

- SUBJECT:** Establishing procedures for counting and recounting voting ballots
- COMMITTEE:** Elections — committee substitute recommended
- VOTE:** 8 ayes — Danburg, J. Jones, Denny, Gallego, Hodge, Madden, Sadler, Wilson
0 nays
1 absent — Truitt
- WITNESSES:** For — *Registered but did not testify:* Dana DeBeauvoir, County Clerks Legislative Committee; James Gaston, Texas Democratic Party; Suzy Woodford, Common Cause of Texas
Against — None
- BACKGROUND:** Election Code, ch. 127 establishes the processing procedures for electronic voting system results and the organization of central counting stations. Sec. 127.034 and 127.069 require that all ballots counted by a tabulator be sorted and, if necessary, duplicated according to voter intent so that the ballot will be tabulated properly. Sec. 127.069 requires the presiding judge of the central counting station to sort damaged ballots, ballots with write-in votes, and any other ballots requiring special handling. After sorting the ballots, the judge must deliver them to the manager of the central counting station.

Election Code, sec. 212.0241 allows a candidate who is shown not to have been nominated or elected to obtain an initial recount of electronic voting system results.
- DIGEST:** CSHB 1559 would require the manager of a central counting station to have the ballots that are counted by automatic tabulating equipment examined to detect any irregularly marked ballots and to determine whether the ballots to be counted automatically can be counted properly. The manager would have to have irregularly marked ballots duplicated to indicate the voter's intent if the intent was clearly ascertainable, as long as the ballot otherwise was eligible for counting. After making the appropriate determinations and taking

any action necessary to make the ballots countable, the manager would have to approve the ballots. Ballots in an election recount would have to be processed in the same manner as regular ballots are prepared under the provisions for preparing and duplicating ballots for automatic counting.

CSHB 1599 would allow a winning candidate to request an initial recount if the opposing candidate's initial recount was approved and did not include all of the voting system precincts in the election. A petition for the winning candidate in response to an opposing candidate's petition for recount would have to be submitted within 48 hours after the receipt of the notice of approval for the recount.

If an initial recount was requested in an election for which there was a final canvass at the state level, an initial recount of votes cast in a particular voting system would have to include all election precincts in which that particular voting system was used.

This bill would take effect September 1, 2001.

**SUPPORTERS
SAY:**

Last year, the U.S. Supreme Court sent a strong message to the states in its decision in *Bush v. Gore* to "examine ways to improve the mechanisms and machinery for voting." The experience with election-night results and recount results in Florida has prompted state leaders to examine voting procedures in Texas, specifically those for counting and recounting ballots. One reason for the discrepancy in Florida was that the ballots were not reviewed for possible counting problems before they were tabulated.

Although current law requires damaged and irregularly marked ballots to be sorted, the statutory requirements are spread throughout several sections of the Election Code and may not be readily ascertainable. Election officials are under a great deal of pressure to report their election results and may not always scrutinize the ballots before they are sorted. Ballot procedures need to be outlined explicitly so that all political subdivisions can follow the law. CSHB 1599 would help provide that clarity.

Examining all electronic ballots that are to be tabulated automatically might take a little longer but ultimately would result in more ballots being read correctly by the tabulator and would ensure a more accurate vote count.

Current law allows only the losing candidate to request an initial recount and to choose which precincts are to be recounted. As in the Florida scenario, a candidate could ask for a recount in selected precincts that might give that candidate an advantage in the outcome. CSHB 1599 would allow a winning candidate also to select precincts to be recounted if a recount was approved.

Authorizing a coordinated recount would ensure that counties that were recounted in an initial recount would not have to be recounted again during the final canvass.

**OPPONENTS
SAY:**

Current law requires a losing candidate who requests an initial recount to include a monetary deposit. CSHB 1599 should require a winning candidate who is requesting an initial recount also to include a deposit with the request.

NOTES:

The committee substitute modified the filed version by adding a provision regarding the initial preparation of ballots for automatic counting and the duplication of ballots before automatic counting. The substitute also would require ballots in an election recount to be processed in the same manner as ballots are prepared under current law.