

By: Jetton

H.B. No. 95

A BILL TO BE ENTITLED

AN ACT

1
2 relating to improvements to election integrity, including through a
3 partial count of auditable voting system ballots; creating a
4 criminal offense.

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

6 SECTION 1. Section 121.003, Election Code, is amended by
7 adding Subdivision (14) to read as follows:

8 (14) "Auditable voting system" means a voting system
9 that:

10 (A) uses, creates, or displays a paper record
11 that may be read by the voter and that is deposited by the voter into
12 a secure ballot box; and

13 (B) is not capable of being connected to the
14 Internet or any other computer network or electronic device.

15 SECTION 2. Subchapter H, Chapter 127, Election Code, is
16 amended by adding Section 127.2015 to read as follows:

17 Sec. 127.2015. PARTIAL COUNT OF AUDITABLE VOTING SYSTEM
18 BALLOTS BY GENERAL CUSTODIAN. (a) In this section, "ballot box"
19 means all ballot boxes used for the deposit of voters' marked
20 ballots at a polling place or early voting polling place, whether
21 one or multiple physical ballot boxes were used.

22 (b) Notwithstanding Section 127.201, not later than 24
23 hours after all ballots have been counted in an election, the
24 general custodian of election records in each county shall conduct

1 by hand a partial count of ballots cast for a selected number of
2 ballot boxes. Each ballot box selected must be from a polling place
3 in which an auditable voting system was used, and the number of
4 ballot boxes selected for the partial count shall be the greater of:

5 (1) two; or

6 (2) 10 percent of the number of ballot boxes used in
7 the election, rounded up to the nearest even number.

8 (c) Not later than 18 hours after the completion of the
9 initial counting or tabulation of election results and with not
10 less than six hours' notice given to each participant, the general
11 custodian of election records shall conduct a telephone conference
12 call with the following persons:

13 (1) the general custodian;

14 (2) the county chair of the political party who
15 received the most votes in the county in the most recently preceding
16 gubernatorial election, or the chair's designee;

17 (3) the county chair of the political party who
18 received the second most votes in the county in the most recently
19 preceding gubernatorial election, or the chair's designee;

20 (4) up to three additional persons selected by each
21 person participating under Subdivisions (2) and (3); and

22 (5) if a person described by Subdivision (2) or (3)
23 does not attend, a person appointed by the state chair of the
24 person's party to replace that person and up to three additional
25 persons appointed by the state chair to replace the persons
26 described by Subdivision (4).

27 (d) During the conference call under Subsection (c), the

1 general custodian of election records shall allow each party chair
2 or party chair's representative to select ballot boxes to be
3 subject to a partial count conducted under this section. The chairs
4 shall alternate selections, beginning with the chair of the party
5 that received the most votes in the county in the most recently
6 preceding gubernatorial election, until the number of ballot boxes
7 selected for the partial count has satisfied the requirement of
8 Subsection (b).

9 (e) If a party leader or representative fails to attend the
10 conference call as required under Subsection (c), the secretary of
11 state shall select ballot boxes for the partial count at random on
12 the party's behalf.

13 (f) The general custodian of election records shall
14 complete the partial count not later than 24 hours before the time
15 for conducting the canvass of the election.

16 (g) The general custodian of election records shall post a
17 notice of the date, hour, and place of the partial count in the
18 custodian's office and on the county's Internet website, if the
19 county maintains a website, at least 18 hours before beginning the
20 count and shall post the results of the count in the same manner
21 immediately after the conclusion of the count. The notice must
22 identify the ballot boxes chosen for the count.

23 (h) A watcher may be present at all stages of the partial
24 count if appointed by a candidate in the election from the moment a
25 ballot box is taken from its place of storage until the count is
26 completed and all ballot boxes examined in the count are returned to
27 the place of storage. A watcher must deliver a certificate of

1 appointment to the general custodian of election records at the
2 time the watcher reports for service. The certificate must be in
3 writing and must include:

- 4 (1) the printed name and signature of the watcher;
- 5 (2) the election subject to the partial count; and
- 6 (3) the printed name and signature of the candidate
7 making the appointment.

8 (i) The secretary of state may appoint personnel to assist
9 with the partial count, including applicable voting system
10 technicians or representatives and persons who have assisted with
11 the design and implementation of the count.

12 (j) If a partial count conducted under this section reveals
13 a disparity of more than 20 votes between the initial reported
14 outcome of an election at a polling place and the results determined
15 by the partial count, notwithstanding any other law, an automatic
16 recount under Chapter 216 must be conducted in the county for the
17 election in which the disparity is identified. The recount shall be
18 a manual recount by hand of paper records in accordance with
19 Subchapter A, Chapter 214. All candidates in the election and the
20 county chair of any political party in the county must be notified
21 by the general custodian of election records.

