

Canvassing and Post-Election Procedures

CSO Seminar

November 30, 2023



Overview

- Canvassing Elections
- Reporting Results
- Preserving Records
- Qualifying for Office
 - Certificate of Elections
 - Statement of Elected Officer
 - Oath of Office
 - Bond

Note: Unless otherwise indicated, all statutory references are to the Texas Election Code.

Canvassing Elections



Canvassing Elections

- “Canvass” – name given to the official examination of the votes cast in an election
- Unavoidable duty
- Mandatory, ministerial duty

Authority for Local Canvass

- Political Subdivision's Governing Body – for an election ordered by an authority of a political subdivision (other than a county).
- Commissioners Court – for an election ordered by the governor or by a county authority.

[§ 67.002]

Time for Local Canvass

- **Open Meeting**
- Each local canvassing authority shall convene to conduct the local canvass at the time set by the canvassing authority's presiding officer **not later than the 11th day** after Election Day and not earlier than the later of:
 - the **third day after Election Day**;
 - the date on which the early voting ballot board has verified and counted all provisional ballots, if a provisional ballot has been cast in the election;
 - the date on which all timely received ballots cast from addresses outside of the United States are counted, if a ballot to be voted by mail in the election was provided to a person outside of the United States; or
 - the date on which all ballots contained in previously defective carrier envelopes which were corrected by voters by the required deadline are counted.

Time for Local Canvass

- **Earliest Day to Canvass:** As early as 3rd day after Election Day **if no outstanding** late domestic “next business day” (NBD), military, overseas, provisional, or ballots contained in defective carrier envelopes which have not been corrected by voters.
- **Latest Day to Canvass in November Odd Numbered Years and May Elections:** No later than the **11th day** after Election Day.
- **Latest Day to Canvass in November Even Numbered Year:** For an election held on the date of the general election for state and county officers, the local canvass may be set no later than the 14th day after Election Day. [§ 67.003(c)]

Time for Local Canvass

May 4, 2024 Election:

Tuesday, May 7, 2024

(3rd day after Election Day)*

through

Wednesday, May 15, 2024

(11th day after Election Day)

- ***if no outstanding** late domestic (NBD), military, overseas, provisional, or ballots contained in defective carrier envelopes which have not been corrected by voters.

Time for Local Canvass

For May 4, 2024 Election:

- The ballot board must convene by **Monday, May 13, 2024** to qualify and count any late domestic ballots, ballots from overseas or military voters, provisional ballots, or ballots contained in previously defective carrier envelopes which were corrected by voters by the required deadline.

The canvass may be held as soon as late domestic, overseas ballots, provisional ballots, and ballots contained in previously defective carrier envelopes which were corrected by voters by the required deadline are properly processed.

NOTE: If the early voting ballot board needs to meet after this date, it will require a court order to do so.

Canvass Meeting

- Procedures for ordering, posting notice & conducting the canvass meeting should be in compliance with Texas Open Meetings Act (Chapter 551, Texas Government Code)
 - Quorum - **two members** [§ 67.004]
 - **Two or more members of the governing body may perform a TEC duty of the presiding officer** if the office is vacant or the presiding officer fails to perform the duty unless:
 - (1) a single member of the governing body designated by law to act in place of the presiding officer performs the duty; or
 - (2) TEC specifies that the duty is to be performed by another authority acting in place of the presiding officer.
- [§ 31.121]

Canvass Procedure

- Open returns for each precinct & prepare tabulation
 - Total # of votes in each precinct and sum of precinct totals:
 - Each candidate
 - Votes FOR or AGAINST each measure
 - Total # of voters in each precinct who cast a ballot for a candidate or FOR or AGAINST a measure.

[§ 67.004(b), (b-1)]

Political Subdivisions Using Regular Paper Ballots

1. Presiding Officer will deliver the sealed precinct returns contained in Envelope #1* and the early voting report prepared by the early voting clerk to the canvassing authority.
2. Authority will open the returns & prepare a tabulation.
3. The precinct returns may be compared with the corresponding tally lists contained in Envelope #1. *

***Depending on voting system might not be envelope.**

[§ 67.004]

Political Subdivisions Using Electronic Voting System

1. Automatic tabulating equipment produces one set of election returns.
2. Canvassing authority has no tally lists to compare, but they still must prepare a tabulation of the precinct returns.

