ELECTION CODE

TITLE 6. CONDUCT OF ELECTIONS

CHAPTER 65. COUNTING VOTES AND PREPARING RETURNS

SUBCHAPTER A. COUNTING VOTES GENERALLY

Sec. 65.001. COUNTING OFFICERS. At each polling place, the ballots shall be counted by one or more teams of election officers assigned by the presiding judge. Each team must consist of two or more election officers.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

Sec. 65.002. TIME FOR COUNTING. (a) Subject to Subsection (b), the presiding judge may direct the counting of ballots to occur at any time after the polls have been open for one hour.
	(b) While the polls are open and until voting is concluded after the polls close, the ballot box for the deposit of voters' marked ballots may not be opened for the purpose of counting the ballots unless there are at least 10 ballots in the box.
	(c) After the polls close or the last voter has voted, whichever is later, the counting of ballots shall be conducted continuously until all the ballots are counted.
	(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1235, Sec. 26(5), eff. September 1, 2009.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.
Amended by:
	Acts 2009, 81st Leg., R.S., Ch. 1235 (S.B. 1970), Sec. 26(5), eff. September 1, 2009.

Sec. 65.003. ROTATING BALLOT BOXES NO. 1 AND NO. 2. (a) If the counting of the ballots is to begin before voting is concluded, ballot box no. 1 and ballot box no. 2 shall be used on a rotating basis at the polling place.
	(b) When either ballot box no. 1 or no. 2 containing marked ballots is delivered to the election officers counting the ballots, the other box shall be immediately made available for the deposit of marked ballots.
	(c) Before the ballot box is positioned for the receipt of marked ballots, an election officer shall examine it, remove its contents, and

lock the box.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

Sec. 65.004. TALLY LISTS. Three original tally lists shall be maintained at the polling place to record the number of votes received for the candidates and for and against the measures voted on.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

Sec. 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.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1997, 75th Leg., ch. 1078, Sec. 12, eff. Sept. 1, 1997.

Sec. 65.006. REPLACING MEMBER OF COUNTING TEAM. (a) A member of a counting team may not be replaced after vote tallying is begun unless each existing discrepancy among the three tally lists is corrected before the replacement is made.
(b) If a counting officer is replaced on a counting team after the tallying is begun, the officer to be replaced shall certify the accuracy of the list the officer has kept, as of the time of the replacement, by signing the list at that time.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

Sec. 65.008. TALLYING WRITE-IN VOTES. (a) In an election in which write-in voting is permitted, the name of a write-in candidate shall be entered on the tally list and votes for that candidate shall be tallied in the same manner as votes for a candidate whose name appears on the ballot.

(b) A write-in vote may not be counted if a sticker containing a candidate's name is affixed to the ballot by the voter.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

Sec. 65.009. COUNTING IRREGULARLY MARKED BALLOT. (a) Failure to mark a ballot in strict conformity with this code does not invalidate the ballot.

(b) Marking the ballot by marking through the names of candidates for whom or the statements beside the propositions for which the voter does not desire to vote does not invalidate the ballot.

(c) A vote on an office or measure shall be counted if the voter's intent is clearly ascertainable unless other law prohibits counting the vote.

(d) The intent of the voter in marking a ballot may be determined by:

(1) a distinguishing mark adjacent to the name of a candidate or political party or a voting choice associated with a proposition;

(2) an oval, box, or similar marking clearly drawn around the name of a candidate or political party or a voting choice associated with a proposition;

(3) a line drawn through:

(A) the names of all candidates in a manner that indicates a preference for the candidates not marked if the names of the candidates not marked do not exceed the number of persons that may be elected to that office;

(B) the name of each political party except one in a manner that clearly indicates a preference for the political party not marked; or

(C) a voting choice associated with a proposition in a manner that clearly indicates a preference for the other voting choice associated with the proposition; or

(4) any other evidence that clearly indicates the intent of the voter in choosing a candidate or political party or deciding on a proposition.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 2003, 78th Leg., ch. 1315, Sec. 33, eff. Jan. 1, 2004.

