballot

(a) The secretary of state shall prescribe procedures to allow a voter to apply for and cast a state write-in ballot before the time a voter may receive a regular ballot to be voted by mail if the voter:

(1) is a member of the armed forces of the United States or the spouse or a dependent of a member;

(2) is unable to cast a ballot on election day or during the regular period for early voting because of a military contingency; and

(3) makes an application on an official federal postcard application form that:

(A) indicates that the person desires a state write-in ballot; and

(B) contains the information that is required for registration under Title 2.

(b) An application for a ballot under this section may not be submitted earlier than the 180th day before election day. If an application under this section is received after the time that regularly printed ballots become available, the early voting clerk shall send the applicant a regularly printed ballot.

(c) The secretary of state shall prescribe the form of the ballot to allow a voter to cast a vote in each federal, state, or local race in the election. The ballot must allow a voter to write in the name of a candidate or, if applicable, cast a straight-party vote.

(d) If a person casts a ballot under this section and under Chapter 114, the early voting clerk shall examine both ballots to determine the voter's intent.

Added by Acts 1997, 75th Leg., ch. 1349, § 45, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, § 5.11, eff. Sept. 1, 1999.

Historical and Statutory Notes

Another § 105.002, Voting Permitted, as added by Acts 1997, 75th Leg., ch. 842, § 1, was renumbered as § 105.002 by Acts 1999, 76th Leg., ch. 62, § 19.01(16).

CHAPTER 106. VOTING ON ELECTION DAY BY PERSON ON SPACE FLIGHT

Section

- 106.001. Applicability.
- 106.002. Voting Permitted.

Acts 1999, 76th Leg., ch. 62, § 19.01(16) renumbered Chapter 105, Voting on Election Day by Person on Space Flight, as added by Acts 1997, 75th Leg., ch. 842, § 1, as Chapter 106.

§ 106.001. Applicability

This chapter applies only to a person who:

- (1) is eligible to vote in this state; and
- (2) is unable to vote in an election because the person is on a space flight, as defined by the secretary of state, on election day and during the early voting period for the election.

Added by Acts 1997, 75th Leg., ch. 842, § 1, eff. Sept. 1, 1997. Renumbered from § 105.001 by Acts 1999, 76th Leg., ch. 62, § 19.01(16), eff. Sept. 1, 1999.

§ 106.002. Voting Permitted

The secretary of state shall prescribe procedures for voting from space on election day by secure electronic means by persons to whom this chapter applies. The procedures may provide for:

- (1) a deadline by which a person must apply to vote under this chapter; and
- (2) the use of the National Aeronautics and Space Administration's electronic transmission program to send ballots to persons on a space flight.

Added by Acts 1997, 75th Leg., ch. 842, § 1, eff. Sept. 1, 1997. Renumbered from § 105.002 by Acts 1999, 76th Leg., ch. 62, § 19.01(16), eff. Sept. 1, 1999.

SUBTITLE C. RESTRICTED BALLOT

CHAPTER 111. GENERAL PROVISIONS

Section

- 111.001. Restricted Ballot.
- 111.002. General Conduct of Voting.
- 111.003. Application Required.
- 111.004. Contents of Application.

Section

- 111.005. Preparing Restricted Ballot.
- 111.006. Manually Counting Electronic System Ballot.
- 111.007. Restricted Ballot Roster.

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Section

111.008. Noting Restricted Ballot Voter on Poll List and Registered Voter List.

Section

111.009. Excluding Voter From Precinct Early Voting List.

§ 111.001. Restricted Ballot

In this subtitle, "restricted ballot" means a ballot that is restricted to the offices and propositions stating measures on which a person is entitled to vote under Chapter 112, 113, or 114.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 111.002. General Conduct of Voting

The voting of restricted ballots under this subtitle shall be conducted and the results of voting shall be processed as provided by Subtitle A¹ for early voting, except as otherwise provided by this subtitle.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

¹ Section 81.001 et seq.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 111.003. Application Required

(a) To be entitled to vote a restricted ballot, a person must make an application for the ballot.

(b) A restricted ballot application is subject to the applicable provisions of Chapter 84.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 111.004. Contents of Application

An application for a restricted ballot must include, in addition to the information required by the applicable provisions of Section 84.002, the information necessary to indicate that the applicant is eligible to vote the restricted ballot requested.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 111.005. **Preparing Restricted Ballot**

- (a) The early voting clerk shall prepare a voter's restricted ballot.
- (b) If a regular paper ballot is used, the restricted ballot shall be prepared by striking from an official early voting ballot the offices and propositions stating measures on which the voter is not entitled to vote.
- (c) If an electronic system ballot is used, the restricted ballot shall be prepared by marking, punching, or otherwise identifying an official early voting ballot so that votes on offices and propositions stating measures on which the voter is not entitled to vote may not be counted.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 111.006. **Manually Counting Electronic System Ballot**

If a restricted electronic system ballot cannot be automatically counted with other electronic system ballots voted in the election that are to be counted automatically, the restricted ballot shall be counted manually.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 111.007. **Restricted Ballot Roster**

(a) The early voting clerk shall maintain a roster for each election listing each person who votes a restricted ballot by personal appearance and each person to whom a restricted ballot to be voted by mail is provided.

(b) For each person listed, the roster must include:

- (1) the person's name and residence address;
- (2) an indication of the type of restricted ballot voted or provided, as applicable; and
- (3) the date of voting or the date the ballot was mailed to the person, as applicable.

(c) Except as provided by this section, the restricted ballot roster is subject to the provisions applicable to the early voting roster. A person included on the restricted ballot roster may not be included on the early voting roster.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 111.008. **Noting Restricted Ballot Voter on Poll List and Registered Voter List**

For each voter accepted to vote a restricted ballot, a notation shall be made beside the voter's name on the early voting poll list indicating that a restricted ballot was voted and the type of restricted ballot. If the voter's name appears on the list of registered voters used for conducting early voting, a similar notation shall be made on that list unless the form of the list makes it impracticable to do so.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 111.009. Excluding Voter From Precinct Early Voting List

The name of a person voting a limited ballot by personal appearance under Chapter 112 or to whom a limited or federal ballot to be voted by mail is provided under Chapter 112 or 114 is not required to be included on the precinct early voting list.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

**CHAPTER 112. VOTING LIMITED BALLOT AFTER
CHANGING COUNTY OF RESIDENCE**

Section		Section	
112.001.	Limited Ballot.	112.007.	Verifying Registration Status of Applicant for Ballot.
112.002.	Eligibility.	112.008.	Determining Offices and Measures to be Voted On.
112.003.	Residence in Precinct Situated in More Than One County.	112.009.	Preparing Voting Machine.
112.004.	Offices and Measures on Which Voter Entitled to Vote.	112.010.	Substituting Mail Ballots for Voting Machine.
112.005.	Submitting Application for Mail Ballot.	112.011.	Information on District Composition.
112.006.	Place for Voting by Personal Appearance.	112.012.	Notification to Voter Registrar.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

§ 112.001. Limited Ballot

In this code, "limited ballot" means a ballot voted under this chapter that is restricted to the offices and propositions stating measures on which a person is entitled to vote under Section 112.004.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 112.002. Eligibility

(a) After changing residence to another county, a person is eligible to vote a limited ballot by personal appearance or by mail if:

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

(2) the date of the election is not more than 90 days after the new residence is established; and

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

(b) A person is not eligible to vote a limited ballot by mail unless, in addition to satisfying the eligibility requirements prescribed by Subsection (a), the person is eligible for early voting by mail under Chapter 82.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 112.003. Residence in Precinct Situated in More Than One County

A person who changes county of residence may vote in the regular manner in an election ordered by an authority of a political subdivision situated in more than one county if the person resides in the same election precinct both before and after changing county of residence and the person's voter registration in the county of former residence is effective at the time the person offers to vote.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 112.004. Offices and Measures on Which Voter Entitled to Vote

A person voting a limited ballot is entitled to vote only on:

(1) each office and proposition stating a measure to be voted on statewide; and

(2) each office and proposition stating a measure to be voted on in a territorial unit of which the person was a resident both before changing county of residence and after the change.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 112.005. Submitting Application for Mail Ballot

An application for a limited ballot to be voted by mail must be submitted to the early voting clerk serving the election precinct in which the applicant resides.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 112.006. Place for Voting by Personal Appearance

A person may vote a limited ballot by personal appearance only at the main early voting polling place.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1350, § 6, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1381, § 24, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 112.007. Verifying Registration Status of Applicant for Ballot

Before accepting an applicant to vote a limited ballot or, in the case of an application for a limited ballot to be voted by mail, before providing a ballot to the applicant, the early voting clerk shall verify, if possible, that the applicant does not have an effective voter registration in the county of new residence. If the person has applied in the county of new residence for a voter registration that will be effective on or before election day, the limited ballot application shall be rejected.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 112.008. Determining Offices and Measures to be Voted On

For each person who is to vote a limited ballot, the early voting clerk shall determine the offices and propositions stating measures on which the person is entitled to vote and shall indicate them on the person's application.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 112.009. Preparing Voting Machine

Before permitting a person to vote a limited ballot on a voting machine, the early voting clerk shall adjust the machine so that votes may be cast only on the offices and propositions stating measures on which the voter is entitled to vote.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 112.010. Substituting Mail Ballots for Voting Machine

(a) If early voting by personal appearance is conducted by voting machine, the early voting clerk may conduct the personal appearance voting of limited ballots by using official ballots for early voting by mail.

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(b) The secretary of state may provide for the use of envelopes or other containers instead of ballot boxes for voters to deposit ballots voted under this section.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 112.011. Information on District Composition

(a) In each even-numbered year, the secretary of state shall prepare information on the territorial composition of each district for which an officer of the state government is regularly elected at the general election for state and county officers.

(b) The information must include the data necessary to enable an early voting clerk to determine the district offices on which a voter under this chapter is eligible to vote.

(c) The secretary shall deliver the information to each county clerk before the 20th day before general primary election day.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 112.012. Notification to Voter Registrar

Not later than the 30th day after receipt of an application for a limited ballot, the early voting clerk shall notify the voter registrar for the voter's former county of residence that the voter has applied for a limited ballot.

Added by Acts 1987, 70th Leg., ch. 436, § 8, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

CHAPTER 113. VOTING PRESIDENTIAL BALLOT BY FORMER RESIDENT

Section		Section	
113.001.	Presidential Ballot.	113.004.	Time and Place for Voting by Personal Appearance.
113.002.	Eligibility.	113.005.	Personal Appearance Voting; Processing Results.
113.003.	Submitting Application for Mail Ballot.	113.006.	Canceling Registration.

§ 113.001. Presidential Ballot

In this chapter, "presidential ballot" means a ballot voted under this chapter that is restricted to the offices of president and vice-president of the United States.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 113.002. Eligibility

A former resident of this state is eligible to vote a presidential ballot in the presidential general election by personal appearance or by mail if the former resident:

- (1) is domiciled in another state;
- (2) was registered to vote in this state at the time the former resident ceased to be a resident;
- (3) would be eligible for registration to vote in this state if a resident; and
- (4) on presidential election day will not have resided in the state of present domicile for more than 30 days and is not eligible to vote in the presidential election in that state.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 113.003. Submitting Application for Mail Ballot

An application for a presidential ballot to be voted by mail must be submitted to the early voting clerk serving the county of the applicant's most recent registration to vote.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 113.004. Time and Place for Voting by Personal Appearance

(a) A person may vote a presidential ballot by personal appearance only at the main early voting polling place for the county of the person's most recent registration to vote.

(b) The period for voting presidential ballots by personal appearance ends on presidential election day.

