

ELECTION CODE

TITLE 8. VOTING SYSTEMS

CHAPTER 123. ADOPTION AND ACQUISITION OF VOTING SYSTEM

SUBCHAPTER A. ADOPTION OF VOTING SYSTEM

Sec. 123.001. ADOPTION OF VOTING SYSTEM REQUIRED. (a) Before a voting system may be used in elections, the authority designated by this section, by resolution, order, or other official action of the authority, must adopt the system for use in the elections.

(b) The decision on whether to adopt a voting system is made by the following authority:

(1) for general elections for state and county officers, the commissioners court;

(2) for primary elections, the county executive committee of the political party holding the primary; and

(3) for any other elections:

(A) the commissioners court, if ordered by the governor or by a county authority; or

(B) the governing body of the political subdivision served by the authority ordering the elections, if ordered by an authority serving a political subdivision other than a county.

(c) If a voting system is adopted for use in elections, the voting system shall be used in the elections in accordance with the terms and conditions stated in the official action adopting the system, subject to this title.

(d) Repealed by Acts 2005, 79th Leg., Ch. 1107, Sec. 2.21(1), eff. January 1, 2006.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 2001, 77th Leg., ch. 1054, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1107 (H.B. [2309](#)), Sec. 2.21(1), eff. January 1, 2006.

Sec. 123.002. MODIFICATION OF ADOPTION ACTION. The

official action adopting a voting system for use in elections may be modified or rescinded at any time by the adopting authority.

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

Sec. 123.003. RESTRICTING VOTING SYSTEM TO PARTICULAR ELECTIONS. The authority adopting a voting system may restrict its use to any one or more elections.

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

Sec. 123.004. RESTRICTING VOTING SYSTEM TO PARTICULAR POLLING PLACES. The authority adopting a voting system may restrict its use to one or more polling places, subject to Section [123.009](#).

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 2001, 77th Leg., ch. 557, Sec. 1, eff. Sept. 1, 2001.

Sec. 123.005. MULTIPLE METHODS OF VOTING AT SAME POLLING PLACE. (a) Except as otherwise provided by this code, only one kind of voting system may be used at a polling place in an election.

(b) Except as otherwise provided by this title, regular paper ballots may not be used at a polling place using a voting system.

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

Sec. 123.006. ADOPTION OF VOTING SYSTEM FOR EARLY VOTING. (a) A voting system may be adopted for use in early voting only, regular voting on election day only, or both.

(b) A voting system may be adopted for use in early voting by personal appearance only, early voting by mail only, or both.

(c) Only one kind of voting system may be used for early voting by mail. A voting system and regular paper ballots may not both be used in the same election for early voting by mail.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1991, 72nd Leg., ch. 203, Sec. 2.55; Acts 1991, 72nd Leg., ch. 554, Sec. 26, eff. Sept. 1, 1991.

Sec. 123.007. ADOPTION OF MORE THAN ONE VOTING SYSTEM FOR

SAME ELECTION. If more than one kind of voting system is adopted for use at the polling places in the same election, the adopting authority shall determine the polling place or places at which each system is to be used, subject to Section 123.009.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 2001, 77th Leg., ch. 557, Sec. 2, eff. Sept. 1, 2001.

Sec. 123.008. REQUIREMENTS REGARDING MANUALS, INSTRUCTIONS, AND OTHER DOCUMENTS FOR USE WITH ELECTRONIC VOTING SYSTEM OR EQUIPMENT. (a) Each person who sells, leases, or otherwise provides an electronic voting system or equipment to a political subdivision shall also provide any user or operator manuals or other instructions or documents relating to the use of the system or equipment. The general custodian of election records for the political subdivision shall make those materials available for public inspection in the custodian's office on the request of any person.

(b) The custodian shall also make available for public inspection in the custodian's office any materials described by Subsection (a) that are produced by the political subdivision for its elections.

Added by Acts 1987, 70th Leg., ch. 484, Sec. 5, eff. Sept. 1, 1987.

Sec. 123.009. IMPLEMENTATION OF NEW TECHNOLOGY IN CERTAIN ELECTIONS. (a) This section applies to a voting system adopted for use in an election ordered by the governor or a county authority or in a primary election.

