

# Elections Legislative and Policy Updates



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South Texas County Judges and Commissioners Annual Meeting



# LEGISLATIVE UPDATE



# 2021 Legislative Actions

- **Regular Session concluded on May 31, 2021**
  - This update contains a review of a limited number of bills impacting election officials.
  - Advisory: 2021 Legislative Summary
- **Special Sessions in 2021**
  - Election Related Topics
  - Redistricting



# GENERAL ELECTION LAW CHANGES



# Census Figures

- **House Bill 2025 (Hunter):**
  - Provides that the population figures from the 2010 federal census continue to apply with respect to a statute that applies to a political subdivision having a certain population according to the most recent federal census until September 1, 2023.
- Effective Date: Immediately
- Statutes Affected: Government Code §§ 2058.001, 2058.002, 2058.0021



# Training for County Officials

- **Senate Bill 231 (Seliger):** Requires the Secretary of State to provide a standardized training program and materials for county election officers in the same manner it provides such a program to election judges and clerks.
  - **NOTE:** The Secretary of State will issue an advisory outlining the details of this program.
- Effective Date: September 1, 2021
- Statutes Affected: Election Code § 31.126



# VOTING SYSTEMS





# Requirement for Use of Auditable Voting Systems

- **Senate Bill 598 (Kolkhorst):** Provides for auditable voting systems in Texas, funding to retrofit DRE voting systems purchased since September 2014, and creates a risk-limiting audit program.
  - **Beginning September 1, 2026, DRE voting systems may not be used if they do not contain a paper audit trail.**
  - **Auditable Voting Systems:** An auditable voting system is defined as a voting system that uses, creates, or displays a paper record that may be read by the voter, and is not capable of being connected to the Internet or any other computer network or electronic device.
  - **Risk-Limiting Audits:** Requires the SOS to create a risk-limiting audit program.

Effective Date: September 1, 2021

Statutes Affected: Election Code §§ 127.301-.304, 129.003, 129.054





## Grant Funding

- Various grant programs exist to help with funding the acquisition of paper-based systems:
  - HAVA (Election Security Grant)
  - SB 598
- For more information on the current grant programs and your eligibility for those programs, please contact our EFM Team



# Acquiring New Voting Systems

- Approval by SOS
  - Before you execute a contract to purchase or lease a new voting system, you must receive written approval for the contract from SOS
    - This is important – executing an unapproved contract is a Class B misdemeanor
  - Send a copy of the proposed contract to [Elections@sos.texas.gov](mailto:Elections@sos.texas.gov)
    - Must identify the equipment you are purchasing, and the voting system you are acquiring (including the version number of the system)
- Adoption Action
  - Once you have acquired the system, your commissioners court must adopt it for use in your elections
  - Adoption action must include the following:
    - Name of Vendor
    - Name of Voting System (including the version number)
    - Type of Equipment
    - What part of the election process the equipment will be used for (early voting in person/by mail, election day, provisional ballots),
    - What elections it will be used for (all elections or just certain elections)
- [Advisory 2019-15: Considerations for Obtaining a New Voting System](#)

(Secs. 123.001, 123.035)



## Paper-Based Systems Currently Certified in Texas

- Hart
  - Ballot Markers
    - Verity Duo
    - Verity Touch Writer
  - Precinct Scanners
    - Verity Scan
    - eScan (Legacy)
  - Central Scanners
    - Verity Central
- ES&S
  - Ballot Markers
    - ExpressVote
    - Automark (Legacy)
  - Precinct Scanners
    - DS200
    - M100 (Legacy)
  - Central Scanners
    - DS450
    - DS850
    - M650 (Legacy)



## Risk-Limiting Audits

- SB 598 (87th R.S.) requires a Risk-Limiting Audit to be conducted for any election occurring after August 31, 2026
  - SOS will conduct a pilot program with at least 5 counties beginning with the November 2022 election
- Risk-Limiting Audits are a form of audit that involves manually counting a statistical percentage of ballots to verify the election results



# CANDIDACY



# Candidate Application Requirements

- **House Bill 4555 (Guillen):** Modifies the eligibility requirements related to a candidate’s final felony conviction status and what must be included on the official candidate application form.
  - A candidate must provide an indication on their candidate application that the candidate has either not been finally convicted of a felony or if so convicted has been pardoned or otherwise released from the resulting disabilities.
  - A candidate shall include in the application proof that the person has been pardoned or otherwise released from the resulting disabilities. The application form must include a statement informing candidates of the requirement to submit this information.
  - The application form must be modified to include a statement informing candidates that knowingly providing false information on their application related to their final felony conviction status is a Class B misdemeanor.
  - **NOTE:** This bill applies to candidate applications filed on or after September 1, 2021. Candidate application forms were updated to reflect these changes that went into effect September 1, 2021.