(c) Beginning on the day after the last day of the period for early voting by personal appearance and through presidential election day, the dates and hours for voting presidential ballots by personal appearance are the dates and hours that the county clerk's main business office is regularly open for business.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 113.005. Personal Appearance Voting; Processing Results

(a) On submission of an application for a presidential ballot to be voted by personal appearance, the early voting clerk shall review the application and verify the applicant's registration status in accordance with the procedure applicable to early voting by mail.

§ 113.005

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(b) The personal appearance voting shall be conducted with the balloting materials for early voting by mail.

(c) The voter must mark and seal the ballot in the same manner as if voting by mail except that the certificate on the carrier envelope need not be completed.

(d) On sealing the carrier envelope, the voter must give it to the clerk, who shall note on the envelope that the ballot is a presidential ballot.

(e) The results of voting a presidential ballot by personal appearance shall be processed in accordance with the procedures applicable to processing early voting ballots voted by mail.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 113.006. Canceling Registration

As soon as practicable after the close of voting, the early voting clerk shall notify the voter registrar of the name of each person who applied for a presidential ballot whose name appears on the list of registered voters. On receipt of the notice, the voter registrar shall cancel the voter's registration.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.29; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

CHAPTER 114. VOTING FEDERAL BALLOT BY OVERSEAS CITIZEN

Section		Section	
114.001.	Definitions.	114.005.	Applying for More Than One Election in Same Application.
114.002.	Eligibility.	114.006.	Determining Offices to be Voted On.
114.003.	Offices on Which Voter Entitled to Vote.	114.007.	Method of Providing Ballot; Required Address; Return of Ballot.
114.004.	Application.	114.008.	Official Carrier Envelope.

§ 114.001. Definitions

In this chapter:

(1) "Federal ballot" means a ballot voted under this chapter that is restricted to federal offices only.

(2) "Federal office" means the offices of president and vice-president of the United States, United States senator, or United States representative.

(3) "United States" includes the several states and the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, but does not include any other territory or possession of the United States.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.30; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 114.002. Eligibility

A United States citizen dwelling outside the United States is eligible to vote a federal ballot by mail if:

- (1) the citizen's most recent domicile in the United States was in this state and the citizen's intent to return to this state is uncertain;
- (2) the citizen would be eligible for registration as a voter in this state if a resident; and
- (3) the citizen is not eligible to vote on federal offices in any other state.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.30; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 114.003. Offices on Which Voter Entitled to Vote

A person voting a federal ballot is entitled to vote only on each federal office to be voted on in the election precinct of the person's most recent domicile in this state.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.30; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 114.004. Application

(a) An application for a federal ballot must be submitted on an official federal postcard application form.

(b) The application must be submitted to the early voting clerk serving the election precinct of the applicant's most recent domicile in this state.

(c) The period during which a federal ballot application may be submitted is the same as that for submitting a federal postcard application under Chapter 101.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.30; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 114.005. Applying for More Than One Election in Same Application

The provisions governing the application for ballots for more than one election by a single federal postcard application under Chapter 101 apply to a federal ballot application.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.30; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 114.006. Determining Offices to be Voted On

For each voter who is to vote a federal ballot, the early voting clerk shall determine the federal offices on which the voter is entitled to vote and indicate them on the application or the jacket envelope.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.30; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 114.007. Method of Providing Ballot; Required Address; Return of Ballot

(a) The balloting materials provided under this chapter shall be airmailed to the voter free of United States postage, as provided by the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et seq.), in an envelope labeled "Official Election Balloting Material—via Airmail." The secretary of state shall provide early voting clerks with instructions on compliance with this subsection.

(b) The address to which the balloting materials are sent to a voter must be an address outside the United States or an address in the United States for forwarding or delivery to the voter at a location outside the United States. If the address to which the balloting materials are to be sent is within the county served by the early voting clerk, the federal ballot application must indicate that the balloting materials will be forwarded or delivered to the voter at a location outside the United States.

(c) A ballot voted under this chapter may be returned to the early voting clerk by mail, common or contract carrier, or courier.

Amended by Acts 1991, 72nd Leg., ch. 203, § 1.36; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1349, § 46, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

For resolution of conflicting amendments of the 72nd Legislature, see § 51 of Acts 1991, 72nd Leg., ch. 554, quoted at the Historical and Statutory Notes following § 67.004.

§ 114.008. Official Carrier Envelope

The officially prescribed carrier envelope for voting under this chapter shall be labeled "Official Election Balloting Material—via Airmail."

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.30; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

TITLE 8. VOTING SYSTEMS

WESTLAW Computer Assisted Legal Research

WESTLAW supplements your legal research in many ways. WESTLAW allows you to

- update your research with the most current information
- expand your library with additional resources
- retrieve direct history precedential history and parallel citations with the Insta-Cite service.

For more information on using WESTLAW to supplement your research, see the WESTLAW Electronic Research Guide, which follows the Preface.

CHAPTER 121. GENERAL PROVISIONS

Section

121.003. Definitions.

Library References

Tex. Prac., County and Special District Law, ch.
11.

§ 121.003. Definitions

In this title:

(1) "Voting system" means a method of casting and processing votes that is designed to function wholly or partly by use of mechanical, electromechanical, or electronic apparatus and includes the procedures for casting and processing votes and the programs, operating manuals, tabulating cards, printouts, and other software necessary for the system's operation.

(2) "Electronic voting system" means a voting system in which the ballots are automatically counted and the results automatically tabulated by use of electronically operated apparatus.

(3) "Voting machine" means an apparatus on which voters cast their votes, that records each vote, and that furnishes a total of the number of votes cast for the candidates and for and against the measures.

(4) "Mechanical voting machine" means a voting machine that is designed to function by the manual operation of a lever or other device on the machine without the aid of electrical power.

(5) "Voting device" means an apparatus that is designed for use with punch-card ballots, that holds the punch-card ballot label, and that enables a voter to position the ballot for voting.

(6) "Voting system equipment" means any kind of mechanical, electromechanical, or electronic apparatus for use in a voting system.

(7) "Automatic tabulating equipment" means equipment, other than a voting machine, that compiles vote totals by ballot sorting, ballot reading, ballot scanning, or electronic data processing.

(8) "Public counter" means a registering device that cumulatively records the number of voters casting votes on a voting machine and that is constructed and installed on the machine in a way that provides an unobstructed view of the recorded number.

(9) "Protective counter" means a registering device that permanently records the cumulative number of times that a voting machine has been operated and that is installed in the machine in a way that prevents resetting the device.

(10) "Registering counter" means a registering device on a voting machine that records the votes cast for a particular candidate or for or against a particular measure.

(11) "Mechanical machine ballot label" means the cardboard or other material listing the candidates and propositions that is attached to a mechanical voting machine to enable voters to make their choices.

(12) "Punch-card ballot label" means the paper or other material listing the candidates and propositions that is designed for use with punch-card ballots to enable voters to make their choices.

(13) "Voting system ballot label" means a punch-card ballot label or a mechanical machine ballot label.

(14) "Electronic system ballot" means a ballot designed for use with an electronic voting system.

(15) "Punch-card ballot" means an electronic system ballot in the form of a tabulating card.

(16) "Voting system ballot" means a ballot designed for use with a voting system.

Amended by Acts 1987, 70th Leg., ch. 484, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in the definition of "Voting system equipment" following "apparatus" deleted "specially designed".

Library References

Conduct of elections, election supplies and equipment, see Brooks, 35 Texas Practice § 11.11.

CHAPTER 122. STATE SUPERVISION OVER VOTING SYSTEMS

SUBCHAPTER A. VOTING SYSTEM STANDARDS

Section		Section	
		122.031.	Additional Requirements for Electronic Voting System.
122.001.	Voting System Standards.	122.034.	Application for Approval and Fee.
122.0011.	Access by Persons With Disabilities.	122.035.	Appointment of Examiners.
122.002.	Inspection of Voting Systems and Equipment by Secretary of State.	122.036.	Examination and Report by Examiners.
122.003.	Action by Secretary of State.	122.037.	Compensation of Examiners.
122.004.	Preparation of Software by Secretary of State.	122.038.	Action by Secretary of State.
122.005.	Venue for Offenses.	122.039.	Report by Secretary of State.
[Sections 122.006 to 122.030 reserved for expansion]		[Sections 122.040 to 122.060 reserved for expansion]	

SUBCHAPTER B. APPROVAL OF VOTING SYSTEM AND EQUIPMENT

122.031.	Approval of System and Equipment Required.
122.032.	Requirements for Approval Generally.
122.033.	Additional Requirements for Approval of Voting Machine.

SUBCHAPTER C. MODIFICATION IN DESIGN OF APPROVED SYSTEM OR EQUIPMENT

122.061.	Approval of Modified Design Required.
122.062.	Requirements for Approval.
122.063.	Application for Approval.
122.064.	Review of Application.

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122.065.	Review and Examination of Additional Material.
122.066.	Examination Fee.
122.067.	Appointment of Examiners.
122.068.	Examination and Report by Examiners.
122.069.	Compensation of Examiners.
122.070.	Action by Secretary of State.
122.071.	Report by Secretary of State.
[Sections 122.072 to 122.090 reserved for expansion]	

Section

SUBCHAPTER D. REEXAMINATION OF VOTING SYSTEM OR EQUIPMENT	
122.091.	Reexamination of Approved System or Equipment Authorized.
122.0911.	Assistance Required by Secretary of State.
122.092.	Appointment of Examiners.
122.093.	Examination and Report by Examiners.
122.094.	Compensation of Examiners.
122.095.	Action by Secretary of State.
122.096.	Effect of Secretary of State's Action.
122.097.	Notice of Secretary of State's Action.
122.098.	Subsequent Approval.
122.099.	Report by Secretary of State.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. VOTING SYSTEM STANDARDS**§ 122.001. Voting System Standards**

(a) A voting system may not be used in an election unless the system:

- (1) preserves the secrecy of the ballot;
- (2) is suitable for the purpose for which it is intended;
- (3) operates safely, efficiently, and accurately;
- (4) is safe from fraudulent or unauthorized manipulation;
- (5) permits voting on all offices and measures to be voted on at the election;
- (6) prevents counting votes on offices and measures on which the voter is not entitled to vote;
- (7) prevents counting votes by the same voter for more than one candidate for the same office or, in elections in which a voter is entitled to vote for more than one candidate for the same office, prevents counting votes for more than the number of candidates for which the voter is entitled to vote;
- (8) prevents counting a vote on the same office or measure more than once;
- (9) permits write-in voting;
- (10) is capable of permitting straight-party voting; and
- (11) is capable of providing records from which the operation of the voting system may be audited.

(b) A voting system may not be used in an election in which straight-party voting is permitted unless the system permits or prevents, as applicable, counting votes in accordance with Sections 65.007(c) and (d).

(c) The secretary of state may prescribe additional standards for voting systems consistent with this title. The standards may apply to particular kinds of voting systems, to particular elements comprising a voting system, including operation procedures, or to voting systems generally.

Amended by Acts 1987, 70th Leg., ch. 484, § 2, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 728, § 30, eff. Sept. 1, 1993.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in subsec. (a) required a voting system to be capable of providing records for auditing purposes.

Library References

Conduct of elections, write-in voting, see Brooks, 85 Texas Practice § 11.15.

§ 122.0011. Access by Persons With Disabilities

A voting system that is acquired on or after September 1, 1999, must:

(1) comply with Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Section 794) and its subsequent amendments and Title II of the federal Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.) and its subsequent amendments; and

(2) provide a practical and effective means for voters with physical disabilities to cast a secret ballot.

Added by Acts 1999, 76th Leg., ch. 319, § 1, eff. Sept. 1, 1999.

§ 122.002. Inspection of Voting Systems and Equipment by Secretary of State

The secretary of state may inspect at any time, including the day of an election, a voting system or the voting system equipment used in an election to determine whether the system or equipment complies with applicable standards or deviates from the system or equipment approved by the secretary.

