

ELECTION CODE

TITLE 13. RECOUNTS

CHAPTER 214. COUNTING PROCEDURES

SUBCHAPTER A. MANUALLY COUNTED BALLOTS

Sec. 214.001. APPLICABILITY OF SUBCHAPTER. This subchapter applies to a recount of regular paper ballots and any other ballots not recounted under Subchapter B, C, or D.

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

Sec. 214.002. COUNTING PROCEDURE. (a) One member of a counting team shall read the ballots, and the other two members shall tally the votes as the ballots are read.

(b) The count shall be made, and the correctness of the tally lists shall be certified, in the same manner as an original count of regular paper ballots, except that only two tally lists are prepared.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1993, 73rd Leg., ch. 728, Sec. 76, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 1107 (H.B. [2309](#)), Sec. 2.16, eff. January 1, 2006.

Sec. 214.003. DISPOSITION OF TALLY LISTS. (a) On completion of the count for a precinct, a member of the counting team shall place one tally list in the ballot box containing the voted ballots and shall deliver the other tally list to the recount committee chair.

(b) The recount committee chair shall use the tally list received from the counting team in preparing the committee report of the recount. The chair shall attach the tally list to the copy of the committee report that is to be delivered to the recount supervisor. The attached tally list is part of the report.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1997, 75th Leg., ch. 864, Sec. 220, eff. Sept. 1, 1997.

SUBCHAPTER C. BALLOTS COUNTED BY AUTOMATIC TABULATING EQUIPMENT

Sec. 214.041. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies to a recount of electronic voting system ballots on automatic tabulating equipment.

(b) In this subchapter, "electronic recount" means a recount on automatic tabulating equipment.

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

Sec. 214.042. COUNTING METHOD FOR RECOUNT. (a) A person requesting a recount of electronic voting system ballots has a choice of:

(1) an electronic recount using the same program as the original count;

(2) an electronic recount using a corrected program under Section [214.046\(c\)](#), if obtainable; or

(3) a manual recount as provided by Subchapter A.

(b) The same counting method must be used in all precincts included in the recount document for which the same program was used in the original count.

(c) Unless a different counting method is requested, the ballots shall be counted electronically using the same program as the original count.

(d) Except as otherwise provided by this subchapter, a request for a specific counting method must be made in the recount document, specifying the precincts to which the request applies if it does not apply to all precincts in which electronic voting system ballots are to be recounted.

(e) After a recount document is approved, the person requesting the recount may change the counting method specified in the document by filing with the appropriate recount supervisor a written request for a different method before the supervisor gives notice of the time and place for beginning the recount. If the requested change is to a manual recount, the request must be accompanied by a cashier's check payable to the recount coordinator in the amount of the difference between the amount of the deposit for a manual recount and the amount for an electronic recount.

(f) If a recount supervisor who receives a request for a change to a manual recount under Subsection (e) is not also the recount coordinator, the supervisor shall notify the coordinator of the change and shall deliver the accompanying check to the coordinator.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 59, Sec. 18, eff. Oct. 20, 1987.

Sec. 214.043. EQUIPMENT USED FOR RECOUNT. (a) The recount supervisor shall designate the automatic tabulating equipment to be used for an electronic recount in precincts in the supervisor's jurisdiction.

(b) A recount of ballots originally counted on automatic tabulating equipment at a polling place must be made on the same or a similar unit of equipment unless the person requesting the recount requests that other equipment be used.

(c) A recount of ballots originally counted at a central counting station must be made on the same equipment unless:

(1) the equipment is unavailable or is not in usable condition; or

(2) the person requesting the recount requests that other equipment be used.

(d) If the equipment used for the original count is available and in usable condition, the recount supervisor is not required to grant a request that the recount be made on different equipment unless the request is contained in the recount document or in a written request filed with the supervisor before the supervisor gives notice of the time and place for beginning the recount.

(e) Equipment other than that used for the original count must:

(1) be located at a site that complies with Section [127.001\(c\)](#) unless all persons entitled to notice of the recount consent to a site that does not comply; and

(2) be approved by:

(A) the programmer for the election if the ballots were counted at a polling place and the unit to be used for

the recount was not used in the election; or

(B) the programmer for the election or the tabulation supervisor of the central counting station at which the ballots were counted, if counted at a central counting station.

