

TEXAS ELECTION LAWS

2009 Update

TEXAS ASSOCIATION OF COUNTIES

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INTRODUCTION

Observers of the Regular Session of the 81st Legislature saw the introduction of more than 130 election-related bills. Of that number, 24 won the approval of both legislative chambers. One of those bills was vetoed by the governor. There were 48 bills introduced relating to political funds reporting and disclosure, with 12 of those being adopted.

Among the subjects addressed in the legislation were: abolishing the office of inspector of hides and animals; eliminating the requirement that a candidate for a judicial district office filled by the voters of only one county file a copy of required reports of political contributions and expenditures with the county clerk in addition to the reports the candidate files with the Texas Ethics Commission; and disqualifying a convicted felon from appointment as a volunteer deputy registrar unless the person has discharged the sentence, been pardoned or otherwise released from disability to vote.

Of particular interest this legislative session was an election bill that did not pass. Senate Bill 362, the "voter identification bill," generated considerable press and media attention. The legislation required a person offering to vote to present either one acceptable form of photo identification or two government-issued documents to establish the voter's identity. After extended procedural and substantive debate, the bill passed the senate on a strict party line vote, with 19 Republicans voting for and 12 Democrats voting against. Democratic house members successfully blocked a vote on the measure in the house of representatives.

The governor vetoed House Bill No. 1457 which required the secretary of state to develop a system for accepting voter registration applications when the information provided by the voter did not match the indentifying information for that individual in the records of the Texas Department of Public Safety or other state agencies. See Appendix.

This update summarizes many of the changes in election laws during the recent regular session that affect counties. Because counties often conduct elections on behalf of or jointly with other political subdivisions, the publication also includes amendments related to those jurisdictions. Except as otherwise noted, the various pieces of legislation have an effective date of September 1, 2009. However, the reader is reminded that no change in Texas election procedures takes effect until initial pre-clearance is received by the secretary of state from the Department of Justice. Local submission of changes is also required in some instances. The reader should consult the secretary of state's elections division to determine whether a particular change has been pre-cleared before making any local changes contemplated by the new laws.

FORMAT

This summary is organized by topic, in a manner similar to the Titles and Chapters of the Election Code itself. Occasionally, changes in different chapters are discussed together for simplicity.

The relevant chapter or section of the Code is referenced for ease in locating the amended sections once the changes are published in codified form. This summary does not attempt to identify all of the changes to the Code enacted by the legislature. This summary is intended to provide the reader with a "snapshot" of election law changes. It should not be relied on as an exclusive resource. The reader should consult the actual text of the bill for a complete understanding of the changes.

CANCELLATION OF ELECTIONS

§ 2.081 added to permit the authority that orders an election on a measure and subsequently determines that the action to be authorized by the voters may not be taken, regardless of the outcome of the election to declare the measure moot and remove it from the ballot. The declaration must be posted during early voting and on election day at each polling place that would have been used for the election on the measure. (SB 1970)

§ 2.082 added to clarify that an authority that orders an election must have specific statutory authority to cancel the election. (SB 1970)

NOTICE OF ELECTION

§4.004(a) amended to require the notice of an election to include the location of each early voting polling place. (SB 1970)

§4.008 amended to require the governing body of a political subdivision (other than a county) that orders an election to deliver notice of the election to the voter registrar (in addition to the notice currently given to the county clerk) of each county in which the political subdivision is located. (HB 3062)

VOTER REGISTRATION

§13.002(h) added to provide that submission of a federal postcard application, in certain instances, constitutes an application for registration at the voting residence stated on the application. (HB 536)

§13.0021 amended to add justices of the peace to the list of judicial officers who may request to have their residence address omitted from the voter registration list. (HB 559)

§13.0021 amended to add spouses of judicial officers to the list of persons who may request to have their residence addresses omitted from the voter registration list. (SB 281)

§13.031 amended to disqualify a convicted felon from appointment as a volunteer deputy registrar, unless the person has fully discharged the sentence or been pardoned or otherwise released from the resulting disability to vote. (HB 488)