Amended by Acts 1987, 70th Leg., ch. 484, § 3, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment, in the section heading inserted "And Equipment", and in the text permitted inspection on the day of an election, included

voting system equipment under the provisions of the section, and permitted inspection for deviations from the system or equipment.

§ 122.003. Action by Secretary of State

(a) If the secretary of state determines after inspecting a voting system or voting system equipment that the system or equipment does not comply with applicable standards or deviates from an approved system or equipment, the secretary by written order may:

(1) prohibit the use of the system or equipment or any part of the system or equipment by an authority that adopted the system or equipment for use in an election; or

(2) limit the use of the system or equipment or any part of the system or equipment to circumstances or conditions stated in the order.

(b) The secretary shall amend or rescind an order issued under this section if the secretary determines that the system or equipment has been modified to comply with applicable standards or to not deviate from an approved system or equipment.

Amended by Acts 1987, 70th Leg., ch. 484, § 3, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment included voting system equipment and deviations from an approved sys-

tem or equipment under the provisions of the section.

§ 122.004. Preparation of Software by Secretary of State

(a) The secretary of state may prepare any type of software for use with an electronic voting system.

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(b) The software is subject to the standards and examination procedures applicable to voting systems.

Added by Acts 1987, 70th Leg., ch. 484, § 3, eff. Sept. 1, 1987.

§ 122.005. Venue for Offenses

Venue for prosecution of an offense under this chapter is in the county in which the offense was committed.

Added by Acts 1993, 73rd Leg., ch. 728, § 31, eff. Sept. 1, 1993.

[Sections 122.006 to 122.030 reserved for expansion]

SUBCHAPTER B. APPROVAL OF VOTING SYSTEM AND EQUIPMENT

§ 122.031. Approval of System and Equipment Required

(a) Before a voting system or voting system equipment may be used in an election, the system and a unit of the equipment must be approved by the secretary of state as provided by this subchapter.

(b) The secretary of state may seek a temporary restraining order or a writ of injunction obtained through the attorney general to prevent the use of any part of a voting system or voting system equipment that has not been approved.

(c) A person commits an offense if the person executes a contract to sell, lease, or otherwise provide a voting system or voting system equipment that the person knows has not been approved. An offense under this subsection is a Class A misdemeanor.

(d) This section does not prohibit a person from exhibiting a voting system or unit of voting system equipment that has not been approved.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 728, § 32, eff. Sept. 1, 1993.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment, in the subchapter heading inserted "And"; in the section heading inserted

"System And"; included voting systems under the provisions of the section; and added subsec. (b).

Cross References

Class A misdemeanors, punishments, see V.T.C.A., Penal Code § 12.21.

§ 122.032. Requirements for Approval Generally

(a) For a voting system or voting system equipment to be approved for use in elections, the voting system in which the equipment is designed to be used must comply with the standards prescribed by Subchapter A.

(b) The secretary of state may prescribe more specific requirements and standards, consistent with this code, for approval of particular kinds of voting system equipment or voting system equipment generally.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment included voting systems under the provisions of the section and permitted

the secretary of state to prescribe more specific standards of approval.

§ 122.033. Additional Requirements for Approval of Voting Machine

(a) In addition to other requirements for approval, a voting machine must be equipped with:

- (1) a security system capable of preventing operation of the machine;
- (2) registering counters that can be secured against access;
- (3) a public counter; and
- (4) a protective counter.

(b) The security system for a mechanical voting machine must be a lock and key system.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment made no apparent change in the section.

§ 122.0331. Additional Requirements for Electronic Voting System

(a) Copies of the program codes and the user and operator manuals and copies or units of all other software and any other information, specifications, or documentation required by the secretary of state relating to an approved electronic voting system and its equipment must be filed with the secretary.

(b) Materials described by Subsection (a) that are not on file with and approved by the secretary of state, including any updated or modified materials, may not be used in an election.

(c) The secretary of state shall periodically compare the materials on file with the materials actually used in elections to ensure compliance with this section.

(d) The program codes and all other software on file with the secretary of state under this section are not public information. The materials shall be made available to the attorney general or the general's designee in any investigation of election irregularities. The materials may be made available in a judicial proceeding on the request of the court or other tribunal but may be viewed in camera only.

Added by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

Section 11(b) of the 1987 Act provides:
"Not later than the 15th day after the effective date of this Act, each person who has obtained

approval of an electronic voting system and its equipment by the secretary of state before the effective date of this Act shall comply with Section 122.0331, Election Code, as added by this Act."

§ 122.034. Application for Approval and Fee

(a) A person desiring approval of a voting system or voting system equipment must submit a written application for approval to the secretary of state.

(b) An applicant must include with the application an application fee.

(c) The secretary of state shall prescribe fees for the submission of applications under this section in amounts reasonably necessary to administer this subchapter and compensate examiners appointed by the secretary.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 728, § 33, eff. Sept. 1, 1993.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment included voting systems under the provisions of the section.

§ 122.035. Appointment of Examiners

(a) On submission of an application for approval of a voting system or voting system equipment, the secretary of state shall appoint four persons as examiners, one of whom must be a full-time employee of the secretary. The attorney general shall appoint two persons as examiners, one of whom must be a full-time employee of the general.

(b) Two of the secretary of state's appointees must have demonstrated ability and experience in mechanics or electronics appropriate to the system or equipment to be examined, and two of the secretary's appointees must have demonstrated knowledge of and experience in election law and procedure.

(c) Only one person employed by the secretary of state may be appointed.

(d) A person who has a pecuniary interest in the manufacturing or marketing of any part of a voting system or voting system equipment is ineligible for appointment.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 728, § 84, eff. Sept. 1, 1993.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment, in subsec. (a), included voting systems under the provisions of the section, required the attorney general or designee to serve

as an examiner, and in subsec. (d) inserted "any part of a voting system or" and following "equipment" deleted "or software necessary for the operation of a voting system".

§ 122.036. Examination and Report by Examiners

(a) The examiners shall examine the voting system or voting system equipment for which an application has been submitted at the time and in the manner directed by the secretary of state.

(b) After conducting the examination, each examiner shall prepare a written report on the examination as directed by the secretary and deliver the report to the secretary.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment required examination of voting systems.

§ 122.037. Compensation of Examiners

(a) Each examiner appointed under this subchapter, other than an employee of the secretary of state or attorney general, is entitled to compensation for services rendered in connection with an application.

(b) The secretary of state shall set the amount of compensation for examiners appointed by the secretary and shall use the application fees collected under Section 122.034 to pay the compensation.

(c) The attorney general shall set the amount of compensation for an examiner appointed by the general and shall pay the compensation from funds available to the general.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 728, § 35, eff. Sept. 1, 1993.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment limited compensation to examiners appointed by the secretary of state.

§ 122.038. Action by Secretary of State

(a) After reviewing the examiners' reports, the secretary of state shall determine whether the voting system or voting system equipment for which an application has been submitted satisfies the applicable requirements for approval.

(b) The secretary may examine the system or equipment to aid in determining whether it satisfies the requirements for approval.

(c) If the system or equipment satisfies the applicable requirements for approval, the secretary by written order shall approve the system or equipment of that design for use in elections. Otherwise, the secretary shall deny the application.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment included voting systems under the provisions of the section.

Notes of Decisions

In general 1

1. In general

Blind voters failed to show that Texas Secretary of State violated ADA by failing to approve equipment accessible to blind voters, which allegedly

contravened Secretary's statutory duty to approve voting systems and equipment used in Texas elections; plaintiffs failed to show that they presented any voting machine to Secretary or that he failed to approve such machine. *Lightbourn v. County of El Paso, Tex.*, C.A.5 (Tex.)1997, 118 F.3d 421, certiorari denied 118 S.Ct. 700, 139 L.Ed.2d 643.

§ 122.039. Report by Secretary of State

(a) The secretary of state shall prepare a written report on each application submitted under this subchapter. The report must state whether the system or equipment was approved and the reasons for approval or denial.

(b) The secretary shall attach the examiners' reports to the report prepared under this section and permanently retain the reports on file.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in subsec. (a) inserted "system or".

[Sections 122.040 to 122.060 reserved for expansion]

SUBCHAPTER C. MODIFICATION IN DESIGN
OF APPROVED SYSTEM OR EQUIPMENT

§ 122.061. Approval of Modified Design Required

Before a voting system or voting system equipment that is modified in design after its approval may be used in an election, the modified design must be approved by the secretary of state as provided by this subchapter.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment, in the subchapter heading inserted "System Or", and in the text of the section inserted "a voting system or".

§ 122.062. Requirements for Approval

The requirements for approval of a modified design are the same as those prescribed by Subchapter B for the initial approval of the voting system or voting system equipment.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment inserted "voting system or".

§ 122.063. Application for Approval

A person desiring approval of a modified design must submit a written application for approval to the secretary of state.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987.

Historical and Statutory Notes**1987 Legislation**

The 1987 amendment made no change in the section.

§ 122.064. Review of Application

(a) The secretary of state shall review an application for approval of a modified design.

(b) The secretary may approve the modified design by written order if the design satisfies the applicable requirements for approval.

(c) If the secretary does not approve the modified design, the secretary by written order shall:

(1) invite the applicant to submit additional information in support of the application, submit the modified system or equipment itself, or both; or

(2) require an examination of the modified system or equipment by independent examiners.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987.

Historical and Statutory Notes**1987 Legislation**

The 1987 amendment inserted "system or" in two places.

§ 122.065. Review and Examination of Additional Material

(a) The secretary of state shall review additional information in support of an application and examine the modified system or equipment submitted.

(b) The secretary may approve the modified design by written order if the design satisfies the applicable requirements for approval.

(c) If the secretary does not approve the modified design, the secretary by written order shall require an examination of the modified system or equipment by independent examiners.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987.

Historical and Statutory Notes**1987 Legislation**

The 1987 amendment inserted "system or" in two places.

§ 122.066. Examination Fee

(a) The secretary of state shall prescribe an examination fee or fee schedule to compensate examiners appointed by the secretary under this subchapter.

(b) The fee for an examination may not exceed the fee for an application for initial approval of a voting system or voting system equipment.

(c) If the secretary orders an independent examination of the modified system or equipment, the secretary may not appoint examiners until the secretary receives the examination fee.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 728, § 36, eff. Sept. 1, 1993.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment included voting systems under the provisions of the section.

§ 122.067. Appointment of Examiners

(a) If the secretary of state requires an independent examination of the modified system or equipment, the secretary shall appoint four persons as examiners, one of whom must be a full-time employee of the secretary. The attorney general shall appoint two persons as examiners, one of whom must be a full-time employee of the general.

(b) To be eligible for appointment as an examiner under this section, a person must be eligible for appointment as an examiner for an application for initial approval of a system or equipment. Only one employee of the secretary of state may be appointed.

(c) Two of the secretary of state's appointees must have demonstrated ability and experience in mechanics or electronics appropriate to the system or equipment to be examined. Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 728, § 37, eff. Sept. 1, 1993.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment included voting systems under the provisions of the section; and in subsec.

(a), required the attorney general or designee to serve as an examiner.

§ 122.068. Examination and Report by Examiners

The examiners shall examine the modified system or equipment and prepare and deliver examination reports in the same manner as for an application for initial approval of a system or equipment.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment included voting systems under the provisions of the section.

§ 122.069. Compensation of Examiners

(a) Subject to Subsections (b) and (c), an examiner appointed by the secretary of state under this subchapter, other than the secretary's employee, is entitled to compensation in an amount set by the secretary.

(b) The compensation rate for each examiner appointed by the secretary of state for the same examination must be uniform.

(c) The total compensation paid to the examiners appointed by the secretary of state for the same examination may not exceed the examination fee.