[§ 67.004]

Canvassing Procedure

- Presiding officer shall deliver:
 - Local election register:
 - Tabulation [§ 67.004(e)]
- General custodian of election records:
 - the precinct returns, tally lists, and early voting precinct. [§ 67.004(f)]

Canvassing Procedure

- Section 67.004 provides that the presiding officer of the canvassing authority shall note the completion of the canvass in the minutes or in the recording required by Section 551.021 of the Government Code.

Recount

- If a recount is filed – does NOT halt the canvass meeting.
Does halt issuance of certificate of election.
- Canvassing authority must make a note on the canvass that a recount has been requested.

Prohibited Activities At Canvass

- May **NOT** open – Ballot Boxes
- May **NOT** recount - Ballots
- Should **NOT** compare – poll list with return sheet

Post-Election Reports



Precinct by Precinct Report

- Presiding Officer of canvassing authority shall prepare a report of the precinct results as contained in the election register.
- Report no longer required to be filed with SOS (non-county elections).

[§ 67.017]

Reconciliation Form

The Texas Election Code requires that the presiding judge of the central counting station attest to a written reconciliation of votes and voters [§ 127.131(f)]:

- At the close of tabulation on election day
- **Again after counting late mail/provisional ballots/ and ballots previously contained in defective carrier envelopes which were corrected by voters by the required deadline (canvass)**
- Use SOS form from Forms Manual (Form 12-2)
- Post completed forms on your county website and your local website, if any
- Only required if using a central counting station

Post-canvass reconciliation form overview – official totals

Canvass

Election Reconciliation - Official Totals

County _____ Election Name _____
 Registered Voters _____ Election Date _____

1. Voters <small>(from election returns and lists)</small>		2. Rejected ballots		3. Counted ballots <small>(from tabulation software)</small>	
A. Early voting in person voters				I. Early voting ballots counted	
B. Election day in person voters		F. Mail ballots rejected		J. Election day ballots counted	
C. Mail ballot voters		G. Provisional ballots rejected		K. Mail ballots counted	
D. Provisional ballots submitted		H. Total ballots rejected (F+G)		L. Provisional ballots counted	
E. Total voters (A+B+C+D)		M. Total ballots counted (I+J+K+L)			

4. Comparison of voters and counted ballots	
N. Difference between voters and ballots (E-H+M)	O. Difference as percentage of voters (N÷E×100) _____ %
P. Explanation for difference, if any	

5. Attestation	
Q. "I certify that the information contained in this document accurately reflects the official reconciliation of votes and voters from the above stated election"	
Presiding judge signature _____	Print name _____ Date _____

6. Mail ballots		7. Provisional ballots	
R. Mail ballots sent		U. Provisional ballots deemed incomplete	
S. Mail ballots not returned by voter			
T. Mail ballots surrendered			



Reconciliation Form More Resources

See October 2023 Webinar and PowerPoint archived on SOS's Training webpage for details

See most recent Post-Election advisory under Conducting Elections

Reporting Requirements

- Section 65.016 of the Code requires a county that holds an election or provides election services for an election for a public entity to post certain information on their website.
- A city or independent school district that holds an election and maintains an Internet website must also post certain information on their website related to election results, even if the county is also posting such information. Information should be posted **as soon as practicable after the election** and must be accessible without having to make more than two selections or view more than two network locations after accessing the home page of the county, city or school district, whichever is applicable.

Reporting Requirements Cont'd

- Required information on the websites must include:
 - the results of each election;
 - the total number of votes cast;
 - the total number of votes cast for each candidate or for or against each measure;
 - the total number of votes cast by personal appearance on election day;
 - the total number of votes cast by personal appearance or mail during the early voting period; and
 - the total number of counted and uncounted provisional ballots cast.

[§§ 4.009, 65.016]

Reporting Requirements Cont'd

- We recommend that election results information remain posted on the entity's main page (or within two clicks of the main page) at least until the next election, and that the information continues to be available for the full 22-month retention period for election records.

Partial Manual Count

- **Purpose:** To ensure the accuracy of the tabulation of electronic voting system results
- General custodian of election records shall conduct a manual count of all the races in at least 1% of the election precincts or in 3 precincts, whichever is greater, in which the electronic voting system was used.
- Partial Manual Count is conducted on all paper ballots – election day, early voting in person, early voting by mail.

