

By: Tinderholt

H.B. No. 5204

A BILL TO BE ENTITLED

AN ACT

relating to counting certain voted ballots by hand; creating a criminal penalty.

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

SECTION 1. Chapter 65, Election Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. COUNTING CERTAIN VOTES BY HAND

Sec. 65.101. DEFINITION. In this subchapter, "county election officer" means the county elections administrator in counties having that position, the county tax assessor-collector in counties in which the county clerk's election duties and functions have been transferred to the tax assessor-collector, and the county clerk in other counties.

Sec. 65.102. PARTIAL HAND COUNT REQUIRED. (a) Notwithstanding any other provision of this code, before any report is run from any voting machine in a polling place, each presiding judge shall conduct by hand a partial count of voted ballots for a selected number of races according to the counting procedures set forth in this subchapter.

(b) A county using direct recording electronic voting machines under Chapter 129 is exempt from the requirements of this subchapter until September 1, 2026.

Sec. 65.103. COUNTING OFFICERS FOR PARTIAL HAND COUNT. (a) At each voting location, the partial count shall be conducted by

1 bipartisan counting teams assigned by the presiding judge or the
2 county election officer.

3 (b) Each counting team must consist of two election
4 officers.

5 (c) The presiding judge or county election officer shall
6 assign a sufficient number of counting teams, based on the
7 anticipated turnout in each polling place, to reasonably have the
8 selected races or measures tallied, totaled, recorded, and posted
9 within one hour after polls close on election day.

10 (d) The county election officer shall provide online
11 training for counting teams as to counting method, including how to
12 conduct the partial count without seeing votes for another race on
13 the ballot. The county election officer may also provide in-person
14 training for counting teams.

15 (e) Counting teams may serve on a volunteer basis or may be
16 paid by the authority holding the election for their services.

17 Sec. 65.104. TIME AND LOCATION FOR PARTIAL HAND COUNT. (a)
18 The presiding judge may direct the counting of ballots to begin any
19 time after at least 10 voted ballots are in a ballot box on the last
20 day of the early voting period and on election day.

21 (b) Ballots may not be moved from the polling place until
22 the conclusion of the partial count.

23 (c) The counting tables must be in an open area, viewable at
24 all times by the presiding judge and alternate presiding judge, and
25 may not be draped or have other means of obscuring items under or
26 around the tables.

27 (d) Counting teams may not have bags or cell phones at or

1 near the counting tables.

2 (e) Poll watchers may observe all counting activities,
3 including removal of ballots from the ballot boxes and placement of
4 ballots into ballot box no. 3.

5 (f) The counting of ballots shall be conducted continuously
6 until all the ballots are counted.

7 (g) Ballot boxes must be rotated in accordance with Section
8 [65.003](#).

9 Sec. 65.105. TALLY LISTS FOR PARTIAL HAND COUNT. (a) Tally
10 lists shall be distributed based on the anticipated turnout at each
11 polling place.

12 (b) Each tally list shall have a designated place for
13 counting team number, counting team member name, counting team
14 member's lot number, ballot stack number, number of ballots in the
15 stack, and serial number of the voting machine.

16 Sec. 65.106. DETERMINING RACES AND MEASURES FOR PARTIAL
17 HAND COUNT. (a) On the last day of early voting by personal
18 appearance and on election day the election officials present at
19 each voting location shall, in the presence of one another and any
20 poll watchers, randomly select by lot a minimum of one race or
21 measure from each of the contested races or measures in a federal,
22 state, county, or local election. A presiding judge may elect to
23 hand count additional races if time and resources permit.

24 (b) The presiding judge, alternate presiding judge, and any
25 poll watcher present must ensure that all eligible races are
26 included in the races from which the lots are drawn.

27 (c) In a presidential election year, the office of president

1 shall be counted under this subchapter in addition to those chosen
2 by lot.

3 Sec. 65.107. PARTIAL HAND COUNT PROCEDURE. (a) At the time
4 directed by the presiding judge for counting under Section
5 65.104(a), the presiding judge shall deliver all ballots then voted
6 to the counting teams.

7 (b) The counting teams shall separate the ballots into
8 stacks of 100 ballots, plus any additional stack of fewer than 100,
9 as applicable, and keep record of the total number of ballots
10 delivered each time a delivery is made.

11 (c) The stacks of ballots must be distributed as evenly as
12 possible among the counting teams.