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

Sec. 214.044. CHARGE FOR USE OF EQUIPMENT. The person having control of the automatic tabulating equipment used in the original count shall make it available for a recount for a reasonable charge at a rate not to exceed the rate charged for its use in the election being recounted. If the equipment is owned or leased by the authority responsible for the expenses of the election, a charge may not be made for its use in the recount.

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

Sec. 214.045. COMPOSITION OF COMMITTEE. (a) The recount committee chair shall designate one member of the recount committee for an electronic recount to operate the automatic tabulating equipment. In this subchapter, "recount tabulator" means the member designated to operate the equipment.

(b) In a recount of ballots originally counted at a central counting station, the recount tabulator must be the tabulation supervisor of the station, an assistant to the supervisor, or a person approved by the supervisor.

(c) In a recount of ballots originally counted at a polling place, the recount tabulator must be a person who has served as an election officer at a polling place using the type of equipment on which the recount is made and must have had experience in operating the equipment.

(d) At least one member of the recount committee other than the recount tabulator must have had experience in operating the type of equipment on which the recount is made.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1997, 75th Leg., ch. 864, Sec. 223, eff. Sept. 1, 1997.

Sec. 214.046. TEST OF PROGRAM AND EQUIPMENT. (a) After the time set for beginning an electronic recount but before the recount

is made, the recount tabulator shall conduct a test of the program and equipment in the same manner as the test that is conducted immediately before an original count of ballots for an election. Each person entitled to notice of the recount or the person's representative at the recount is entitled to examine the program and the test materials on request.

(b) If the test is unsuccessful, the recount tabulator shall notify the recount committee chair, who shall notify the recount supervisor, and the supervisor shall investigate the cause of the test's failure. The electronic recount may not proceed until a test is successful on the equipment used for the first test or on other equipment selected by the supervisor.

(c) If the recount supervisor determines that the program is defective, the supervisor shall inform the person requesting the recount or the person's agent. The person requesting the recount may notify the supervisor:

(1) to have the ballots recounted manually; or

(2) to attempt to correct the program so that an electronic recount may be conducted with the corrected program.

(d) A recount using a corrected program may not be made unless the tabulation supervisor of the central counting station or the presiding election judge of the polling place at which the ballots were counted, as applicable, and the person who prepared the program sign a written statement indicating that the original program is defective. If the statement cannot be obtained, the recount supervisor shall have the ballots recounted manually.

(e) If a recount using a corrected program is to be made, the original program shall be preserved without change and a complete new program shall be prepared. The original set of test materials shall also be preserved without change and a complete new set shall be prepared if the original set is unsuitable for testing the corrected program.

(f) The recount supervisor shall obtain from the person who prepares a new program a signed statement that the program was prepared by the person, with the date of preparation and the person's address shown on the statement. The new program, the preparer's statement, and the test materials used for verification

shall be preserved in a sealed container in the same manner and for the same period as the original program.

(g) The costs of a recount under Subsection (c) may not be assessed against a person regardless of its outcome. If other precincts are included in the same recount document, the assessment of the costs in the other precincts shall be determined by the overall outcome in all precincts included in the document.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1997, 75th Leg., ch. 864, Sec. 224, eff. Sept. 1, 1997.

Sec. 214.047. TEST USING UNOFFICIAL TEST MATERIALS. (a) In addition to a test conducted under Section 214.046 using official test materials, a person requesting a recount of electronic voting system ballots but not requesting a manual recount is entitled to have each test repeated, using test materials furnished by the person, if the person offers the materials to the recount tabulator before or immediately after the official test is made.

(b) The outcome of a test using unofficial test materials has no legal effect on the conduct of the recount.

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

Sec. 214.048. REQUEST FOR MANUAL RECOUNT AFTER SUCCESSFUL TEST. (a) If a person requesting an electronic recount is dissatisfied with the program or the equipment to be used for the recount after a successful test conducted under Section 214.046, the person may change the method of counting to a manual recount as provided by this section.

(b) A person desiring a manual recount under this section must notify the recount supervisor immediately after the test is concluded that a manual recount is desired.