[§ 127.201]

Partial Manual Count

- Custodian shall select the precincts at random
- Begin the count not later than 72 hours after the polls close and the complete the count no later than the 21st day after Election Day. [§ 127.201]
- We have issued an advisory related to this process. (Advisory No. 2018-30)

Notice

- General custodian shall post in the custodian's office a notice of the date, hour, and place of the count.

[§ 127.201(c)]

Who May be Present?

- Each candidate is entitled to be present and is entitled to have a representative present.
- Representative must deliver a certificate of appointment to the general custodian at the time of service. (Form 4-30)

Reporting

- Not later than the 3rd day after the count is completed, deliver the written report to the SOS.

Preserving Results



Preservation of Results

- Precinct election records shall be preserved by the authority to whom they are distributed for at least 22 months after election day. [§ 66.058(a)]

Voted Ballot Security

- During the preservation period, the voted ballots must be preserved securely in a locked ballot box inside a locked room for at least 60 days. [§ 66.058]
 - After 60 days, may transfer voted ballots to another secure container for remainder of preservation period.

Voted Ballot Security

- The ballot box with voted ballots may only be opened to:
 - complete partial manual count, if required;
 - comply with a court order;
 - complete official request for a recount;OR
 - after 60-day locked box period, transfer.
- If one of these authorized entries is made into a ballot box during the preservation period, the box or container shall be relocked or re-secured, and the box and key or secure container returned to the custodian. [§ 66.058]

Voted Ballot Security

- **NOTE - NEW LAW:** House Bill 5180 (2023, R.S.) amended Section 1.012 of the Election Code, effective September 1, 2023, to provide that on the first day after the final canvass of an election is completed, the general custodian of election records shall make images of voted ballots and cast vote records available for public inspection.
- House Bill 5180 also amended Section 1.012 of the Election Code to provide that on the 61st day after election day, the general custodian of election records shall make the original voted ballots available for public inspection.
- Our office recommends that the general custodian work closely with the attorney for your political subdivision and its public information division in ensuring that records have been properly redacted before being made publicly available.
- Additionally, the OAG has a hotline you can call for questions related to open government issues, including the Public Information Act. That number is (877) OPEN-TEX (673-6839).

When Might you have a Second Election to Resolve a Tie?

- Election requires a plurality vote. [Sec. 2.002]
 - Single member District or At-Large by Place, candidate with most votes wins even if not >50%
 - Pure at Large - top candidates win (e.g., if 3 offices are up for election, top 3 vote-getters win)
- There is a tie **based on the canvass**, so that you cannot determine all of the winners, and
- Tie not resolved by **Sworn** Withdrawal, Casting of Lots, or Automatic Recount.

Resolving (Canvassed) Tie without a Second Election

- Candidates may agree to cast lots [Sec. 2.002(f)]
 - Agreement must be in writing and filed with authority responsible for ordering election
 - Presiding officer of governing body supervises casting of lots
- One Candidate may Withdraw [Sec. 2.002(g)]
 - Written statement filed with authority responsible for ordering election
 - On receipt of **sworn** withdrawal statement, remaining candidate is the winner and no casting of lots or second election is held

Resolving (Canvassed) Tie without a Second Election, cont.

- **IF** tie is not resolved through a withdrawal or a casting of lots, **THEN** there is an automatic recount. [§ 2.002(i)]
 - If a recount does not resolve a tie, the tied candidates may (1) cast lots not later than the day before the date the authority must order the second election; or (2) withdraw from the election **by sworn withdrawal** not later than 5 p.m. of the day after the date the automatic recount is held.
 - There is a clear second opportunity to withdraw or cast lots before the second election is held. [§ 2.002]

Resolving Tie without a Second Election, cont.

- Note: The law allowing a late withdrawal does not apply to a withdrawal from a second election under Section 2.002(g).

Second Election Ballot

- Order of names determined by **original** drawing, same as for runoff. [§§ 2.002, 52.094]

Qualifying For Office



Qualifying for Office-Generally

- Absent specific statutory language to the contrary, a winning candidate may qualify for office immediately once he/she receives the certificate of election.
 - However, a candidate **may not** qualify for an office involved in a recount before completion of the recount, **unless** he/she received a certificate of election and qualified for the office **before** the recount petition involving that office was submitted.

Exceptions

- **Note:** With few exceptions, most officers-elect must be a registered voter in time to be sworn in.
 - See our FAQ on voter registration requirements for candidates (available online).
 - **Does not** apply to a member of the governing body of a district created under Section 52(b)(1) or (2), Article III, or Section 59, Article XVI, Texas Constitution; and (2) does not apply to an office for which the federal or state constitution prescribes exclusive qualification requirements (most water districts).