Sec. 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 provisional ballot that is not accepted under Subchapter B.

(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.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1993, 73rd Leg., ch. 728, Sec. 18, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1078, Sec. 13, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1315, Sec. 34, eff. Jan. 1, 2004.

Sec. 65.011. OVERVOTING. 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.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1993, 73rd Leg., ch. 728, Sec. 19, eff. Sept. 1, 1993.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 404 (H.B. 25), Sec. 4, eff. September 1, 2020.

Sec. 65.012. DEPOSITING BALLOT IN BALLOT BOX NO. 3. (a) After a ballot is counted, it shall be deposited in ballot box no. 3.

(b) A voted ballot that is not counted shall also be deposited in ballot box no. 3.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

Sec. 65.013. BALLOT REGISTER. (a) Each presiding judge shall prepare a ballot register as provided by this section.

(b) The register must state:

(1) the total number of ballots received for conducting
voting at the polling place;
         (2) the number of defectively printed ballots received;
         (3) the number of ballots provided to voters as indicated by
the number of voters on the poll list;
         (4) the number of spoiled ballots returned by voters; and
         (5) the number of unused ballots that are not accounted for
as defectively printed ballots.
      (c) The ballot register shall be prepared as an original and one
copy, and on completing the register, the presiding judge shall sign each
one to certify its accuracy.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

      Sec. 65.014. PREPARING THE PRECINCT RETURNS. (a) On completion
of the vote count, the presiding judge shall prepare the returns of the
election for the precinct.
      (b) The returns must state:
         (1) the total number of voters who voted at the polling
place as indicated by the poll list; and
         (2) the total number of votes counted for each candidate and
for and against each measure.
      (c) The returns shall be prepared as an original and three copies,
and on completing the returns, the presiding judge shall sign each one to
certify its accuracy.
      (d) A presiding judge commits an offense if the judge knowingly
fails:
         (1) to include in the precinct returns the applicable
information required by this code; or
         (2) to complete the returns in time for them to be delivered
by the deadline prescribed by Section 66.053(c) for delivery of the
precinct election records.
      (e) An offense under Subsection (d) is a Class B misdemeanor.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

      Sec. 65.015. ANNOUNCING PARTIAL RESULTS. (a) Subject to
Subsection (b), after the polls close and the last voter has voted, the
presiding judge may announce the status of the vote count from time to
time.
      (b) The local canvassing authority may require the announcements
or prohibit them.

(c) The announcements shall be made at the entrance to the polling place.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

Sec. 65.016. INTERNET POSTING OF ELECTION RESULTS. (a) A county that holds or provides election services for an election and maintains an Internet website shall post on its public Internet website for an election of public officials or of a governmental entity authorized by law to impose a tax administered by the county:
(1) the results of each election;
(2) the total number of votes cast;
(3) the total number of votes cast for each candidate or for or against each measure;
(4) the total number of votes cast by personal appearance on election day;
(5) the total number of votes cast by personal appearance or mail during the early voting period; and
(6) the total number of counted and uncounted provisional ballots cast.
(b) A city or independent school district that holds an election and maintains an Internet website shall post on its public Internet website for the city or independent school district, as applicable:
(1) the results of each election;
(2) the total number of votes cast;
(3) the total number of votes cast for each candidate or for or against each measure;
(4) the total number of votes cast by personal appearance on election day;
(5) the total number of votes cast by personal appearance or mail during the early voting period; and
(6) the total number of counted and uncounted provisional ballots cast.
(c) The information described by Subsections (a) and (b) must be:
(1) posted as soon as practicable after the election; and
(2) accessible without having to make more than two selections or view more than two network locations after accessing the Internet website home page of the county, city, or district, as applicable.