§§ 15.052 and 15.053 amended to require the voter to include on the confirmation of residence response form that the voter submits to the voter registrar all information required on a voter registration application. (HB 3069)

§19.004 amended to permit the voter registrar to expend state voter registration funds to employ temporary voter registration personnel for a period not to exceed 39 weeks per state fiscal year.
(HB 3061)

ELECTION OFFICERS

§31.039 amended to extend the restrictions on certain political activity that are currently imposed on a county elections administrator to include the full-time employees in the administrator's office. (HB 2401)

§32.002 amended to require appointment of election judges at the July term in counties over 500,000 and at the August term in counties of 500,000 or less. (HB 1145) Effective January 1, 2010.

§ 32.0511 added to permit certain high school students age 16 or older to serve as election clerks. (SB 1134)

TIME AND PLACE OF ELECTIONS

§42.0052 (a-1) added to permit a political subdivision, other than a county, that holds its general election for officers on a date other than the November uniform election date to change its election date to the November election date. A change made under this subsection must occur no later than December 31, 2010. (HB 401) Effective May 13, 2009.

§43.007 added to require the secretary of state to implement a program to allow participating counties to eliminate county election precincts and establish countywide voting locations for the November general election for state and county officers, constitutional amendment elections, certain elections held on the May uniform election date, and other elections held jointly with such elections. The secretary of state will select counties to participate based on criteria prescribed in the legislation. (HB 719) See Appendix.

§62.0112 added to require the presiding election judge to post a notice of “Voter Complaint Information” in the polling place. (HB 1256)

EARLY VOTING

§85.001 (e) amended to provide that the early voting period for a runoff election following an election held on the May uniform election date begins on the 12th day before the runoff and continues through the 4th day before the runoff. (SB 1970)

§ 85.004 amended to require the election order and notice to include the location of each early voting polling place. (SB 1970)

§101.0041 added to require the early voting clerk to notify the voter registrar of an FPCA that states a voting residence address outside the registrar’s county. (SB 1970)

§112.002(a) amended to provide that a person who changes residence to a new county may not vote a limited ballot in the new county unless the person is registered to vote in the former county of residence when the person offers to vote the limited ballot. (SB 1970)

DIRECT RECORDING ELECTRONIC VOTING MACHINES

Chapter 129 amended to establish procedures to ensure the accuracy, security, and reliability of direct recording electronic voting machines. (HB 2524) See Appendix.

PRIMARY ELECTIONS

§172.127 added to provide that signs used to indicate the location of a polling place for a joint primary election may not contain the name or symbol of one political party unless the name or symbol of the other political party is also included on the signs. (HB 719)

§174.022 amended to require the place selected for a precinct convention to meet the requirements imposed on polling places related that are related to accessibility for the elderly and persons with disabilities. (SB 2067)

§174.062 amended to allow the county convention to be held at a location outside the county under certain circumstances. (HB 2101)

RECOUNTS

§212.112 amended to set \$60 as the amount of a recount deposit for each precinct that used regular paper ballots and \$100 for each precinct that used an electronic voting system. (SB 1970)

POLITICAL FUNDS AND CAMPAIGNS

§253.039 amended to prohibit a person from making, authorizing, or accepting a political contribution in a courthouse. Courthouse is defined as any building owned by the state, a county, or a municipality, or an office or part of a building leased to the state, a county, or a municipality, in which a justice or judge sits to conduct court proceedings. (SB 1152)

§253.100 amended to provide a detailed list of permissible and prohibited expenditures by a corporation in the administration of a general purpose political committee. (HB 2525) Effective June 19, 2009.

§255.003 (b-1) added to prohibit the expenditure of public funds for a communication describing a ballot measure that contains information that the officer or employee knows to be false. (HB 1720)

§255.003(d) added to require the Texas Ethics Commission, on the request of a governing body, to provide an advance written opinion on whether a particular communication complies with §255.003. (HB 1720)

§§254.066 and 254.907 amended to delete the requirement that a candidate for a judicial district office filled by the voters of only one county file a copy of reports of political contributions and expenditures with the county clerk in addition to the reports required to be filed with the Texas Ethics Commission. (HB 1142) Effective June 19, 2009.