13 (d) The totals for each stack of 100 ballots, and any
14 partial stack, as applicable, must be assigned a separate tally
15 sheet.

16 (e) The presiding judge may deliver additional ballots to
17 the counting teams each time more than 10 ballots are deposited in a
18 ballot box.

19 (f) If a polling location has more than one voting machine,
20 ballots associated with each device shall be stacked, counted,
21 totaled, and reported separately.

22 (g) The members of each counting team shall examine each
23 ballot and record on their tally list the votes for each candidate
24 or for or against a measure.

25 (h) The counting team shall total and compare the tally
26 lists on completion of each stack of 100 ballots to determine
27 whether discrepancies exist between them. If a discrepancy is

discovered, the ballots shall be recounted by the same team. If the original team is unable to reconcile the discrepancy, the counting team shall pass the entire stack of 100 ballots to a different counting team for recounting.

(i) After each team's tally lists are verified to match one another, each member of the counting team shall sign all tally lists compiled by the counting team. Once signed, the tally lists from one member of the counting team shall be attached to the associated counted ballots, and the ballots and tally sheets shall be placed into ballot box no. 3 in accordance with Section 65.012. The tally lists of the other member of the counting team shall be set aside in a secure location until the final totals are recorded on completion of all counting under this subchapter.

Sec. 65.108. BREAKS AND REPLACING MEMBER OF PARTIAL HAND COUNT COUNTING TEAM. A member of a counting team may not be replaced nor take a break until completion of the current stack of 100 ballots unless the presiding judge or alternate presiding judge allows the counting team member to leave in case of an emergency. In the event of an emergency, the tally sheets for both team members for the current stack of ballots shall be voided and the stack shall be secured until the counting member returns or is replaced, at which time the stack of ballots shall be counted.

Sec. 65.109. DETERMINING VOTER INTENT. (a) If a member of a counting team is unsure of a voter's intent, taking into consideration Sections 65.009 and 65.011, the counting team member shall consult their team member to see if an agreement can be reached as to the voter's intent. If they are unable to agree on the

voter's intent, they shall consult with the presiding judge and alternate presiding judge. If no consensus on the voter's intent can be reached, the vote for the race on the ballot on which no consensus can be reached shall not be counted.

(b) Votes not counted shall be recorded on a voter's intent unknown list. The voter's intent unknown list must state why the intent could not be determined and must note the race and candidate for which the intent could not be determined. The voter's intent unknown list shall be kept in a secure place and made available to the presiding judge for reconciliation of results after all ballots are counted under this subchapter.

Sec. 65.110. BALLOTS NOT COUNTED FOR PARTIAL HAND COUNT. A provisional ballot or a ballot marked by hand may not be counted under this subchapter.

Sec. 65.111. TOTALING FINAL RESULTS OF PARTIAL HAND COUNT. (a) On completion of all counting under this subchapter, a counting team member from each team shall record the verified tallies on two final total sheets to determine the final results of each race or measure. The other counting team member shall verify that the totals are recorded correctly. Any poll watcher present may also verify the correct recording of the totals.

(b) After all totals have been entered on the final total sheets, a counting team shall calculate the final total for each race or measure. Each counting team member shall independently total the results and then verify the totals match. If the totals do not match, they shall each calculate the results again. If there is still no match, the two counting team members that calculated the

1 final total shall be replaced by a different bipartisan counting
2 team to repeat the process. Each counting team member and any poll
3 watchers present shall sign the final total sheets on completion
4 and verification.

5 Sec. 65.112. VERIFYING ACCURACY OF VOTING MACHINES. (a)
6 After the partial hand count is completed and verified under
7 Section 65.111, the presiding judge shall print the results tape
8 from each voting machine, in the presence of the alternate
9 presiding judge, the counting teams, and all other present election
10 officers and poll watchers.

11 (b) The presiding judge, alternate presiding judge, and
12 poll watchers shall compare the results tapes to the partial count
13 total sheets and determine if the totals from the races or measures
14 counted by hand match the results tape.

15 Sec. 65.113. ACCURACY VERIFICATION REGISTER FOR PARTIAL
16 HAND COUNT. (a) Each presiding judge shall prepare an accuracy
17 verification register.