Added by Acts 2021, 87th Leg., R.S., Ch. 436 (S.B. 1116), Sec. 1, eff. September 1, 2021.

Sec. 65.017. VIDEO RECORDING OF BALLOT COUNTING AND PROCESSING. (a) Except as provided by Subsection (d), the secretary of state shall establish a pilot program requiring a county to use a video recording device to record:

             (1) all areas containing voted ballots in:

                  (A) each central counting station in the manner required by Section 127.1232; or

                  (B) if the county has not established a central counting station, not less than 20 percent of precincts in the county; and

             (2) ballot counting activity performed by the early voting ballot board after the polls close on election day, including the processing of:

                  (A) early voting ballots voted by mail;

                  (B) early voting ballots voted by mail that have had a defect corrected under Section 87.0411; and

                  (C) provisional ballots.

     (b) The secretary of state shall select six counties to take part in the pilot program, including:

             (1) two counties with a population of more than 100,000 and not more than 500,000;

             (2) two counties with a population of not less than 50,000 and not more than 100,000; and

             (3) two counties with a population of not more than 5,000.

     (c) The secretary of state shall adopt procedures to implement this section, including procedures to determine which counties may participate in the pilot program under this section.

     (d) The procedures adopted under Subsection (c) may not violate the requirements of Section 61.014.

     (e) The secretary of state shall operate the pilot program established under this section until January 1, 2025.

     (f) Not later than January 1, 2025, the secretary of state shall file a report with the legislature. The report must state:

             (1) which counties participated in the pilot program;

             (2) the number of precincts and central counting stations that recorded video;

             (3) any best practices for placement and use of the video recording devices, including:

                  (A) best angles for visibility;

                  (B) best distance between device and counting station; and

                  (C) best devices for clarity;

(4) the cost and availability of broadband Internet
connectivity required to implement the program; and
        (5) any other information and recommendations considered
necessary by the secretary of state.
    (g) This section expires January 1, 2025.

Added by Acts 2023, 88th Leg., R.S., Ch. 1112 (H.B. 246), Sec. 1, eff.
September 1, 2023.

    SUBCHAPTER B. VERIFICATION AND COUNTING OF PROVISIONAL BALLOTS

    Sec. 65.051. DUTY OF EARLY VOTING BALLOT BOARD. (a) The early
voting ballot board shall verify and count provisional ballots as
provided by this subchapter not later than the ninth day after the date
of an election.
    (a-1) Notwithstanding Subsection (a), for an election held on the
date of the general election for state and county officers, the early
voting ballot board shall verify and count provisional ballots as
provided by this subchapter not later than the 13th day after the date of
the election.
    (b) Except as provided by this subchapter, the conduct of the
board is governed by the same procedures as are provided by Chapter 87.
    (c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 84 , Sec. 31, eff.
September 1, 2015.

Added by Acts 2003, 78th Leg., ch. 1315, Sec. 35, eff. Jan. 1, 2004.
Amended by:
    Acts 2011, 82nd Leg., R.S., Ch. 1318 (S.B. 100), Sec. 7, eff.
September 1, 2011.
    Acts 2013, 83rd Leg., R.S., Ch. 891 (H.B. 985), Sec. 1, eff.
September 1, 2013.
    Acts 2015, 84th Leg., R.S., Ch. 84 (S.B. 1703), Sec. 5, eff.
September 1, 2015.
    Acts 2015, 84th Leg., R.S., Ch. 84 (S.B. 1703), Sec. 31, eff.
September 1, 2015.

    Sec. 65.052. DUTY OF VOTER REGISTRAR. The secretary of state
shall prescribe procedures by which the voter registrar of the county in
which a provisional ballot is cast shall provide assistance to the early
voting ballot board in executing its authority under this subchapter. In
an election described by Section 65.051(a-1), the procedures must allow
for 10 calendar days for the voter registrar to review a provisional
voter's eligibility.