MISCELLANEOUS

The office of inspector of hides and animals abolished and references to the office deleted from the Election Code. (HB 328) Effective May 19, 2009.

APPENDIX

H.B. 719

1 AN ACT

2 relating to polling places for certain elections.

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

4 SECTION 1. Subchapter A, Chapter 43, Election Code, is

5 amended by adding Section 43.007 to read as follows:

6 Sec. 43.007. COUNTYWIDE POLLING PLACE PROGRAM. (a) The

7 secretary of state shall implement a program to allow each

8 commissioners court participating in the program to eliminate

9 county election precinct polling places and establish countywide

10 polling places for:

11 (1) each general election for state and county

12 officers;

13 (2) each countywide election held on the uniform

14 election date in May;

15 (3) each election on a proposed constitutional

16 amendment; and

17 (4) each election of a political subdivision located

18 in the county that is held jointly with an election described by

19 Subdivision (1), (2), or (3).

20 (b) The commissioners court of a county that desires to

21 participate in the program authorized by this section shall hold a

22 public hearing on the county's participation in the program. The
23 commissioners court shall submit a transcript or electronic
24 recording of the public comments made at the hearing to the
1 secretary of state. A county that has previously participated in a
2 similar program and held a public hearing on the county's
3 participation in that program is not required to hold a hearing
4 under this subsection.

5 (c) In conducting the program, the secretary of state shall
6 provide for an audit of the direct recording electronic voting
7 units before and after the election, and during the election to the
8 extent such an audit is practicable.

9 (d) The secretary of state shall select to participate in
10 the program each county that:

11 (1) has held a public hearing under Subsection (b);

12 (2) has submitted documentation listing the steps

13 taken to solicit input on participating in the program by

14 organizations or persons who represent the interests of voters;

15 (3) has implemented a computerized voter registration

16 list that allows an election officer at the polling place to verify

17 that a voter has not previously voted in the election;

18 (4) uses direct recording electronic voting machines;

19 and

20 (5) is determined by the secretary of state to have the

21 appropriate technological capabilities.

22 (e) Each countywide polling place must allow a voter to vote

23 in the same elections in which the voter would be entitled to vote

24 in the county election precinct in which the voter resides.

25 (f) In selecting countywide polling places, a county must

26 adopt a methodology for determining where each polling place will

27 be located. The total number of countywide polling places may not

1 be less than:

2 (1) except as provided by Subdivision (2), 50 percent

3 of the number of precinct polling places that would otherwise be

4 located in the county for that election; or

5 (2) for an election held in the first year in which the

6 county participates in the program, 65 percent of the number of

7 precinct polling places that would otherwise be located in the

8 county for that election.

9 (g) A county participating in the program must establish a

10 plan to provide notice informing voters of the changes made to the

11 locations of polling places under the program. The plan must

12 require that notice of the location of the nearest countywide

13 polling place be posted on election day at each polling place used

14 in the previous general election for state and county officers that
15 is not used as a countywide polling place.

16 (h) In adopting a methodology under Subsection (f) or
17 creating the plan under Subsection (g), the county shall solicit
18 input from organizations or persons located within the county who
19 represent minority voters.

20 (i) The secretary of state may only select to participate in
21 the program three counties with a population of 100,000 or more and
22 two counties with a population of less than 100,000.

23 (j) Not later than January 1 of each odd-numbered year, the
24 secretary of state shall file a report with the legislature. The
25 report must include any complaints or concerns regarding a specific
26 election that have been filed with the office of the secretary of
27 state before the preparation of the report and any available
1 information about voter turnout and waiting times at the polling
2 places. The report may include the secretary of state's
3 recommendations on the future use of countywide polling places and
4 suggestions for statutory amendment regarding the use of countywide
5 polling places.

6 SECTION 2. Subchapter E, Chapter 172, Election Code, is
7 amended by adding Section 172.127 to read as follows:

8 Sec. 172.127. CONTENT OF SIGN USED TO IDENTIFY POLLING

9 PLACE LOCATION. (a) This section applies only to a polling place

10 used to hold an election for more than one political party.