(d) The secretary of state shall use the examination fees collected under Section 122.066 to pay the compensation to examiners appointed by the secretary.

(e) An examiner appointed by the attorney general under this subchapter, other than an employee of the general, is entitled to compensation in an amount set by the general. The attorney general shall pay the compensation from funds available to the general.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 728, § 38, eff. Sept. 1, 1993.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment limited compensation to examiners appointed by the secretary of state.

§ 122.070. Action by Secretary of State

(a) After reviewing the examiners' reports, the secretary of state shall determine whether the modified design satisfies the applicable requirements for approval.

(b) The secretary may examine the modified system or equipment to aid in determining whether it satisfies the requirements for approval.

(c) If the modified design satisfies the applicable requirements for approval, the secretary by written order shall approve the system or equipment of that design for use in elections. Otherwise, the secretary shall deny the application.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment included voting systems under the provisions of the section.

§ 122.071. Report by Secretary of State

(a) The secretary of state shall prepare a written report on each application submitted under this subchapter. The report must state whether the modified design was approved and must include a description of and the reason for the action ordered.

(b) If an examination by independent examiners was conducted, the secretary shall attach the examiners' reports to the report prepared under this section.

(c) The secretary shall permanently retain reports prepared under this subchapter on file with the secretary's report on the application for initial approval of the system or equipment.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in subsec. (c) inserted "system or".

[Sections 122.072 to 122.090 reserved for expansion]

SUBCHAPTER D. REEXAMINATION OF VOTING SYSTEM OR EQUIPMENT

§ 122.091. Reexamination of Approved System or Equipment Authorized

(a) The secretary of state may reexamine a voting system or voting system equipment as provided by this subchapter at any time after the system or equipment is approved under Subchapter B or C.

(b) The secretary of state may suspend approval for use of a voting system or voting system equipment if the system or equipment is not submitted for reexamination under this subchapter on the request of the secretary.

(c) The secretary of state may prescribe fees in amounts reasonably necessary to administer this subchapter and compensate examiners appointed by the secretary.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 728, § 39, eff. Sept. 1, 1993.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment, in the subchapter heading inserted "Or"; in the section heading inserted "System Or"; included voting systems under the provisions of the section; and added subsecs. (b) and (c).

Section 11(c) of the amendatory act provides:

"Not later than January 1, 1988, the secretary of state shall conduct a reexamination under Subchapter D, Chapter 122, Election Code, of all electronic voting systems and voting system equipment approved before the effective date of this Act for use in elections."

Cross References

Compensation of examiners, payment out of fees collected under this section, see V.T.C.A., Election Code § 122.094.

§ 122.0911. Assistance Required by Secretary of State

(a) If the secretary of state determines that the assistance of a particular person is necessary for the proper and efficient reexamination of a voting system or voting system equipment under this subchapter, the secretary may require that person to provide the necessary assistance as provided by this section.

(b) The secretary of state shall deliver written notice to a person whose assistance is required not later than 72 hours before the date the reexamination is scheduled to occur. The notice must state:

- (1) that the person is required to provide assistance under Section 122.0911, Election Code;
- (2) the nature of the assistance that is required; and
- (3) the date, hour, and place of the reexamination.

(c) A person who, after proper notice, fails to provide the assistance required by the secretary of state is civilly liable to the state for \$100 for each day that the person fails to comply. The secretary of state shall notify the attorney general to initiate suit to recover the penalty.

Added by Acts 1993, 73rd Leg., ch. 728, § 40, eff. Sept. 1, 1993.

§ 122.092. Appointment of Examiners

(a) The secretary of state shall appoint four persons as examiners, one of whom must be a full-time employee of the secretary, to assist in a reexamination of an approved voting system or voting system equipment. The attorney general shall appoint two persons as examiners, one of whom must be a full-time employee of the general.

(b) Two of the secretary of state's appointees must have demonstrated knowledge of and experience in the operation of the system or equipment.

(c) Only one person employed by the secretary of state may be appointed.

(d) A person who has a pecuniary interest in the manufacturing or marketing of any part of a voting system or voting system equipment is ineligible for appointment.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 728, § 41, eff. Sept. 1, 1993.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment included voting systems under the provisions of the section, required the attorney general or designee to serve as an exam-

iner, and in subsec. (d) inserted "any part of a voting system or" and deleted "or software necessary for operation of a voting system".

§ 122.093. Examination and Report by Examiners

(a) The examiners shall examine the system or equipment to be reexamined at the time and in the manner directed by the secretary of state.

(b) After conducting the examination, each examiner shall prepare a written report on the examination as directed by the secretary and deliver the report to the secretary.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment inserted "system or".

§ 122.094. Compensation of Examiners

(a) An examiner appointed under this subchapter, other than an employee of the secretary of state or attorney general, is entitled to compensation for services rendered in connection with a reexamination.

(b) The secretary of state shall set the amount of compensation for examiners appointed by the secretary and shall use the fees collected under Section 122.091 to pay the compensation.

(c) The attorney general shall set the amount of compensation for an examiner appointed by the general and shall pay the compensation from funds available to the general. Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 728, § 42, eff. Sept. 1, 1993.

Historical and Statutory Notes**1987 Legislation**

The 1987 amendment limited compensation to examiners appointed by the secretary of state and

required payment out of fees collected under § 122.091 instead of appropriated funds.

§ 122.095. Action by Secretary of State

(a) After reviewing the examiners' reports, the secretary of state shall determine whether the voting system or voting system equipment subject to reexamination satisfies the applicable requirements for approval of the system or equipment for use in elections.

(b) The secretary may examine the system or equipment to aid in determining whether it satisfies the requirements for approval.

(c) If the reexamined system or equipment does not satisfy the applicable requirements for approval, the secretary by written order shall:

- (1) suspend approval of the system or equipment;
- (2) suspend approval for future use of the system or equipment; or
- (3) give conditional approval of the system or equipment.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987.

Historical and Statutory Notes**1987 Legislation**

The 1987 amendment included voting systems under the provisions of the section.

§ 122.096. Effect of Secretary of State's Action

(a) A voting system or voting system equipment for which approval is suspended may not be used in an election held after the date the suspension order is issued.

(b) A voting system or voting system equipment for which approval for future use is suspended may not be used in an election held after the date the suspension order is issued unless the system or equipment was adopted for use in the election before the date the suspension order is issued. In that case, the system or equipment may be used in that election only.

(c) A voting system or voting system equipment for which conditional approval is given may not be used in an election held after the date the conditional approval order is issued except in accordance with conditions prescribed by the conditional approval order.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987.

Historical and Statutory Notes**1987 Legislation**

The 1987 amendment included voting systems under the provisions of the section.

§ 122.097. Notice of Secretary of State's Action

Not later than the fifth day after the date an order taking action under Section 122.095(c) is issued, the secretary of state shall deliver a copy of the order to the presiding officer of each political subdivision that owns or leases a system or equipment subject to the order.
Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment inserted "a system or".

§ 122.098. Subsequent Approval

If a voting system or voting system equipment subject to an order under Section 122.095(c) is subsequently approved under Subchapter B,¹ the approval nullifies the order.
Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987.

¹ Section 122.031 et seq.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment inserted "a voting system or".

§ 122.099. Report by Secretary of State

(a) The secretary of state shall prepare a written report on each reexamination. The report must state whether the system or equipment satisfied the approval requirements and must include a description of and the reason for the action ordered.

(b) The secretary shall attach the examiners' reports to the report prepared under this section and permanently retain the reports on file with the secretary's report on the application for initial approval of the system or equipment.

Amended by Acts 1987, 70th Leg., ch. 484, § 4, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment inserted "system or" in two places.

CHAPTER 123. ADOPTION AND ACQUISITION OF VOTING SYSTEM

	SUBCHAPTER A. ADOPTION OF VOTING SYSTEM	Section	
		123.032.	Acquisition of Equipment by Political Subdivision Other Than County.
Section		123.035.	Voting System Equipment Contract.
123.006.	Adoption of Voting System for Early Voting.	123.036.	Venue for Offenses.
123.008.	Requirements Regarding Manuals, Instructions, and Other Documents for Use With Electronic Voting System or Equipment.		SUBCHAPTER C. ANNUAL VOTING SYSTEM REPORT
		123.061.	Annual Report Required.
		123.062.	Filing Period.
		123.063.	Contents of Report.
		123.064.	Review of Report.
		123.065.	Mandamus by Attorney General.
		123.066.	Additional Procedures Prescribed by Secretary of State.
	SUBCHAPTER B. ACQUISITION OF EQUIPMENT USED IN VOTING SYSTEM		
123.031.	Acquisition of Equipment by County.		

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. ADOPTION OF VOTING SYSTEM

§ 123.006. Adoption of Voting System for Early Voting

(a) A voting system may be adopted for use in early voting only, regular voting on election day only, or both.

(b) A voting system may be adopted for use in early voting by personal appearance only, early voting by mail only, or both.

(c) Only one kind of voting system may be used for early voting by mail. A voting system and regular paper ballots may not both be used in the same election for early voting by mail.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.55; Acts 1991, 72nd Leg., ch. 554, § 26, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

§ 123.008. Requirements Regarding Manuals, Instructions, and Other Documents for Use With Electronic Voting System or Equipment

(a) Each person who sells, leases, or otherwise provides an electronic voting system or equipment to a political subdivision shall also provide any user or operator manuals or other instructions or documents relating to the use of the system or equipment. The general custodian of election records for the political subdivision shall make those materials available for public inspection in the custodian's office on the request of any person.

(b) The custodian shall also make available for public inspection in the custodian's office any materials described by Subsection (a) that are produced by the political subdivision for its elections.

Added by Acts 1987, 70th Leg., ch. 484, § 5, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

Section 11(a) of the 1987 amendatory act provides:

"Not later than the 15th day after the effective date of this Act, each person who has sold, leased,

or otherwise provided an electronic voting system or equipment to a political subdivision before the effective date of this Act shall comply with Section 123.008, Election Code, as added by this Act."

SUBCHAPTER B. ACQUISITION OF EQUIPMENT USED IN VOTING SYSTEM

§ 123.031. Acquisition of Equipment by County

(a) A county may contract to acquire the equipment necessary for operating a voting system by purchase, lease, or other means.

(b) To finance the acquisition of equipment, the commissioners court may issue bonds or other evidences of indebtedness as authorized by general law, payable solely from the county general fund.

Amended by Acts 1993, 73rd Leg., ch. 728, § 43, eff. Sept. 1, 1993.

Library References

Conduct of elections, election supplies and equipment, see Brooks, 35 Texas Practice § 11.11.

Purposes for bond issues, see Brooks, 35 Texas Practice § 17.4.

§ 123.032. Acquisition of Equipment by Political Subdivision Other Than County

(a) A political subdivision other than a county may contract to acquire the equipment necessary for operating a voting system as provided by this section.

(b) A political subdivision may lease the equipment from a county in which the political subdivision is wholly or partly situated. If the desired equipment is not available from the county, the political subdivision may acquire it by purchase, lease, or other means from any other source.

(c) If a political subdivision desires to lease equipment owned by a county in which the political subdivision is wholly or partly situated, the county shall lease the equipment to the political subdivision under the terms agreed to by the parties, except that the county's duty to lease the equipment is subject to reasonable restrictions and conditions imposed by the commissioners court to:

(1) ensure availability of the equipment in elections for which the commissioners court adopted the voting system; and

(2) protect the equipment from misuse or damage.

(d) The maximum amount that a county in which a political subdivision is wholly or partly situated may charge the political subdivision for leasing county-owned equipment is 10 percent of the purchase price of the equipment for each day the equipment is leased.

Amended by Acts 1993, 73rd Leg., ch. 728, § 44, eff. Sept. 1, 1993.