Added by Acts 2003, 78th Leg., ch. 1315, Sec. 35, eff. Jan. 1, 2004.
Amended by:
        Acts 2013, 83rd Leg., R.S., Ch. 891 (H.B. 985), Sec. 2, eff.
September 1, 2013.
        Acts 2021, 87th Leg., R.S., Ch. 711 (H.B. 3107), Sec. 43, eff.
September 1, 2021.

        Sec. 65.053. DELIVERY OF PROVISIONAL BALLOTS. The presiding judge
of an election precinct shall deliver in person to the general custodian
of election records the box containing each envelope containing a
provisional ballot that was cast in the precinct. The secretary of state
shall prescribe procedures by which the early voting ballot board may
have access to the provisional ballots as necessary to implement this
subchapter.

Added by Acts 2003, 78th Leg., ch. 1315, Sec. 35, eff. Jan. 1, 2004.

        Sec. 65.054. ACCEPTING PROVISIONAL BALLOT. (a) The early voting
ballot board shall examine each affidavit executed under Section 63.011
and determine whether to accept the provisional ballot of the voter who
executed the affidavit.
        (b) A provisional ballot shall be accepted if the board determines
that:
                (1) from the information in the affidavit or contained in
public records, the person is eligible to vote in the election and has
not previously voted in that election;
                (2) the person:
                        (A) meets the identification requirements of Section
63.001(b) at the time the ballot was cast or in the period prescribed
under Section 65.0541;
                        (B) notwithstanding Chapter 110, Civil Practice and
Remedies Code, executes an affidavit under penalty of perjury that states
the voter has a religious objection to being photographed and the voter
has consistently refused to be photographed for any governmental purpose
from the time the voter has held this belief; or
                        (C) executes an affidavit under penalty of perjury that
states the voter does not have any identification meeting the
requirements of Section 63.001(b) as a result of a natural disaster that
was declared by the president of the United States or the governor,
occurred not earlier than 45 days before the date the ballot was cast,
and caused the destruction of or inability to access the voter's
identification; and

(3) the voter has not been challenged and voted a provisional ballot solely because the voter did not meet the requirements for identification prescribed by Section 63.001(b).

(c) If a provisional ballot is accepted, the board shall enter the voter's name on a list of voters whose provisional ballots are accepted.

(d) If a provisional ballot is rejected, the board shall indicate the rejection by marking "rejected" on the envelope containing the provisional ballot.

Added by Acts 2003, 78th Leg., ch. 1315, Sec. 35, eff. Jan. 1, 2004. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1078 (H.B. 2823), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 123 (S.B. 14), Sec. 17, eff. January 1, 2012.

Sec. 65.0541. PRESENTATION OF IDENTIFICATION FOR CERTAIN PROVISIONAL BALLOTS. (a) A voter who is accepted for provisional voting under Section 63.011 because the voter does not meet the identification requirements of Section 63.001(b) may, not later than the sixth day after the date of the election:

(1) present a form of identification described by Section 63.0101 to the voter registrar for examination; or

(2) execute an affidavit described by Section 65.054(b)(2) (B) or (C) in the presence of the voter registrar.

(b) The secretary of state shall prescribe procedures as necessary to implement this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 123 (S.B. 14), Sec. 18, eff. January 1, 2012.

Sec. 65.055. DISPOSITION OF ACCEPTED PROVISIONAL BALLOT AND AFFIDAVIT. (a) The early voting ballot board shall open each envelope containing an accepted provisional ballot without defacing the affidavit located on the outside of the envelope and shall remove the ballot.

(b) The board shall place the ballot in a ballot box containing all the provisional ballots accepted for voting in the election.

(c) For each accepted provisional ballot, the board shall place the corresponding envelope on which is printed the voter's affidavit executed under Section 63.011 in a sealed envelope and shall deliver the envelope to the general custodian of election records, to be retained for the period for preserving precinct election returns.