11 (b) A sign used to indicate the location of a polling place

12 for a primary election or a primary runoff election must either:

13 (1) not contain the name of, or symbol representing,

14 any political party that is holding an election at the polling

15 place; or

16 (2) contain each name of, or each symbol representing,

17 a political party that is holding an election at the polling place.

18 SECTION 3. This Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 719 was passed by the House on April 15, 2009, by the following vote: Yeas 147, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 719 on May 29, 2009, by the following vote: Yeas 142, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 719 was passed by the Senate, with
amendments, on May 26, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

H.B. No. 2524

1 AN ACT

2 relating to the accuracy, security, and reliability of certain
3 electronic voting systems.

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

5 SECTION 1. Section 66.058, Election Code, is amended by
6 adding Subsection (g) to read as follows:

7 (g) Electronic records created under Chapter 129 shall be
8 preserved in a secure container.

9 SECTION 2. Chapter 129, Election Code, is amended to read as
10 follows:

11 CHAPTER 129. DIRECT RECORDING ELECTRONIC VOTING MACHINES

12 SUBCHAPTER A. GENERAL PROVISIONS

13 Sec. 129.001. APPLICABILITY. (a) This chapter applies
14 only to a voting system that uses direct recording electronic
15 voting machines.

16 (b) To the extent possible, the procedures applicable to an
17 electronic voting system under Chapter 127 are applicable to a
18 voting system under this chapter.

19 Sec. 129.002. GENERAL [~~CERTAIN DIRECT RECORDING ELECTRONIC~~
20 ~~VOTING MACHINE~~] PROCEDURES. (a) [~~As part of the testing of the~~

21 ~~direct recording electronic voting machine equipment before its use~~
22 ~~in a particular election, the general custodian of election records~~
23 ~~shall include a specific test of each machine's logic and accuracy~~
24 ~~functions to ensure that the machine properly records, counts, and~~
1 ~~tabulates the votes.]~~

2 [(b)] Each direct recording electronic voting machine must
3 provide the voter with a screen in summary format of the voter's
4 choices for the voter to review before the vote is actually cast.

5 (b) [(e)] During the early voting period, the early voting
6 clerk shall conduct a daily audit of the direct recording
7 electronic voting machines used in the election to ensure proper
8 correspondence among the numbers of ballots provided on the
9 machines, names on the poll list, and ballots cast on the machines.

10 (c) [(d) ~~The general custodian of election records shall~~
11 ~~conduct a recount sufficient to confirm the accuracy of the vote~~
12 ~~totals in an election in which direct recording electronic voting~~
13 ~~machines are used for the first time.]]~~

14 [(e)] The secretary of state shall prescribe any procedures
15 necessary to implement this [chapter](#) [section] and to ensure the
16 orderly and proper administration of elections using direct
17 recording electronic voting machines.

18 [\(Sections 129.003-129.020 reserved for expansion\)](#)

19 SUBCHAPTER B. PRE-ELECTION ACCEPTANCE AND

20 TESTING OF VOTING SYSTEM

21 Sec. 129.021. ACCEPTANCE TESTING. Immediately after
22 receiving a voting system from a vendor, the general custodian of
23 election records shall:

24 (1) verify that the system delivered is certified by
25 the secretary of state;

26 (2) perform a hardware diagnostic test on the system
27 as provided by Section 129.022(b);

1 (3) perform a public test of logic and accuracy on the
2 system as provided by Section 129.023; and

3 (4) perform any additional test that the secretary of
4 state may prescribe.

5 Sec. 129.022. HARDWARE DIAGNOSTIC TEST. (a) The general
6 custodian of election records shall conduct a successful hardware
7 diagnostic test before a voting system is used in an election.

8 (b) The hardware diagnostic test must ensure that each part
9 of the system functions properly as prescribed by the secretary of
10 state.

11 Sec. 129.023. PUBLIC TEST OF LOGIC AND ACCURACY. (a) The
12 general custodian of election records shall create a testing board

13 consisting of at least two persons. The general custodian of
14 election records shall make every reasonable effort to ensure that
15 the testing board consists of at least one person from each
16 political party that holds a primary election.