(b) If the design of the voting system or voting system equipment is modified, upgraded, or otherwise enhanced by the incorporation of new technology, the voting system equipment implementing the new technology shall be distributed and used proportionately and equitably among the election precincts in which the particular voting system is used.

(c) The secretary of state by rule shall prescribe any procedures necessary for the implementation of this section in a manner that protects the voting rights of the affected voters.

Added by Acts 2001, 77th Leg., ch. 557, Sec. 3, eff. Sept. 1, 2001.

SUBCHAPTER B. ACQUISITION OF EQUIPMENT USED IN VOTING SYSTEM

Sec. 123.031. ACQUISITION OF EQUIPMENT BY COUNTY. (a) A county may contract to acquire the equipment necessary for operating a voting system by purchase, lease, or other means.

(b) To finance the acquisition of equipment, the commissioners court may issue bonds or other evidences of indebtedness as authorized by general law, payable solely from the county general fund.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1993, 73rd Leg., ch. 728, Sec. 43, eff. Sept. 1, 1993.

Sec. 123.032. ACQUISITION OF EQUIPMENT BY POLITICAL SUBDIVISION OTHER THAN COUNTY. (a) A political subdivision other than a county may contract to acquire the equipment necessary for operating a voting system as provided by this section.

(b) A political subdivision may lease the equipment from a county in which the political subdivision is wholly or partly situated. If the desired equipment is not available from the county, the political subdivision may acquire it by purchase, lease, or other means from any other source.

(c) If a political subdivision desires to lease equipment owned by a county in which the political subdivision is wholly or partly situated, the county shall lease the equipment to the political subdivision under the terms agreed to by the parties, except that the county's duty to lease the equipment is subject to reasonable restrictions and conditions imposed by the commissioners court to:

(1) ensure availability of the equipment in elections for which the commissioners court adopted the voting system; and

(2) protect the equipment from misuse or damage.

(d) The maximum amount that a county in which a political subdivision is wholly or partly situated may charge the political subdivision for leasing county-owned equipment is 10 percent of the purchase price of the equipment for each day the equipment is leased.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1993, 73rd Leg., ch. 728, Sec. 44, eff. Sept. 1, 1993.

Sec. 123.033. ACQUISITION OF EQUIPMENT BY POLITICAL PARTY FOR PRIMARY. (a) A political party's county executive committee that desires to use a voting system for a primary election must acquire the equipment necessary for operating the voting system as provided by this section.

(b) The county executive committee may contract to lease the equipment from the county. If the equipment desired is not available from the county, the county executive committee may contract to lease it from any other source.

(c) If the county executive committee desires to lease equipment owned by the county served by the committee, the county shall lease the equipment to the committee under the terms agreed to by the parties, except that the county's duty to lease the equipment is subject to reasonable restrictions and conditions imposed by the commissioners court to:

(1) ensure availability of the equipment in elections for which the commissioners court adopted the voting system; and

(2) protect the equipment from misuse or damage.

(d) A county is not required to provide a political party's county executive committee with equipment for use in an election precinct in which fewer than 100 votes were cast in the political party's most recent general or runoff primary.

(e) The maximum amount that may be charged for leasing equipment to a county executive committee for a general or runoff primary is:

(1) \$5 for each unit of electronic voting system equipment installed at a polling place; and

(2) \$5 for each unit of other equipment not specified by this subsection.

(f) In addition to the amount a county may charge for leasing its equipment under Subsection (e), a county may charge a county executive committee for the actual expenses incurred by the county in:

(1) transporting the equipment to and from the polling

places;

(2) preparing the equipment for use in the primary election; and

(3) operating a central counting station for the primary election.

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

Amended by:

Acts 2005, 79th Leg., Ch. 1107 (H.B. [2309](#)), Sec. 2.06, eff. January 1, 2006.

Sec. 123.034. MAINTENANCE AND STORAGE OF EQUIPMENT. The governing body of a political subdivision shall provide for the proper maintenance and storage of the equipment that the subdivision acquires for use in the operation of a voting system.