Added by Acts 2003, 78th Leg., ch. 1315, Sec. 35, eff. Jan. 1, 2004.

Sec. 65.056. DISPOSITION OF REJECTED PROVISIONAL BALLOT. (a) If the affidavit on the envelope of a rejected provisional ballot contains the information necessary to enable the person to register to vote under Chapter 13, the voter registrar shall make a copy of the affidavit under procedures prescribed by the secretary of state. The voter registrar shall treat the copy as an application for registration under Chapter 13.

(b) The early voting ballot board shall place the envelopes containing rejected provisional ballots in an envelope and shall seal the envelope. More than one envelope may be used if necessary.

(c) The envelope for the rejected provisional ballots must indicate the date and identity of the election, be labeled "rejected provisional ballots," and be signed by the board's presiding judge.

(d) A board member shall deliver the envelope containing the rejected provisional 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 accepted provisional ballots.

Added by Acts 2003, 78th Leg., ch. 1315, Sec. 35, eff. Jan. 1, 2004.

Sec. 65.057. PROCESSING ACCEPTED PROVISIONAL BALLOTS. (a) The early voting ballot board shall count accepted provisional ballots as follows:

(1) for ballots to be counted manually, in the manner provided by Subchapter D, Chapter 87;

(2) for ballots to be counted by automatic tabulating equipment at a central counting station, in the manner provided by Subchapter F, Chapter 87; and

(3) for ballots to be counted by any other means, in the manner provided by rules adopted by the secretary of state.

(b) On counting the ballots under this section, the board shall report the results to the local canvassing authority for the election.

Added by Acts 2003, 78th Leg., ch. 1315, Sec. 35, eff. Jan. 1, 2004.

Sec. 65.058. PRESERVATION OF PROVISIONAL VOTING RECORDS GENERALLY. The returns of provisional ballots that are accepted, the accepted ballots, and other provisional voting records shall be preserved after the election in the same manner as the corresponding precinct election returns.

Added by Acts 2003, 78th Leg., ch. 1315, Sec. 35, eff. Jan. 1, 2004.

Sec. 65.0581. PUBLIC INSPECTION OF PROVISIONAL VOTING RECORDS. Provisional voting records are not available for public inspection until the first business day after the date the early voting ballot board completes the verification and counting of provisional ballots under Section 65.051 and delivers the provisional ballots and other provisional voting records to the general custodian of election records.

Added by Acts 2021, 87th Leg., R.S., Ch. 711 (H.B. 3107), Sec. 44, eff. September 1, 2021.

Sec. 65.059. NOTICE TO PROVISIONAL VOTER. The secretary of state shall prescribe procedures to implement a system to allow a person who casts a provisional ballot under Section 63.011 to obtain access free of charge to information on the disposition of the person's ballot. The system:

(1) must allow the person to determine whether the person's ballot was counted, and, if the person's ballot was not accepted, must indicate the reason why;

(2) must provide the information only to the person who cast the provisional ballot; and

(3) may involve the use of a toll-free telephone number or the Internet.

Added by Acts 2003, 78th Leg., ch. 1315, Sec. 35, eff. Jan. 1, 2004.

Sec. 65.060. DISCLOSURE OF SOCIAL SECURITY, DRIVER'S LICENSE, OR PERSONAL IDENTIFICATION NUMBER ON PROVISIONAL BALLOT AFFIDAVIT. A social security number, Texas driver's license number, or number of a personal identification card issued by the Department of Public Safety furnished on a provisional ballot affidavit is confidential and does not constitute public information for purposes of Chapter 552, Government Code. The general custodian of election records shall ensure that a social security number, Texas driver's license number, or number of a personal identification card issued by the Department of Public Safety is excluded from disclosure.

Added by Acts 2005, 79th Leg., Ch. 1107 (H.B. 2309), Sec. 1.13, eff. September 1, 2005.