22 (k) The secretary of state may not waive any requirements of
23 this section.

24 (l) This section applies only to an election held after
25 August 31, 2022, in which an auditable voting system is used.

26 SECTION 3. Section 127.301, Election Code, as effective
27 September 1, 2021, is amended to read as follows:

1 Sec. 127.301. APPLICABILITY OF SUBCHAPTER. This subchapter
2 applies to an election:

- 3 (1) that occurs after August 31, 2024 [~~2026~~];
4 (2) that contains a race or measure that is voted on
5 statewide; and
6 (3) in which an auditable voting system [~~described by~~
7 ~~Section 129.003(a)~~] is used.

8 SECTION 4. Section 127.305(e), Election Code, as effective
9 September 1, 2021, is amended to read as follows:

10 (e) This section expires August 31, 2024 [~~2026~~].

11 SECTION 5. Sections 129.003(e) and (g), Election Code, as
12 effective September 1, 2021, are amended to read as follows:

13 (e) An authority that purchased a voting system other than
14 an auditable voting system after September 1, 2014, and before
15 September 1, 2021, may use available federal funding and, if
16 federal funding is not available, available state funding to
17 convert the purchased voting system into an auditable voting system
18 in accordance with the following schedule:

19 (1) if the voting system was converted into an
20 auditable voting system not later than the election taking place
21 November 8, 2022, the authority is eligible to have 100 percent of
22 the cost of conversion reimbursed under this section; and

23 (2) if the authority is not eligible for a 100 percent
24 reimbursement of cost under Subdivision (1) and the voting system
25 was converted into an auditable voting system not later than the
26 election taking place November 5, 2024 [~~3, 2026~~], the authority is
27 eligible to have 50 percent of the cost of conversion reimbursed

1 under this section.

2 (g) Subsections (b), (c), and (d) do not apply to an
3 election held before September 1, 2024 [~~2026~~].

4 SECTION 6. Subchapter A, Chapter 129, Election Code, is
5 amended by adding Section 129.004 to read as follows:

6 Sec. 129.004. VIDEO SURVEILLANCE OF BALLOT BOXES. (a) In
7 this section, "chair" means a county chair of a political party that
8 received the greatest or second-greatest number of votes in the
9 chair's county at the most recent gubernatorial election.

10 (b) A chair may, at the party's expense, authorize the
11 installation and maintenance of temporary video surveillance
12 equipment:

13 (1) at any polling location used in the county for
14 early voting by personal appearance or for election day, for the
15 sole purpose of recording any activity involving interaction with a
16 ballot box; and

17 (2) at the central counting station in the county, for
18 the sole purpose of recording any activity involving interaction
19 with a ballot box.

20 (c) The secretary of state shall adopt rules as necessary to
21 administer this section. Rules adopted under this subsection must
22 require that:

23 (1) ballot boxes be protected from tampering at all
24 times;

25 (2) ballot boxes subject to surveillance under this
26 section be kept in surveilled areas except as necessary to
27 transport the boxes directly from one location to another in

1 accordance with this code;

2 (3) watchers be permitted to observe the
3 transportation of a ballot box from one location to another;

4 (4) video surveillance equipment installed under this
5 section be positioned so that the equipment does not record the face
6 of a voter or the content of a ballot; and

7 (5) persons be prevented from interfering with the
8 operation of surveillance equipment installed in accordance with
9 this section.

10 (d) A person commits an offense if the person intentionally
11 or knowingly:

12 (1) interferes with the operation of video
13 surveillance equipment installed under this section; or

14 (2) prevents a watcher from observing activity the
15 watcher is entitled to observe under this section.

16 (e) An offense under Subsection (d) is a felony of the third
17 degree.

18 (f) The secretary of state may not waive any requirements of
19 this section.

20 (g) This section applies only to an election held after
21 August 31, 2022, and in which an auditable voting system is used.

22 SECTION 7. Sections 129.054(a) and (b), Election Code, as
23 effective September 1, 2021, are amended to read as follows:

24 (a) A voting system may not be connected to any external
25 communications network, including the Internet. Beginning
26 September 1, 2024 [~~2026~~], a voting system may not be capable of
27 being connected to any external or internal communications network,

1 including the Internet.

2 (b) A voting system may not have the capability of
3 permitting wireless communication unless the system uses
4 line-of-sight infrared technology that shields the transmitter and
5 receiver from external infrared transmissions and the system can
6 only accept transmissions generated by the system. Beginning
7 September 1, 2024 [~~2026~~], a voting system may not have the
8 capability of permitting wireless communication.

9 SECTION 8. Section [129.003\(a\)](#), Election Code, as effective
10 September 1, 2021, is repealed.

11 SECTION 9. This Act takes effect on the 91st day after the
12 last day of the legislative session.