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

Sec. 123.035. VOTING SYSTEM EQUIPMENT CONTRACT. (a) A contract for the acquisition of voting system equipment under this subchapter must be in writing and be approved by the secretary of state as to compliance of the voting system and voting system equipment with the applicable requirements. The authority acquiring the equipment shall submit to the secretary of state a request for the letter and order described by this subsection accompanied by a copy of the relevant portions of the contract containing only the identifying information that the secretary needs to determine whether the version of the system and equipment being acquired under the contract complies with the applicable requirements. If the contract is approved, the secretary of state shall provide to the parties to the contract:

(1) a letter stating that the voting system and voting system equipment being acquired under the contract satisfy the applicable requirements for approval; and

(2) a certified copy of the written order issued by the secretary under Section [122.038](#) or [122.070](#) approving the voting system and voting system equipment for use in elections and, if applicable, of the written order issued under Section [122.095](#) granting conditional approval of the system or equipment.

(b) A contract for the acquisition of voting system equipment under this subchapter that is not approved by the secretary of state in accordance with Subsection (a) is void. The contract may not be ratified by either party and a payment may not be made relating to the contract.

(c) A person commits an offense if the person executes a voting system equipment contract that is not approved by the secretary of state in accordance with Subsection (a). An offense under this subsection is a Class B misdemeanor.

(d) If the secretary of state does not approve a contract under this section, the secretary shall provide notice to the parties to the contract that states the reasons the contract was not approved.

Added by Acts 1993, 73rd Leg., ch. 728, Sec. 45, eff. Sept. 1, 1993.

Amended by Acts 2003, 78th Leg., ch. 653, Sec. 1, eff. Sept. 1, 2003.

Sec. 123.036. VENUE FOR OFFENSES. Venue for prosecution of an offense under this chapter is in the county in which the offense was committed.

Added by Acts 1993, 73rd Leg., ch. 728, Sec. 45, eff. Sept. 1, 1993.

SUBCHAPTER C. ANNUAL VOTING SYSTEM REPORT

Sec. 123.061. ANNUAL REPORT REQUIRED. (a) Each authority adopting a voting system for use in its elections shall file an annual report as provided by this subchapter.

(b) The report must be filed with the secretary of state in the form prescribed by the secretary.

Added by Acts 1993, 73rd Leg., ch. 728, Sec. 46, eff. Sept. 1, 1993.

Sec. 123.062. FILING PERIOD. The report must be filed on or after July 1 and before July 15.

Added by Acts 1993, 73rd Leg., ch. 728, Sec. 46, eff. Sept. 1, 1993.

Sec. 123.063. CONTENTS OF REPORT. The report must contain:

(1) a description of the voting system currently used

by the authority;

(2) a copy of the written order issued by the secretary of state under Section 122.038 or 122.070 approving the voting system and voting system equipment for use in elections and, if applicable, of the written order issued under Section 122.095 granting conditional approval of the system or equipment; and

(3) a statement that the voting system currently used by the authority has not been modified since the date of filing of the authority's previous report, or if modified, that approval of the modified design has been sought under Subchapter C, Chapter 122.

Added by Acts 1993, 73rd Leg., ch. 728, Sec. 46, eff. Sept. 1, 1993.

Sec. 123.064. REVIEW OF REPORT. (a) The secretary of state shall review each report filed under this subchapter not later than the 30th day after the date of the filing deadline for the report.

(b) The secretary of state shall deliver a written delinquency notice to each authority that filed a report covering the previous reporting period but that fails to file a report covering the current reporting period.

(c) The secretary of state may deliver to the attorney general the name of each authority that fails to file a report covering the current reporting period within 30 days after the date of receipt of a delinquency notice.

Added by Acts 1993, 73rd Leg., ch. 728, Sec. 46, eff. Sept. 1, 1993.

Sec. 123.065. MANDAMUS BY ATTORNEY GENERAL. The attorney general may seek a writ of mandamus to compel the filing of a report by each authority that fails to comply with this subchapter.

Added by Acts 1993, 73rd Leg., ch. 728, Sec. 46, eff. Sept. 1, 1993.

Sec. 123.066. ADDITIONAL PROCEDURES PRESCRIBED BY SECRETARY OF STATE. The secretary of state may prescribe any procedures necessary to implement this subchapter.

Added by Acts 1993, 73rd Leg., ch. 728, Sec. 46, eff. Sept. 1, 1993.