(c) After being notified under Subsection (b) that a manual recount is desired, the recount supervisor shall promptly deliver to the person requesting the recount a written statement of the costs incurred for use of the equipment in making the tests and for compensation of the recount committee for time spent in making the tests.

(d) To obtain a manual recount, the person requesting the

recount must deliver to the recount supervisor within 24 hours after receiving the cost statement under Subsection (c):

(1) a cashier's check payable to the recount supervisor in the amount specified in the statement; and

(2) a cashier's check payable to the recount coordinator in the amount of the difference between the amount of the deposit for a manual recount and the amount for an electronic recount.

(e) On receiving checks complying with Subsection (d), the recount supervisor shall promptly arrange for a manual recount of the ballots.

(f) The recount supervisor shall place a check remitted under Subsection (d)(1) in the fund from which the costs covered by the check are payable. No part of the amount is refundable. If the recount costs are assessed against the person requesting the recount, the costs covered by the check may not be included in the assessment.

(g) If the recount supervisor is not the recount coordinator, the supervisor shall notify the coordinator of the change in the counting method and shall deliver to the coordinator the check remitted under Subsection (d)(2). The check is subject to disposition in the same manner as the check accompanying the recount document.

(h) If the person requesting the recount does not comply with Subsection (d), a recount of the precincts for which the manual recount is requested may not be made, and the person shall be assessed for the amount of the costs specified in the cost statement prepared under Subsection (c) regardless of the outcome of a recount in any other precincts.

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

Sec. 214.049. COUNTING PROCEDURE. (a) All members of the recount committee in an electronic recount shall be present during the testing of the program and equipment and during the counting of the ballots. The other members of the committee may assist the recount tabulator in the handling of the test materials and the ballots, but only the tabulator may operate the equipment.

(b) After the ballots are counted, a member of the recount committee shall prepare returns for each precinct in the same manner as original election returns are prepared, except that the returns shall be prepared as an original and one copy.

(c) If it is necessary to count any of the ballots manually, other than write-in votes, the recount committee shall count the ballots, and a member shall enter the result of the count on the returns.

(d) Except as otherwise provided by this subchapter, the ballots shall be processed in the manner prescribed by Sections [127.125](#) and [127.126](#). Before the tabulation of duplicate ballots, the recount committee chair shall compare the duplicate ballot with the original to verify that the original ballot was duplicated properly. If the original ballot was duplicated improperly, the recount committee chair shall have the original ballot duplicated properly and that duplicate ballot shall be counted. The improper duplicate ballot shall be retained and the recount committee chair shall make a notation on the improper duplicate ballot of the reason for which it was not counted.

(e) If electronic voting system ballots are to be recounted manually, the original ballot, rather than the duplicate of the original ballot, shall be counted.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 59, Sec. 19, eff. Oct. 20, 1987; Acts 1997, 75th Leg., ch. 864, Sec. 225, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 851, Sec. 8, eff. Sept. 1, 2001.

Sec. 214.050. COUNTING AND RECORDING WRITE-IN VOTES. (a) Write-in votes shall be counted in the manner prescribed by Section [214.002](#). One write-in tally list shall be placed in the ballot box with the voted ballots, and one tally list shall be retained by the recount committee. A member of the committee shall enter the write-in results on the recount returns.

(b) For a precinct in which a recount of write-in votes is excluded under Section [212.136](#), a member of the recount committee shall enter on the recount returns the write-in votes as recorded on the original returns.



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

Sec. 214.051. DISPOSITION OF RECOUNT RETURNS. (a) After the recount committee certifies the recount returns for a precinct, a member of the committee shall place the copy of the returns in the ballot box containing the voted ballots and shall deliver the original to the recount committee chair.

(b) The recount committee chair shall use the returns received from the recount committee in preparing the committee report of the recount. The chair shall attach the recount returns to the copy of the committee report that is to be delivered to the recount supervisor. The attached returns are part of the report.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1997, 75th Leg., ch. 864, Sec. 226, eff. Sept. 1, 1997.

#### SUBCHAPTER D. OTHER VOTING SYSTEMS

Sec. 214.071. PROCEDURES PRESCRIBED BY SECRETARY OF STATE. The secretary of state shall prescribe the counting procedures for a recount of votes cast by means of a voting system to which Subchapter B or C does not apply.

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