Library References

Conduct of elections, election supplies and equipment, see Brooks, 35 Texas Practice § 11.11.

§ 123.033. Acquisition of Equipment by Political Party for Primary

Library References

Party nominations, see Brooks, 35 Texas Practice § 11.21.

§ 123.035. Voting System Equipment Contract

(a) A contract for the acquisition of voting system equipment under this subchapter must be in writing and incorporate before execution:

(1) a letter from the secretary of state stating that the voting system and voting system equipment being acquired satisfy the applicable requirements for approval; and

(2) a certified copy of the written order issued by the secretary under Section 122.038 or 122.070 approving the voting system and voting system equipment for use in elections and, if applicable, of the written order issued under Section 122.095 granting conditional approval of the system or equipment.

(b) A contract that does not comply with Subsection (a) is void. The contract may not be ratified by either party and a payment may not be made relating to the contract.

(c) A person commits an offense if the person executes a voting system equipment contract that does not comply with Subsection (a). An offense under this subsection is a Class B misdemeanor.

Added by Acts 1993, 73rd Leg., ch. 728, § 45, eff. Sept. 1, 1993.

Historical and Statutory Notes

1993 Legislation

Section 92 of the 1993 Act provides:

“(a) Any authority that acquired the equipment necessary for operating a voting system before the effective date of this Act shall promptly obtain the

documents required by Section 123.035, Election Code, as added by this Act.

“(b) An authority that fails to obtain the documents before September 1, 1994, may not use the voting system in a future election.

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“(c) The attorney general may seek a writ of injunction to prevent a violation of Subsection (b) of this section. The injunction shall be granted unless the authority:

“(1) produces the necessary documentation in court; or

“(2) proves that it submitted a written request for the necessary documentation from the secretary of state not later than three months after the effective date of this Act and that the secretary has failed to respond to that request.

“(d) If a writ of injunction is denied under Subsection (c)(2) of this section, the attorney general shall seek a writ of mandamus to compel the secretary of state to respond to the request made by the authority.

“(e) The changes in law made by this Act apply only to a voting system equipment contract that is executed or renewed on or after the effective date of this Act. A contract that was executed and in force before that date is governed by the law as it existed on the date of execution, and that law is continued in effect for that purpose.”

Cross References

Class B misdemeanors, punishments, see V.T.C.A., Penal Code § 12.22.

§ 123.036. Venue for Offenses

Venue for prosecution of an offense under this chapter is in the county in which the offense was committed.

Added by Acts 1993, 73rd Leg., ch. 728, § 45, eff. Sept. 1, 1993.

SUBCHAPTER C. ANNUAL VOTING SYSTEM REPORT

§ 123.061. Annual Report Required

(a) Each authority adopting a voting system for use in its elections shall file an annual report as provided by this subchapter.

(b) The report must be filed with the secretary of state in the form prescribed by the secretary.

Added by Acts 1993, 73rd Leg., ch. 728, § 46, eff. Sept. 1, 1993.

§ 123.062. Filing Period

The report must be filed on or after July 1 and before July 15.

Added by Acts 1993, 73rd Leg., ch. 728, § 46, eff. Sept. 1, 1993.

§ 123.063. Contents of Report

The report must contain:

(1) a description of the voting system currently used by the authority;

(2) a copy of the written order issued by the secretary of state under Section 122.038 or 122.070 approving the voting system and voting system equipment for use in elections and, if applicable, of the written order issued under Section 122.095 granting conditional approval of the system or equipment; and

(3) a statement that the voting system currently used by the authority has not been modified since the date of filing of the authority's previous report, or if modified, that approval of the modified design has been sought under Subchapter C, Chapter 122.¹

Added by Acts 1993, 73rd Leg., ch. 728, § 46, eff. Sept. 1, 1993.

¹ § 122.061 et seq.

§ 123.064. Review of Report

(a) The secretary of state shall review each report filed under this subchapter not later than the 30th day after the date of the filing deadline for the report.

(b) The secretary of state shall deliver a written delinquency notice to each authority that filed a report covering the previous reporting period but that fails to file a report covering the current reporting period.

§ 123.064

(c) The secretary of state may deliver to the attorney general the name of each authority that fails to file a report covering the current reporting period within 30 days after the date of receipt of a delinquency notice.

Added by Acts 1993, 73rd Leg., ch. 728, § 46, eff. Sept. 1, 1993.

§ 123.065. Mandamus by Attorney General

The attorney general may seek a writ of mandamus to compel the filing of a report by each authority that fails to comply with this subchapter.

Added by Acts 1993, 73rd Leg., ch. 728, § 46, eff. Sept. 1, 1993.

§ 123.066. Additional Procedures Prescribed by Secretary of State

The secretary of state may prescribe any procedures necessary to implement this subchapter.

Added by Acts 1993, 73rd Leg., ch. 728, § 46, eff. Sept. 1, 1993.

CHAPTER 124. VOTING SYSTEM BALLOT

SUBCHAPTER A. VOTING SYSTEM
BALLOT GENERALLY

Section
124.063.
124.065.

Instructions Required on Ballot.
Paper Ballot for Office of Precinct
Chair.

Section
124.006. Implementation of Ballot Stub System.

SUBCHAPTER C. ELECTRONIC
VOTING SYSTEM BALLOT

124.0621. No Write-in Space Provided on Certain Ballots.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. VOTING SYSTEM BALLOT GENERALLY

§ 124.003. Separate Listing of Unopposed Candidates; Bloc Voting

Notes of Decisions

Cancellation of election 1

to be filled at the city general election and no persons file declarations of write-in candidacy, those candidates are unopposed for purposes of statute governing applicability of statutes providing for election of unopposed candidates, and the general election may be cancelled. Election Law Opinion No. AOG-1(1996).

1. Cancellation of election

In a city election where three persons file as candidates for three at-large city council positions

§ 124.006. Implementation of Ballot Stub System

The secretary of state shall prescribe the form of a ballot stub and ballot for use with a stub and the necessary procedures to implement the ballot stub system prescribed by Section 52.074 for use with each voting system used in this state.

Added by Acts 1997, 75th Leg., ch. 1078, § 20, eff. Sept. 1, 1997.

Historical and Statutory Notes

1997 Legislation
Section 23 of Acts 1997, 75th Leg., ch. 1078, provides:

"The secretary of state by rule shall prescribe any procedures necessary to implement this Act."

SUBCHAPTER B. MECHANICAL VOTING MACHINE BALLOT

§ 124.034. Paper Ballot for Precinct Offices

Administrative Code References

Primary elections, paper ballots for precinct chairman, see 1 TAC § 81.42.

SUBCHAPTER C. ELECTRONIC VOTING SYSTEM BALLOT

§ 124.0621. No Write-in Space Provided on Certain Ballots

If no candidate's name is to appear for a particular office on the list of write-in candidates in an election in which write-in votes may be counted only for names appearing on the list, a write-in space is not required for that office on an electronic system ballot on which a voter indicates a vote by making a mark on the ballot.

Added by Acts 1987, 70th Leg., ch. 472, § 35, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 497, § 3, eff. Sept. 1, 1987.

§ 124.063. Instructions Required on Ballot

(a) An electronic system ballot on which a voter indicates a vote by punching a hole in the ballot must contain the following instruction if candidates are to be voted on: "Vote for the candidate of your choice in each race by making a punch hole in the space provided adjacent to the name of that candidate." If a proposition appears on the ballot, the ballot must contain the following instruction: "Make a punch hole in the space provided beside the statement indicating the way you desire to vote."

(b) An electronic system ballot on which a voter indicates a vote by making a mark on the ballot must comply with Subsection (a), with the substitution of "mark" for "punch hole."

(c) The instructions prescribed by Subsections (a) and (b) shall be changed appropriately if the election has only one race, more than one candidate is to be elected in a race, or other circumstances require an alteration of the instructions.

(d) An electronic system ballot on which a voter indicates a vote by punching a hole in the ballot must contain the following instruction following the other required instructions: "Check your ballot after voting to make sure that the holes are actually punched through."

(e) The electronic system ballot must contain instructions for casting a write-in vote. The secretary of state shall prescribe the wording of the instructions.

(f) The electronic system ballot for an election in which straight-party voting is allowed must contain the instruction prescribed by Section 52.071(b) with the language relating to placing an "X" in the party square changed as appropriate to accommodate the method by which the voter indicates a vote.

(g) The instructions required by this section may be placed on the punch-card ballot label instead of on the punch-card ballot.

Amended by Acts 1987, 70th Leg., ch. 472, § 36, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 728, § 47, eff. Sept. 1, 1993.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in subsec. (d) following "casting a" deleted "straight party vote and a";

redesignated former subsec. (e) as subsec. (f); and inserted subsec. (e).

§ 124.065. Paper Ballot for Office of Precinct Chair

(a) The authority adopting an electronic voting system for use in a primary election may provide by resolution, order, or other official action for voting by paper ballot for the party office of precinct chair.

(b) The paper ballot for precinct chair must conform to the applicable standards governing regular paper ballots, except that the ballot shall be limited to the office of precinct chair.

(c) The secretary of state shall prescribe the form of the ballot for precinct chair consistent with this section.

Amended by Acts 1997, 75th Leg., ch. 864, § 85, eff. Sept. 1, 1997.

CHAPTER 125. CONDUCT OF VOTING WITH VOTING SYSTEM

SUBCHAPTER A. VOTING SYSTEMS GENERALLY		Section	SUBCHAPTER C. ELECTRONIC VOTING SYSTEMS	
Section				
125.006.	Malfunction of Equipment at Polling Place.	125.0611.	Providing Separate Ballot Part for Write-in Voting.	
		125.064.	Records Available for Public Inspection.	
	SUBCHAPTER B. MECHANICAL VOTING MACHINES			
125.031.	Inspecting and Securing Machine Before Delivery to Polling Place.			
125.033.	Voting Paper Write-In Ballot.			

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. VOTING SYSTEMS GENERALLY

§ 125.006. Malfunction of Equipment at Polling Place

(a) The presiding judge shall stop use of malfunctioning voting system equipment installed at a polling place immediately after discovering that the equipment is not functioning properly.

(b) The presiding judge shall have the malfunctioning equipment promptly repaired or replaced if practicable.

(c) If the presiding judge determines that the equipment cannot be promptly repaired or replaced and that voting cannot be continued by using only the remaining operational equipment without substantially interfering with the orderly conduct of the election, voting at that polling place may be conducted by one of the following methods in addition to, or instead of, using remaining operational equipment:

- (1) using another voting system that has been adopted for use in the election;
- (2) using regular paper ballots, whether early voting ballots or ballots for regular voting on election day; or
- (3) having voters manually mark the electronic system ballots that were furnished for use with the malfunctioning equipment and having the ballots processed as regular paper ballots.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.56; Acts 1991, 72nd Leg., ch. 554, § 27, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 67.004.

SUBCHAPTER B. MECHANICAL VOTING MACHINES

§ 125.031. Inspecting and Securing Machine Before Delivery to Polling Place

(a) Not earlier than the 30th or later than the fifth day before the first day that a mechanical voting machine is to be used for voting, the authority responsible for distributing the election supplies to the polling places shall inspect the machine to determine whether it is in the proper order for use.

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(b) If the voting machine is in the proper order for use, the authority shall secure the machine against operation as prescribed by the secretary of state.

(c) The authority shall prepare a record containing the identification of each voting machine inspected, the identification of the polling place at which each machine is to be used, the number on the protective counter, and any other information required by the secretary of state. The record shall be preserved for the period for preserving the precinct election records.

(d) Not later than the day before the date of the inspection of machines, the authority shall notify the county chair of each political party with a nominee on the ballot of the place, date, and hour of the inspection. The county chair or the chair's designee is entitled to observe the inspection and securing of the machines.