18 (b) The accuracy verification register must state:

19 (1) the total number of voters accepted to vote at the
20 polling place;

21 (2) the total number of ballots voted;

22 (3) the total number of ballots voted on a voting
23 machine at the polling place as indicated by the results tape;

24 (4) the total votes for each candidate or for or
25 against each measure counted under this subchapter;

26 (5) the voted ballot total votes from each voting
27 machine for each candidate or for or against each measure randomly

1 chosen for the partial count; and

2 (6) the number of votes from the voter's intent unknown
3 list, aggregated by race.

4 (c) The accuracy verification register shall be prepared as
5 an original and four copies. On completing the register, the
6 presiding judge, the alternate presiding judge, the counting teams,
7 and the poll watchers shall sign each one to certify its accuracy.

8 (d) Not later than the 10th day after election day, the
9 accuracy verification register shall be posted on the Internet
10 website of the county in which the election was held.

11 (e) The original accuracy verification register shall be
12 placed with the precinct election returns. One copy of the accuracy
13 verification register shall be placed in ballot box no. 3 with all
14 voted and counted ballots, and the presiding judge and alternate
15 presiding judge shall each receive a copy.

16 Sec. 65.114. POST-PARTIAL HAND COUNT PROCEDURES. (a) If
17 the totals from the races or measures counted by hand match the
18 voting machine results tape, the presiding judge shall state that
19 the totals match on the accuracy verification register and the
20 precinct election returns and close the polling place as provided
21 under Section [61.002](#).

22 (b) If the totals from the races or measures counted by hand
23 do not match the voting machine results tape, the presiding judge
24 and alternate presiding judge shall review the voter's intent
25 unknown list to determine if any entries on the list are the cause
26 of any discrepancy. If the discrepancy is identified, the
27 presiding judge shall note the discrepancy on the final precinct

1 election returns, and the polling place shall be closed as provided
2 under Section 61.002.

3 (c) If the partial count does not match the voting machine
4 results tape, and votes recorded on the voter's intent unknown list
5 are not determined to be the cause of the discrepancy, the presiding
6 judge shall post the voting location returns using the hand-counted
7 totals where applicable, with the word "PRELIMINARY" printed or
8 typed at the top, close the voting location, and prepare the
9 precinct election returns, with the word "PRELIMINARY" printed or
10 typed at the top.

11 (d) If ballots are counted by automatic tabulating
12 equipment at a central counting station, the races and measures
13 selected for the hand count under this subchapter must be tabulated
14 at the central counting station in the presence of the presiding
15 judge of the polling place, the presiding judge of the central
16 counting station, and any present poll watcher. A report shall be
17 printed containing the results of the tabulation, which must be
18 dated, time-stamped, and signed by all present election officers.

19 (e) If the tabulation at a central counting station does not
20 match a race or measure hand-counted under this subchapter, or if
21 there is any discrepancy between the electronically tabulated
22 results of any race or measure from that polling place and the
23 hand-counted results, all ballots from that polling place must be
24 hand-counted by bipartisan counting teams in the manner provided by
25 this subchapter.

26 (f) The result of a hand count under Subsection (e)
27 constitutes the official election result.

1 (g) After completion of the tabulation, a final precinct
2 election return document, with the word "FINAL" printed or typed at
3 the top, shall be created by the presiding judge of the central
4 counting station to reflect the verified results, and copies of the
5 final precinct election returns shall be distributed as required
6 under Section 65.113(e).

7 Sec. 65.115. INACCURATE VOTING MACHINES. (a) The voting
8 machines of any polling place that produce results that do not match
9 any count by hand or the tabulation at the central counting station
10 shall be segregated and marked for forensic analysis and repair or
11 replacement.

12 (b) The tabulation equipment at a central counting station
13 shall be marked for forensic analysis and repair or replacement if
14 the results do not match any count by hand.

15 Sec. 65.116. OFFENSE. (a) A counting team member or poll
16 watcher observing the partial count commits an offense by
17 intentionally or knowingly disclosing any vote totals outside the
18 counting process until after the polls are closed.

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

20 Sec. 65.117. ACTION BY SECRETARY OF STATE. (a) The
21 secretary of state shall conduct a statewide effort to:

22 (1) recruit voters to serve as volunteer counting team
23 members; and

24 (2) educate the public on new processes designed to
25 promote accuracy, transparency, and accountability in elections in
26 the state.

27 (b) The secretary of state may adopt rules for the

1 implementation of this subchapter.

2 SECTION 2. This Act takes effect September 1, 2023.