17 (b) Not later than 48 hours before voting begins on a voting
18 system, the general custodian of election records shall conduct a
19 logic and accuracy test. Public notice of the test must be
20 published at least 48 hours before the test begins, and the test
21 must be open to the public.

22 (c) The general custodian of election records shall adopt
23 procedures for testing that:

24 (1) direct the testing board to cast votes;

25 (2) verify that each contest position on the ballot
26 can be voted and is accurately counted for each precinct and ballot
27 style;

1 (3) include overvotes and undervotes for each race, if
2 applicable to the system being tested;

3 (4) include straight-party votes and crossover votes;

4 (5) include write-in votes, when applicable to the
5 election;

6 (6) include provisional votes, if applicable to the
7 system being tested;

8 (7) calculate the expected results from the test

9 ballots;

10 (8) ensure that each voting machine has any public
11 counter reset to zero and presented to the testing board for
12 verification before testing;

13 (9) require that, for each feature of the system that
14 allows disabled voters to cast a ballot, at least one vote be cast
15 and verified by a two-person testing board team using that feature;
16 and

17 (10) require that, when all votes are cast, the
18 general custodian of election records and the testing board observe
19 the tabulation of all ballots and compare the actual results to the
20 expected results.

21 (d) A test is successful if the actual results are identical
22 to the expected results.

23 (e) To provide a full and accurate account of the condition
24 of a given voting machine, the testing board and the general
25 custodian of election records shall:

26 (1) sign a written statement attesting to:

27 (A) the qualification of each direct recording
1 electronic voting machine that was successfully tested;

2 (B) any problems discovered; and

3 (C) the cause of any problem if it can be

4 identified; and

5 (2) provide any other documentation as necessary.

6 (f) On completing the testing:

7 (1) the testing board shall witness and document all

8 steps taken to reset, seal, and secure any equipment or test

9 materials, as appropriate; and

10 (2) the general custodian for election records shall

11 preserve a copy of the system's software at a secure location that

12 is outside the administrator's and programming entity's control

13 until at least 22 months after election day.

14 Sec. 129.024. SECURITY OF TEST MATERIALS. (a) On

15 completing each test, the general custodian of election records

16 shall place the test materials in a container provided for that

17 purpose and seal the container in a manner that prevents opening

18 without breaking the seal. The general custodian of election

19 records and at least two members of the testing board shall sign the

20 seal.

21 (b) The test materials shall remain sealed for the period

22 for preserving the precinct election records.

23 (c) The container may not be unsealed unless the contents

24 are necessary to conduct a test under this subchapter or a criminal
25 investigation, election contest, or other official proceeding
26 under this code. If the container is unsealed, the authority in
27 charge of the proceeding shall reseal the contents when not in use.

1 (Sections 129.025-129.050 reserved for expansion)

2 SUBCHAPTER C. VOTING SYSTEM SECURITY

3 Sec. 129.051. PRE-ELECTION SECURITY PROCEDURE. (a) The

4 general custodian of election records shall create and maintain an

5 inventory of all electronic information storage media.

6 (b) The general custodian of election records shall develop

7 a procedure for tracking the custody of each electronic information

8 storage medium from its storage location, through election coding

9 and the election process, to its final post-election disposition

10 and return to storage. The chain of custody must require two or

11 more individuals to perform a check and verification check whenever

12 a transfer of custody occurs.

13 (c) The general custodian of election records shall

14 establish a secured location for storing electronic information

15 storage media when not in use, coding a medium for an election,

16 transferring and installing the medium into voting system

17 equipment, and storing voting system equipment after election
18 parameters are loaded.

19 (d) An election information storage medium shall be kept in
20 the presence of an election official or in a secured location once
21 the medium has been coded for an election.

22 (e) The general custodian of election records shall create a
23 procedure for tracking the custody of voting system equipment once
24 election parameters are loaded.

25 (f) The general custodian of election records shall create a
26 recovery plan to be followed if a breach in security procedures is
27 indicated. This plan must include immediately notifying the
1 secretary of state.