(e) The authority shall post a notice of the place, date, and hour of the inspection of machines on the bulletin board used for posting notices of meetings of the governing body of the political subdivision served by the authority. The notice must remain posted continuously for the 48 hours preceding the beginning of the inspection.

Amended by Acts 1987, 70th Leg., ch. 54, § 10(a), eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 86, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

The 1987 amendatory act, to conform this section to Acts 1985, 69th Leg., Ch. 313 [see italicized note, main volume], in subsec. (a), substituted "Not earlier than the 30th or later than the fifth day

before the first day that a mechanical voting machine" for "Before a mechanical voting machine is delivered to a polling place, but not earlier than the fifth day before the first day that the machine", and added subsec. (e), and repealed Acts 1985, 69th Leg., Ch. 313.

Administrative Code References

Elections, inspection of voting system equipment, see 1 TAC § 81.45.

§ 125.033. Voting Paper Write-In Ballot

(a) In an election in which paper write-in ballots are used, a voter who has been accepted to vote by voting machine is entitled to a paper write-in ballot on request if the voter executes the following affidavit:

"State of Texas

"County of _____

"Before me, the undersigned authority, on this day personally appeared _____, who, having been by me first duly sworn, on the person's oath did depose and say:

"I have not and will not cast a vote on the voting machine for the office for which I am casting a write-in ballot."

Voter

"Subscribed and sworn before me this _____ day of _____, 19____

Election Officer of Polling Place_____
_____ County, Texas"

(b) An election officer shall complete the affidavit and obtain the voter's signature before permitting the voter to cast a paper write-in ballot.

Amended by Acts 1997, 75th Leg., ch. 864, § 87, eff. Sept. 1, 1997.

SUBCHAPTER C. ELECTRONIC VOTING SYSTEMS

§ 125.0611. Providing Separate Ballot Part for Write-in Voting

(a) If an electronic system ballot includes a separate write-in part under Section 124.064, that part shall be provided with the electronic system ballot.

(b) A voter may not be required to request the separate write-in part as a condition to being provided that part.

Added by Acts 1999, 76th Leg., ch. 1316, § 2, eff. Sept. 1, 1999.

§ 125.064. Records Available for Public Inspection

Any documents or records used in the preparation of or prepared for use in an electronic voting system for the operation of the system for a particular election and any documents or records generated by the system in that election shall be made available for public inspection in the office of the general custodian of election records for the period for preserving the precinct election records.

Added by Acts 1987, 70th Leg., ch. 484, § 6, eff. Sept. 1, 1987.

CHAPTER 126. PROCESSING MECHANICAL VOTING MACHINE RESULTS

SUBCHAPTER A. PREPARING RETURNS
AND RELATED ACTIVITIES

Section

SUBCHAPTER B. PRESERVATION
OF ELECTION RESULTS

Section

126.003. Entering Results on Returns for Machine With Printout.

126.035.

Examination of Secured Machine.

WESTLAW Electronic Research

See WESTLAW, Electronic Research Guide following the Preface.

SUBCHAPTER A. PREPARING RETURNS AND RELATED ACTIVITIES

§ 126.003. Entering Results on Returns for Machine With Printout

(a) The procedure for entering the election results on the election returns prescribed by Section 126.002 applies to a mechanical voting machine that produces a printout of the votes cast on the machine except as provided by this section.

(b) After a voting machine is secured against unauthorized operation, the presiding judge shall detach the printout from the voting machine. The entries on the returns shall be made by using the printout as the source of the election results instead of the registering counters of the voting machine. The registering counters shall be kept closed to access.

(c) If the identity of the voting machine does not appear on its printout, the presiding judge shall enter the machine's identity on the printout. The presiding judge and two election clerks shall certify that the printout and the machine correspond by signing the printout.

(d) After the entries are verified and corrected, the presiding judge shall deliver the printout to the general custodian of election records who shall preserve it for the period for preserving the precinct election records.

(e) If the printout is illegible, the presiding judge shall note that fact on the returns, and the results shall be entered on the returns in the manner prescribed by Section 126.002.

Amended by Acts 1987, 70th Leg., ch. 472, § 37, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 491, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

Acts 1987, 70th Leg., ch. 472, § 37 and Acts 1987, 70th Leg., ch. 491, § 1 both, in subsec. (e),

inserted provision for entry of results on returns and deleted provision for making entries on the returns using registering counters of the voting

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machine and provision for opening registering counters on request of the presiding officer of the local canvassing authority.

SUBCHAPTER B. PRESERVATION OF ELECTION RESULTS

§ 126.035. Examination of Secured Machine

(a) During the period that a mechanical voting machine is secured following an election, the machine may be examined only as authorized by this code or on the order of a court or other tribunal of competent jurisdiction.

(b) On completion of an examination, the authority that ordered the examination shall have the machine restored to its secured condition. The person in charge of the examination shall replace the keys to the machine in their envelope, seal the envelope, sign the person's name across the seal, and return the sealed envelope to the machine's custodian.

Amended by Acts 1997, 75th Leg., ch. 864, § 88, eff. Sept. 1, 1997.

CHAPTER 127. PROCESSING ELECTRONIC VOTING SYSTEM RESULTS

SUBCHAPTER A. ESTABLISHMENT AND ORGANIZATION OF CENTRAL COUNTING STATION		Section	
		127.130.	Manual Counting.
		127.132.	Disposition of Ballots, Returns, and Other Records.
Section			
127.002.	Counting Station Manager.		
127.003.	Tabulation Supervisor.		
127.004.	Assistants to Tabulation Supervisor.		
127.005.	Presiding Judge of Counting Station.		
127.006.	Counting Station Clerks.		
SUBCHAPTER B. PROCEDURES PRELIMINARY TO COUNTING STATION PROCESSING			
127.037.	Delivering Ballot Box No. 3 to Counting Station.	127.151.	Applicability of Subchapter; Procedures Prescribed by Secretary of State.
127.038.	Receiving Ballot Box No. 3 at Counting Station.	127.152.	Test of Tabulating Equipment Required.
		127.153.	Test Repeated if Equipment Malfunctions.
		127.154.	Identification Numbers Required for Equipment.
		127.155.	Presiding Judge to Sign Tape.
SUBCHAPTER C. SEALED BALLOT BOXES		127.156.	Tabulation at Central Counting Station if Discrepancy Exists in Ballot Totals.
127.068.	Receiving Sealed Ballot Box at Counting Station.	127.157.	Processing Irregularly Marked Ballots.
			[Sections 127.158 to 127.180 reserved for expansion]
SUBCHAPTER D. TESTING TABULATING EQUIPMENT			
127.096.	Conduct of First Test.		
SUBCHAPTER E. PROCESSING RESULTS AT CENTRAL COUNTING STATION			
127.1231.	Security of Automatic Tabulating Equipment.	127.201.	Partial Count of Electronic Voting System Ballots by General Custodian.
127.1232.	Security of Voted Ballots.		
127.124.	Early Processing of Ballots.	127.202.	Count of Electronic Voting System Ballots by Secretary of State.
127.126.	Duplicating Ballots.		
SUBCHAPTER F. PROCESSING RESULTS IN SYSTEM WITHOUT CENTRALIZED COUNTING			
SUBCHAPTER G. ADDITIONAL COUNT OF ELECTRONIC VOTING SYSTEM BALLOTS			

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. ESTABLISHMENT AND ORGANIZATION
OF CENTRAL COUNTING STATION

Library References

Conduct of elections, election supplies and equipment, see Brooks, 35 Texas Practice § 11.11.

§ 127.002. Counting Station Manager

(a) The authority establishing a central counting station shall appoint a manager of the station. Except as otherwise provided by this section, the eligibility requirements prescribed by this code for precinct election judges apply to a person appointed under this section.

(b) To be eligible for appointment, a person must:

(1) have knowledge and experience in the conduct of elections with the electronic voting system for which the counting station is established; and

(2) be a registered voter of the political subdivision served by the authority establishing the counting station, except during the first year following the adoption of the voting system.

(c) Employees of a political subdivision are not disqualified from appointment and, if appointed, may be paid additional compensation for their services.

(d) The general custodian of election records is eligible for appointment notwithstanding the custodian's status as a candidate or officeholder.

(e) The manager is in charge of the overall administration of the central counting station and the general supervision of the personnel working at the station.

(f) The manager is entitled to compensation in an amount fixed by the authority establishing the counting station.

Amended by Acts 1987, 70th Leg., ch. 492, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 728, § 48, eff. Sept. 1, 1993.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment, in subsec. (a), added the exception provision; in subsec. (c) substituted "Employees" for "Officers and employees"; insert-

ed a new subsec. (d) and redesignated former subsecs. (d) and (e) as subsecs. (e) and (f) respectively.

§ 127.003. Tabulation Supervisor

(a) The authority establishing a central counting station shall appoint a tabulation supervisor of the station. Except as otherwise provided by this section, the eligibility requirements prescribed by this code for precinct election judges apply to a person appointed under this section.

(b) To be eligible for appointment, a person must be trained in the operation of the automatic tabulating equipment installed at the counting station.

(c) Employees of a political subdivision are not disqualified from appointment and, if appointed, may be paid additional compensation for their services.

(d) The tabulation supervisor is in charge of the operation of the automatic tabulating equipment at the counting station.

(e) The tabulation supervisor is entitled to compensation in an amount fixed by the authority establishing the counting station.

Amended by Acts 1987, 70th Leg., ch. 492, § 2, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment, in subsec. (a), added the exception provision and in subsec. (c) substituted "Employees" for "Officers and employees".

§ 127.004. Assistants to Tabulation Supervisor

(a) The tabulation supervisor may appoint one or more assistants, each of whom must be approved by the authority establishing the central counting station.

(b) To be eligible for appointment, a person must have the competence, training, and experience required for the proper performance of the work assigned.

(c) Employees of the political subdivision are not disqualified from appointment and, if appointed, may be paid additional compensation for their services.

(d) An assistant shall assist the tabulation supervisor in the operation of the automatic tabulating equipment as directed by the tabulation supervisor.

(e) An assistant is entitled to compensation in an amount fixed by the authority establishing the counting station.

Amended by Acts 1987, 70th Leg., ch. 492, § 3, eff. Sept. 1, 1987.

Historical and Statutory Notes**1987 Legislation**

The 1987 amendment, in subsec. (c), substituted "Employees" for "Officers and employees".

§ 127.005. Presiding Judge of Counting Station

(a) The authority appointing the presiding judges to serve in an election shall appoint a presiding judge of each central counting station operating in the election.

(b) Except as otherwise provided by this section, the eligibility requirements prescribed by this code for precinct presiding judges apply to a presiding judge of a central counting station. To be eligible to serve as a judge under this section, a person must be a qualified voter of the political subdivision served by the authority adopting the voting system. The general custodian of election records and employees of the custodian are eligible to serve as a judge under this section notwithstanding the custodian's status as a candidate or officeholder.

(c) The presiding judge shall maintain order at the counting station and has the same authority as a precinct presiding judge in that respect and in the administration of oaths. The presiding judge may confer with and advise the manager or tabulation supervisor on any activity at the counting station.

(d) The presiding judge is entitled to compensation at the same rate as a precinct presiding judge, except that the counting station judge is entitled to a minimum compensation of five hours' pay regardless of the amount of time worked.

Amended by Acts 1987, 70th Leg., ch. 492, § 4, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 728, § 49, eff. Sept. 1, 1993.

Historical and Statutory Notes**1987 Legislation**

The 1987 amendment, in subsec. (b), added the exception clause at beginning of the section, deleted "do-not" preceding "apply to a presiding judge" and substituted provision on eligibility of the gen-

eral custodian of election records and the custodian's employees where custodian is a candidate for eligibility provision based on familial relationship to an opposed candidate for certain offices.