- Effective Date: September 1, 2021
- Statutes Affected: Election Code §§ 141.031, 141.039



# Minor Party Candidates

- **Senate Bill 2093 (Hughes):**
  - Moves the provision in the Texas Election Code related to minor party candidates paying a filing fee or submitting a petition in lieu of a filing fee in conjunction with their candidate application from Chapter 141 to Chapter 181.
  - Provides that the filing fee/petition in lieu of filing fee must be submitted to be considered for nomination by convention.
- Effective Date: September 1, 2021
- Statutes Affected: Election Code § 181.0311





# VOTER REGISTRATION



# Completing VR Duties

- **Senate Bill 1113 (Bettencourt):** If a voter registrar fails to timely perform a duty imposed on the registrar related to the approval, change, or cancellation of a voter's registration, the Secretary of State may withhold funds administered and distributed under Chapter 19 or Section 31.009 of the Texas Election Code.
  - If the registrar takes corrective action, their withheld funds will be distributed.
- Effective Date: September 1, 2021
- Statutes Affected: Election Code § 16.039



# ADDRESS CONFIDENTIALITY



# Address Confidentiality

Quite a few additions to the categories of persons who qualify for address confidentiality. Please review our new legislation advisory for the full list.



# CALLED SESSION BILLS



# Election Bills Passed During the 2nd Called Session

- **SB 13** – Providing three filing periods and general primary/runoff election windows, contingent on the adoption of redistricting maps.
- **SB 1**– Omnibus election bill with a variety of provisions to enhance availability of voting while also inhibiting voter fraud.
- **SJR 2**– Unrelated to elections, but it means that there will be a statewide election in May 2022.



# SB 1

- Defines “election official” and includes party chairs conducting a primary election.
- Allows voters with disabilities to request reasonable accommodations or modifications.





# SB 1 and the Conduct of Elections

- **Requires uncontested elections to be declared elected.**
- **Expands paper ballots in elections using the countywide polling place program.**
- Clarifies requirements for curbside voting.
- Requires our office to prescribe a checklist for opening and closing the polls.



# SB 1 and the Conduct of Elections

- **Modifies days and hours of early voting. Expands the longer minimum hours requirement to all counties over 55K in population.**
- **Provides that early voting can only occur between the hours of 6 a.m. and 10 p.m.**
- **Adds an alternate judge to the EVBB.**



# SB1 and the Conduct of Elections

- Adds security provisions for central counting stations.
- Limits outside electronic devices at central counting stations.
- **Requires the presence of a licensed peace officer at central count.**
- **Requires counties over 100K in population to stream video of the voted ballots throughout the period before and after the election and retain the video until the end of the calendar year.**
- Directs SOS to conduct an audit of four counties at random (two over 300K in population and two under 300K), covering previous two years of elections in those counties.



# SB 1 and Voting Systems

- **Communications with voting system vendors are public information, with certain exceptions.**
- **Voting systems will be required to use write-once media by September 2026.**
- **There must be a written reconciliation of votes and voters.**
- **At the logic and accuracy test, the voting system software must be validated.**



# SB 1 and Voting by Mail

- **Public officials cannot distribute unsolicited ABBMs.**
- A voter who cancels their BBM must vote provisionally unless they surrender their mail ballot.
- Carrier envelope must include DL or SS. If it doesn't ID the voter, the EVBB or SVC must notify voter of the defect.
- Voter can use the mail ballot tracker to correct the defect.



# SB 1 and Voter Fraud

- Numerous provisions in Art. 7 of the bill, such as defining vote harvesting and adding more actions under the definition of voter fraud.
- **Specifically prohibits the alteration of election laws and procedures by election officials.**
- Creates a particular perjury offense for election documents.



# SB 1 and Enforcement

- **Prohibits working as an election official if previously convicted of an election crime.**
- **Creates a civil penalty for election officials who violate a provision of the Election Code.**
- Provides for a lawsuit by candidates challenging improper election procedures.
- Provides for court priority of election proceedings.





# Questions?

[elections@sos.texas.gov](mailto:elections@sos.texas.gov)