Certificate of Election

- When is the certificate of election completed?
 - **After** the completion of the canvass
 - The presiding officer of the local canvassing authority prepares the certificate for each candidate who is elected to an office for which the official result is determined by that authority's canvass. [§ 67.016]

Certificate of Election

- Who is the presiding officer of the canvassing authority?
 - Municipal elections: Mayor
 - County elections: County Judge
 - Primary elections: County Chair
 - All other political subdivisions elections: Board President

Contents of Certificate of Election

- **What does the Certificate of Election contain?**
 - The candidate's name;
 - The office to which the candidate is elected;
 - A statement that the candidate has been elected to an unexpired term, if applicable;
 - The date of election;
 - Signature of the officer preparing the certificate;
 - Any seal used by the officer preparing the certificate to authenticate documents that the officer executes or certifies. [§ 67.016]

Certificate of Election

- **Note:** A sample certificate of election form is available online. Entities may also use this as a model to make their own.
- **Recommendation.** We recommend that the presiding officer issue the Certificate of Election at the canvass meeting.

Certificate of Election

- **Note:** In some political subdivisions, the newly-elected officers **may not** assume the duties of office until a certain date.
 - Example, Section 22.006 of the Local Government Code states that a newly-elected municipal officer of a Type A city may exercise the duties of office beginning on the fifth day **after** the date of the election, excluding Sundays.
 - No** newly elected official may qualify for office before the official canvass of the election has been conducted (or would have been conducted, in the event of a cancelled election.)

Statement of Officer

- Before an elected (or appointed) officer may assume the duties of the office, the officer must first file a Statement of Officer with the official records of the governing body. [Tex. Const. Art. XVI, § 1]
- **Note:** Statements of Officer are filed locally, **NOT** with the Secretary of State's office.

Oath of Office

- **All** elected or appointed officers, before they begin their duties, shall take the Oath of Office. [Tex. Const. Art. XVI, § 1]

Oath of Office

- **Administering oath of office.** The Oath of Office must be administered by someone authorized to administer an oath under Texas law. The Oath may be administered by:
 - A judge, clerk, or commissioner of a court of record;
 - A justice of the peace, or clerk of a justice court;
 - The secretary or clerk of a municipality in a matter pertaining to the official business of the municipality;
 - A notary public;
 - The secretary of state;
 - The lieutenant governor;
 - The speaker of the house of representatives;
 - The governor;
 - A member of the legislature or a retired legislator;
 - A judge, retired judge, or clerk of municipal court.

Oath of Office

- **NOTE:** This is not an exhaustive list. See Chapter 602 of the Government Code for a complete list of other officials who may administer an oath.
- **NOTE:** Special procedures apply to a newly elected director of a water district governed by Chapters 36 or 49 of the Texas Water Code. A duplicate original of the oath (but **not** the statement of elected/appointed officer) shall also be filed with the Secretary of State within 10 days after its execution and need not be filed before the new director begins to perform the duties of office. (Tex. Water Code §§ 36.055, 49.055).

Type A Cities

- In a Type A city, the office is **vacant** if the officer is not sworn in by the **30th day after election day**. Thus, the date of swearing-in is critical for a Type A city official.

[§ 22.007, Local Government Code]

Bond

- If a bond is required, the bond **must** be executed before the officer assumes his or her duties.
 - **Water Districts:** Officers must execute a bond for \$10,000 payable to the district. [Water Code § 49.055(c)]
 - **Type C municipalities:** Mayor and Commissioners must execute a bond for \$3,000 payable to the municipality. [Loc. Gov't Code § 24.024]
 - Section 22.072 of the Local Government Code states that **Type A cities** have authority to require a bond.

Holdover

- Until the new officers are qualified, the old members of the governing body “holdover” and continue to perform the duties of their office. [Tex. Const. Art. XVI, § 17].

Order of Events Following the Election

We recommend that post-election procedures occur in the following sequence:

- Election is canvassed at an open meeting.
- Certificate of Election is issued to newly-elected officers.
- Statement of Officer is completed (to be filed locally).
- Newly-elected officers may take the Oath of Office.
- After taking the Oath of Office, newly-sworn officers may assume the duties of their office.
- **Reporting electronic returns to SOS, no longer necessary.**

See most recent post-election advisory under
Conducting Your Elections for details.

Questions?

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