Notes of Decisions**Authority 1**

has authority to limit excessive or disruptive activity. Election Law Opinion No. JH-2 (1991).

1. Authority

Election judge at central counting station must allow watchers their rights under this code, but

§ 127.006. Counting Station Clerks

(a) Both the manager and the presiding judge may appoint clerks to serve at the central counting station.

(b) Except as otherwise provided by this section, the eligibility requirements prescribed by this code for precinct election clerks apply to clerks serving at a central counting station. To be eligible to serve as a clerk under this section, a person must be a qualified voter of the county in which the central counting station is located. The general custodian of election records, an employee of the custodian, or any other employee of a political subdivision is not ineligible to serve as a clerk under this section because the person is a qualified voter of a county other than the county in which the central counting station is located or because of the custodian's status as a candidate or officeholder.

(c) A clerk appointed by the manager serves under the manager and shall perform the functions directed by the manager. A clerk appointed by the presiding judge serves under the presiding judge and shall perform the functions directed by the presiding judge.

(d) A clerk is entitled to compensation at the same rate as a precinct election clerk, except that a clerk who serves for the entire time a counting station is in operation is entitled to a minimum compensation of three hours' pay regardless of the amount of time worked.

Amended by Acts 1987, 70th Leg., ch. 492, § 5, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1349, § 47, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment, in subsec. (b), inserted the exception clause at the beginning of the subsec., deleted "do not" preceding "apply to clerks serving

as", and substituted provision as to eligibility of political subdivision employees for eligibility provision based on familial relationship to an opposed candidate for certain offices.

§ 127.007. Plan for Counting Station Operation

Notes of Decisions

Recording devices 1

_____ cording at any location of service, including a central counting station. Election Law Opinion No. JH-2 (1991).

1. Recording devices

A poll watcher may not use mechanical or electronic device for audio, visual, or audiovisual re-

SUBCHAPTER B. PROCEDURES PRELIMINARY TO COUNTING STATION PROCESSING

§ 127.037. Delivering Ballot Box No. 3 to Counting Station

(a) Two election officers shall deliver ballot box no. 3 to the central counting station immediately after the box is sealed.

(b) The officers shall present the ballot box to the presiding judge of the counting station or to the judge's designee.

Amended by Acts 1997, 75th Leg., ch. 864, § 89, eff. Sept. 1, 1997.

§ 127.038. Receiving Ballot Box No. 3 at Counting Station

(a) On receipt of ballot box no. 3, the presiding judge of the central counting station or the judge's designee shall give a signed receipt for the box to one of the delivering officers. The presiding judge at the polling place shall preserve the receipt for the period for preserving the precinct election records.

(b) Before opening the ballot box, the presiding judge of the counting station or the judge's designee shall inspect the box and the seal to determine if they are intact and shall determine if the serial number on the seal corresponds with the number indicated on the record of serial numbers at the counting station. If the box and seal are intact and the serial numbers correspond, the judge or designee shall break the seal and open the box.

(c) On opening the ballot box, the judge or the judge's designee shall determine if the serial number on the seal corresponds with the serial number indicated on the certificate inside the ballot box.

(d) If any irregularities are discovered, the presiding judge shall take appropriate action in accordance with procedures prescribed by the secretary of state. If the contents of the ballot box are in order, the presiding judge shall deliver the ballots to the manager of the central counting station.

(e) The presiding judge shall preserve the seal and the certificate for the period for preserving the precinct election records.

Amended by Acts 1997, 75th Leg., ch. 864, § 90, eff. Sept. 1, 1997.

SUBCHAPTER C. SEALED BALLOT BOXES

Cross References

Early voting ballot boxes, security procedures,
see V.T.C.A., Election Code § 85.032.

§ 127.068. Receiving Sealed Ballot Box at Counting Station

(a) On receipt of a sealed ballot box, the presiding judge of the central counting station or the judge's designee shall give a signed receipt for the box to one of the delivering officers. The presiding judge at the polling place shall preserve the receipt for the period for preserving the precinct election records.

(b) Before opening the ballot box, the presiding judge of the counting station or the judge's designee shall inspect the box, the seal of the box, and the seal of the deposit slot to determine if they are intact and shall determine if the serial number on the seal of the box corresponds with the number indicated on the record of serial numbers at the counting station. If the box and both seals are intact and the serial numbers correspond, the judge or designee shall break the seals, unlock the lock, and open the box.

(c) If any irregularities are discovered, the presiding judge shall take appropriate action in accordance with procedures prescribed by the secretary of state.

(d) The presiding judge of the counting station shall preserve both seals for the period for preserving the precinct election records.

Amended by Acts 1997, 75th Leg., ch. 864, § 91, eff. Sept. 1, 1997.

Administrative Code References

Irregularities in seals or serial numbers of containers of voted ballots, see 1 TAC § 81.49.

SUBCHAPTER D. TESTING TABULATING EQUIPMENT

Administrative Code References

Automatic tabulating equipment, test program,
see 1 TAC § 81.50.

§ 127.096. Conduct of First Test

(a) The custodian of the automatic tabulating equipment shall publish notice of the date, hour, and place of the test conducted under Section 127.093(b) in a newspaper, as provided by general law for official publications by political subdivisions, at least 48 hours before the date of the test.

(b) The test is open to the public.

(c) The automatic tabulating equipment may not be used to count ballots voted in the election until a test is successful.

Amended by Acts 1993, 73rd Leg., ch. 728, § 50, eff. Sept. 1, 1993.

SUBCHAPTER E. PROCESSING RESULTS AT CENTRAL COUNTING STATION

§ 127.1231. Security of Automatic Tabulating Equipment

(a) Except as provided by Subsection (b), the general custodian of election records shall ensure that any computer terminals located outside the central counting station that are capable of accessing the automatic tabulating equipment during the tabulation are capable of inquiry functions only and shall ensure that no modem access to the tabulating equipment is available during the tabulation.

(b) The secretary of state may prescribe procedures for the use of a system to allow results to be transmitted by a modem to the central counting station from units of automatic tabulating equipment located at a precinct polling place or at a regional tabulating center serving several precincts. The system must provide for a secure transmission of data. Results may not be transmitted under this subsection until the polls close on election day.

Added by Acts 1987, 70th Leg., ch. 484, § 7, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1349, § 48, eff. Sept. 1, 1997.

§ 127.1232. Security of Voted Ballots

The general custodian of election records shall post a guard to ensure the security of ballot boxes containing voted ballots throughout the period of tabulation at the central counting station.

Added by Acts 1987, 70th Leg., ch. 484, § 7, eff. Sept. 1, 1987.

§ 127.124. Early Processing of Ballots

(a) The authority adopting an electronic voting system for use in an election in which ballots are processed at a central counting station may provide by resolution, order, or other official action that processing the electronic system ballots will begin while the polls are open for voting on election day.

(b) The authority shall state in the official action the intervals during the day at which the ballots are to be delivered from the polling places to the central counting station for processing.

(c) The boxes in which the ballots are delivered to the counting station may be returned to the polling places for use in subsequent deliveries. If a box to be reused is a sealed ballot box authorized by Subchapter C,¹ the authority responsible for distributing election supplies to the polling places, or the authority's designee, shall lock and seal the box at the counting station in the same manner as for the initial locking and sealing of the box and then deliver it to the appropriate polling place.

(d) The precinct election records shall be delivered to the central counting station in the last ballot box delivered from the polling place to the counting station.

(e) The authority may restrict early ballot processing to ballots voted at particular polling places by designating the polling places in the official action providing for the early processing. The authority may restrict the early processing to activities preparatory to the counting of ballots by stating in the official action the activities that are to be performed before the closing of the polls.

(f) Early processing of ballots under this section does not affect the time at which the results of the election may be disclosed.

(g) If the counting of ballots begins before the polls close, the provisions applicable to absences from the polling place by election officers while the polls are open apply to the personnel serving at the central counting station. The presiding judge shall supervise the absences.

Amended by Acts 1997, 75th Leg., ch. 864, § 92, eff. Sept. 1, 1997.

¹ Section 127.061 et seq.

§ 127.126. Duplicating Ballots

(a) The manager of a central counting station may have ballots duplicated for automatic counting as provided by this section.

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(b) The valid portion of a partially invalid ballot may be duplicated on another ballot so that the valid portion can be automatically counted.

(c) If an electronic system ballot is damaged to the extent it cannot be automatically counted, the ballot may be duplicated so it can be automatically counted.

(d) A procedure other than duplication may not be used to process a ballot subject to this section unless the procedure is expressly authorized by the secretary of state.

(e) Each duplicate ballot must be clearly labeled "Duplicate" and must bear the serial number of the original ballot.

(f) The duplicate shall be substituted for the original ballot in the ballots prepared for automatic counting. The original shall be preserved with the other voted ballots for the same period.

Amended by Acts 1987, 70th Leg., ch. 472, § 38, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 491, § 2, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 728, § 51, eff. Sept. 1, 1993.

Historical and Statutory Notes

1987 Legislation

Acts 1987, 70th Leg., ch. 472, § 38 and Acts 1987, 70th Leg., ch. 491, § 2 both, in subsec. (d),

substituted "the serial number of the original ballot" for "a serial number, which shall also be placed on the corresponding original ballot".

Cross References

Irregularly marked ballots, duplicated and processed in accordance with this section, see V.T.C.A., Election Code § 127.157.

§ 127.129. Correction of Results After Equipment Malfunction

Administrative Code References

Voting systems, malfunction in tabulating equipment, see 1 TAC § 81.51.

§ 127.130. Manual Counting

(a) Electronic system ballots that are not to be counted automatically and the write-in votes not counted at the polling places shall be counted manually at the central counting station.

(b) If the automatic counting of electronic system ballots becomes impracticable for any reason, the manager may direct that the ballots be counted manually at the central counting station.

(c) The procedure for manual counting is the same as that for regular paper ballots to the extent practicable. The manager is responsible for the manual counting of ballots at the central counting station.

(d) Subject to Subsection (e), in any manual count conducted under this code, a vote on a ballot on which a voter indicates a vote by punching a hole in the ballot may not be counted unless:

- (1) at least two corners of the chad are detached;
- (2) light is visible through the hole;
- (3) an indentation on the chad from the stylus or other object is present and indicates a clearly ascertainable intent of the voter to vote; or
- (4) the chad reflects by other means a clearly ascertainable intent of the voter to vote.

(e) Subsection (d) does not supersede any clearly ascertainable intent of the voter.

Amended by Acts 1993, 73rd Leg., ch. 728, § 52, eff. Sept. 1, 1993.

Cross References

Counting procedure, applicability of this section, see V.T.C.A., Election Code § 214.002.

§ 127.132. Disposition of Ballots, Returns, and Other Records

(a) The presiding judge of a central counting station shall distribute the voted ballots, election returns, and other election records from the counting station to the appropriate authorities.

(b) The voted ballots, election returns, poll list, tally lists for manually counted votes, and other election records shall be delivered to the authorities who receive the corresponding records from precinct polling places using regular paper ballots.

(c) The election records delivered to the general custodian of election records may be delivered in any container approved by the secretary of state for that purpose.

Amended by Acts 1987, 70th Leg., ch. 54, § 22, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendatory act, to correct a direct conflict among provisions prescribing the contents and use of ballot box No. 3, rewrote subsec. (c).

SUBCHAPTER F. PROCESSING RESULTS IN SYSTEM WITHOUT CENTRALIZED COUNTING

§ 127.151. Applicability of Subchapter; Procedures Prescribed by Secretary of State

(a) This subchapter applies to the processing of election results in electronic voting systems that do not entail the counting of ballots at central locations established under Subchapter A.¹

(b) The secretary of state shall prescribe any necessary procedures, in addition to those prescribed by this subchapter, for processing the election results.