2 (g) The general custodian of election records shall conduct
3 a criminal background check for relevant election officials, staff,
4 and temporary workers upon hiring.

5 Sec. 129.052. TRANSPORT OF VOTING SYSTEM EQUIPMENT. (a)
6 The general custodian of election records shall adopt procedures
7 for securely storing and transporting voting system equipment. The
8 procedures shall include provisions for locations outside the
9 direct control of the general custodian of election records,
10 including overnight storage at a polling location. Procedures

11 relating to the chain of custody must require two or more
12 individuals to perform a check and verification check whenever a
13 transfer of custody occurs.

14 (b) The general custodian of election records shall create a
15 recovery plan to be followed if a breach in security procedures is
16 indicated. This plan must include immediately notifying the
17 secretary of state.

18 (c) The general custodian of election records shall provide
19 a training plan for relevant election officials, staff, and
20 temporary workers that addresses the procedures authorized under
21 this section.

22 Sec. 129.053. ACCESS TO VOTING SYSTEM EQUIPMENT. The
23 general custodian of election records shall secure access control
24 keys or passwords to voting system equipment. Use of access control
25 keys or passwords must be witnessed by one or more individuals
26 authorized to use that information. The use of an access control
27 key or password must be documented and witnessed in a log dedicated
1 for that purpose that is retained until the political subdivision
2 disposes of the equipment.

3 Sec. 129.054. NETWORK CONNECTIONS AND WIRELESS TECHNOLOGY.

4 (a) A voting system may not be connected to any external
5 communications network, including the Internet.

6 (b) A voting system may not have the capability of
7 permitting wireless communication unless the system uses
8 line-of-sight infrared technology that shields the transmitter and
9 receiver from external infrared transmissions and the system can
10 only accept transmissions generated by the system.

11 Sec. 129.055. EQUIPMENT AND SOFTWARE. The sole purpose of
12 voting system equipment is the conduct of an election, and only
13 software certified by the secretary of state and necessary for an
14 election may be loaded on the equipment.

15 Sec. 129.056. PLAN FOR MACHINE FAILURE. The general
16 custodian of election records shall create a contingency plan for
17 addressing direct recording electronic voting machine failure.
18 This plan must include the timely notification of the secretary of
19 state.

20 Sec. 129.057. USE OF MACHINE IN EARLY VOTING. A direct
21 recording electronic voting machine deployed for early voting may
22 not be deployed on election day.

23 SECTION 3. This Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 2524 was passed by the House on May

12, 2009, by the following vote: Yeas 149, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2524 was passed by the Senate on May 27, 2009, by the following vote: Yeas 28, Nays 3.

Secretary of the Senate

APPROVED: _____

Date

Governor

Governor's Veto Statement of H.B. 1457

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Rick Perry, Governor of Texas, do hereby disapprove of and veto House Bill No. 1457 of the 81st Texas Legislature, Regular Session, due to the following objections:

House Bill No. 1457 would require the secretary of state to develop a system for accepting voter registration applications when the information provided by the voter does not match the identifying information for that individual in the records of the Texas Department of Public Safety (DPS) or other state agencies.

Most significantly, this bill would put the responsibility for correcting any mistake in the wrong hands. The secretary of state does not see the application filed with the county voter registrar and therefore is not in a position to determine whether the mismatched information was due to a typographical error at the county level or to incorrect information given by the applicant. A misspelled name or incorrect date of birth on a voter registration application is a strong indication that the application was filled out by someone other than the rightful voter.

Additionally, requiring acceptance of names on voter rolls that do not match the DPS database would impede the ability to keep the rolls accurate; voters' names would not match other state records, which would consequently prevent them being removed from the voter rolls due to death, imprisonment or other legitimate reasons.

While Texas should make every effort to ensure that clerical errors do not prevent legitimate voters from registering, the secretary of state is in no position to determine where the error occurred; this is best done at the county level where voter applications are received.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this the 19th day of June, 2009.

RICK PERRY

Governor of Texas

ATTESTED BY:

COBY SHORTER, III

Deputy Secretary of State