Amended by Acts 1987, 70th Leg., ch. 484, § 8, eff. Sept. 1, 1987.

¹ Section 127.001 et seq.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in the section heading inserted "Applicability of Subchapter;"; rewrote

the provision relating to the prescription of procedures by the secretary of state and designated it as subsec. (b); and inserted subsec. (a).

§ 127.152. Test of Tabulating Equipment Required

(a) Each unit of automatic tabulating equipment shall be tested, using all applicable ballot formats, in accordance with the testing procedures prescribed by Subchapter D¹ to the extent those procedures can be made applicable.

(b) The general custodian of election records shall conduct the first test. The presiding election judge shall conduct the second and third tests at the polling place. If the second and third tests are not conducted in accordance with this subsection, the automatic tabulating equipment shall be used to count the ballots at a central location in accordance with Subchapter A² unless the secretary of state determines that a particular test at the polling place is not feasible for the automatic tabulating equipment.

(c) The general custodian of election records shall preserve the test materials for at least one year after election day or for at least 22 months after election day for an election involving a federal office.

Amended by Acts 1987, 70th Leg., ch. 484, § 8, eff. Sept. 1, 1987.

¹ Section § 127.091 et seq.

² Section § 127.001 et seq.

§ 127.153. Test Repeated if Equipment Malfunctions

If the tabulating of ballots must be restarted because of an equipment or system malfunction or any other reason, the tests required by Section 127.152 shall be repeated.

Amended by Acts 1987, 70th Leg., ch. 484, § 8, eff. Sept. 1, 1987.

§ 127.154. Identification Numbers Required for Equipment

(a) Each unit of automatic tabulating equipment must have a permanent identification number. Each part of that equipment that contains the ballot tabulation must also have a permanent identification number.

(b) Each of the identification numbers shall be recorded on the appropriate ballot and seal certificate.

(c) A ballot tabulation produced by automatic tabulating equipment that does not comply with Subsection (a) may not be used.

Amended by Acts 1987, 70th Leg., ch. 484, § 8, eff. Sept. 1, 1987.

§ 127.155. Presiding Judge to Sign Tape

(a) The presiding judge shall sign any tape containing the ballot tabulation that is produced by the automatic tabulating equipment.

(b) The presiding judge shall retain a copy of the tape.

Amended by Acts 1987, 70th Leg., ch. 484, § 8, eff. Sept. 1, 1987.

§ 127.156. Tabulation at Central Counting Station if Discrepancy Exists in Ballot Totals

If a discrepancy of more than three exists between the number of ballots recorded on the ballot and seal certificate and the number of ballots cast on the tape containing the ballot tabulation that is produced by the automatic tabulating equipment, the official tabulation of those ballots shall be conducted at a central counting station.

Amended by Acts 1987, 70th Leg., ch. 484, § 8, eff. Sept. 1, 1987.

§ 127.157. Processing Irregularly Marked Ballots

(a) This section applies only to a voting system that allows voters to deposit the ballots directly into a unit of automatic tabulating equipment.

(b) While the polls are open or as soon as practicable after the polls close, the counted ballots shall be removed from the ballot box and examined for irregularly marked ballots. The ballot box may not be opened for the purpose of examining the ballots unless there are at least 10 ballots in the box.

(c) If an election officer determines that two or more ballots were improperly tabulated because of irregular marks, the irregularly marked ballots shall be separated from the ballots that were marked properly, and all of the ballots shall be delivered to a central counting station.

(d) At the central counting station, the irregularly marked ballots shall be duplicated, and the ballots shall be processed in accordance with Section 127.126. The duplicate ballots shall be automatically counted with the remainder of the ballots at the central counting station. The tabulation conducted at the central counting station is considered to be the official tabulation for those ballots.

(e) If only one ballot has been improperly tabulated because of an irregular mark, the ballot shall be placed in an envelope as prescribed by the secretary of state. The envelope must include the irregularly marked ballot and a form that identifies the nature and date of the election, ballot serial number, and applicable offices. The envelope shall be delivered to a central counting station. At the central counting station, the ballot shall be examined and adjustments shall be made to the totals certified by the election judge to indicate the intent of the voter. The election results for the affected precinct shall be manually entered into the election processing system, but the original election returns may not be altered. The

envelope containing the ballot and form shall be placed in the ballot box with the regular voted ballots and shall be preserved with those ballots for the same period.

Added by Acts 1991, 72nd Leg., ch. 632, § 1, eff. Sept. 1, 1991.

[Sections 127.158 to 127.180 reserved for expansion]

SUBCHAPTER G. PRESERVATION OF PUNCH-CARD VOTING AIDS

§ 127.182. **Preservation of Punch-Card Ballot Label and Assembly**

Administrative Code References

Preservation of punch-card ballot label assembly, see 1 TAC § 81.53.

SUBCHAPTER H. ADDITIONAL COUNT OF ELECTRONIC VOTING SYSTEM BALLOTS

§ 127.201. **Partial Count of Electronic Voting System Ballots by General Custodian**

(a) To ensure the accuracy of the tabulation of electronic voting system results, the general custodian of election records shall conduct a manual count of all the races in at least one percent of the election precincts or in three precincts, whichever is greater, in which the electronic voting system was used. The custodian shall select the precincts at random and shall begin the count not later than 72 hours after the polls close. The count shall be completed not later than the 21st day after election day. Subsection (b) supersedes this subsection to the extent of a conflict.

(b) In a general election for state and county officers, primary election, or election on a proposed amendment to the state constitution or other statewide measure submitted by the legislature, the secretary of state shall select, in accordance with rules adopted by the secretary, the precincts to be counted under Subsection (a). The secretary shall designate not more than three offices and not more than three propositions to be counted in the selected precincts. The secretary shall notify the general custodian of election records of the precincts, offices, and propositions selected under this subsection not earlier than the day after election day.

(c) On selection or notification, as applicable, of the precincts to be counted, the general custodian of election records shall post in the custodian's office a notice of the date, hour, and place of the count.

(d) Each candidate in the election is entitled to be present at the count and is entitled to have a representative present. A representative must deliver a certificate of appointment to the general custodian at the time the representative reports for service. The certificate must be in writing and must include:

- (1) the printed name and signature of the representative;
- (2) the election subject to the count; and
- (3) the printed name and signature of the candidate making the appointment.

(e) Not later than the third day after the date the count is completed, the general custodian of election records shall deliver a written report of the results of the count to the secretary of state.

(f) The secretary of state at any time may waive or reinstate the requirements of this section for a particular political subdivision.

Added by Acts 1987, 70th Leg., ch. 484, § 9, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 728, § 53, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1349, § 49, eff. Sept. 1, 1997.

§ 127.202. **Count of Electronic Voting System Ballots by Secretary of State**

(a) To ensure the accuracy of the tabulation of electronic voting system results, the secretary of state or the secretary's designee may conduct a manual or automatic count of any

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portion of any number of ballots from any precinct in which the electronic voting system was used.

(b) The count may be conducted at any time during the period for preserving the applicable precinct election records.

(c) The general custodian of election records is entitled to be present at the count.

Added by Acts 1987, 70th Leg., ch. 484, § 9, eff. Sept. 1, 1987.

CHAPTER 128. COMPUTERIZED VOTING SYSTEMS

Section

128.001. Computerized Voting System Standards.

§ 128.001. Computerized Voting System Standards

(a) The secretary of state shall prescribe procedures to allow for the use of a computerized voting system. The procedures must provide for the use of a computerized voting system with:

(1) multiple voting terminals for the input of vote selections on the ballot presented by a main computer; and

(2) a main computer to coordinate ballot presentation, vote selection, ballot image storage, and result tabulation.

(b) Notwithstanding Chapter 66, a system under this section may allow for the storage of processed ballot materials in an electronic form on the main computer.

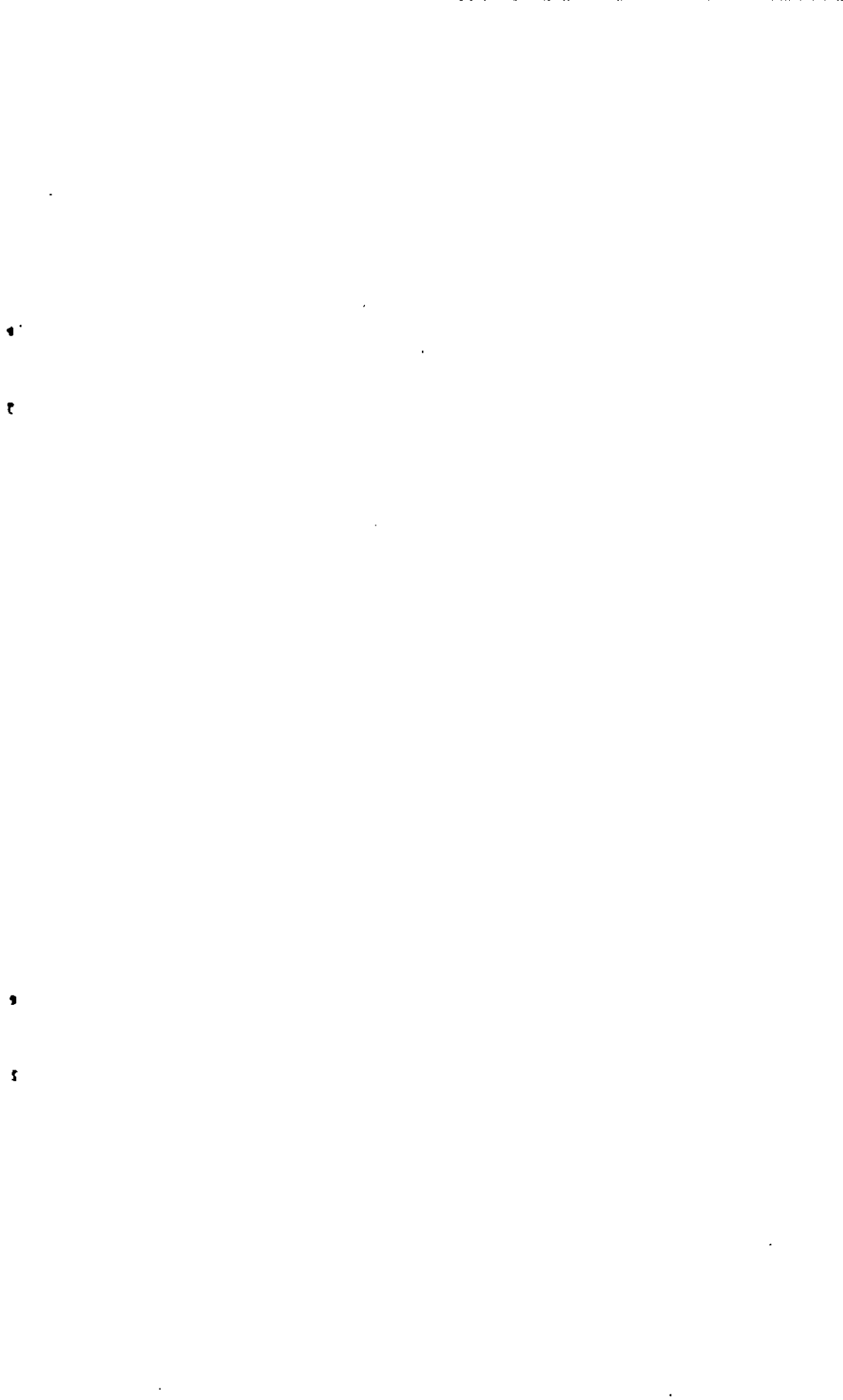
(c) The secretary of state may modify existing procedures as necessary to allow the use of a system authorized by this chapter.

Added by Acts 1997, 75th Leg., ch. 1349, § 50, eff. Sept. 1, 1997.

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