

- SUBJECT:** Prohibiting the use of certain voting systems
- COMMITTEE:** Elections — committee substitute recommended
- VOTE:** 8 ayes — Danburg, J. Jones, Denny, Gallego, Hodge, Madden, Sadler, Wilson  
0 nays  
1 absent — Truitt
- WITNESSES:** For — John Poulans, representing Albert Huddleston, Legacy Investment; *Registered but did not testify:* William Harrell, American Civil Liberties Union; Melvin Reed; Suzy Woodford, Common Cause of Texas  
  
Against — *On earlier version:* Scott Flom, Hart Intercivic, Inc.;  
  
On — Dana DeBeauvoir, County Clerks Legislative Committee; Barry Herron, Sherry Rose, Global Election Systems; Tony J. Sirvello, III, representing Beverly B. Kaufman, Harris County Clerk; *Registered but did not testify:* Mary Ann Collins
- BACKGROUND:** Election Code, Title 8 governs voting systems in Texas. Chapter 127 establishes the processing procedures for tabulating electronic voting system results and the organization of central counting stations. Sec. 123 governs adoption and acquisition of voting systems. Most Texas counties now use a voting method known as the optical scan. A voter marks in a circle with a pencil next to the candidate's name and a machine counts the ballot. Some counties use an electronic touch-screen voting system. Fourteen counties use punch-card ballots.
- DIGEST:** CSHB 1856 would prohibit the acquisition and adoption of a system that used punch-card ballot equipment or a similar form of tabulating card after September 1, 2001. It also would prohibit the use of the "butterfly" layout ballot. A punch-card ballot still could be used for early voting by mail. For entities that currently use punch-card voting systems, the election officer would be required to check each voting device and remove any accumulated

punch-card ballot chads before opening the polling place for voting on election day.

The bill would require that in an election using punch-card ballots or centrally-counted optical scan ballots, the undervotes and overvotes would have to be tallied, tabulated, and reported by the race and election precinct in a form that would be prescribed by the Secretary of State.

CSHB 1856 would amend Title 8 of Election Code, to add a new chapter relating to direct recording electronic voting machines, or DREs. The DREs would have to be tested before use in an election, and the general custodian of election records would have to include a specific test of each machine's logic and accuracy functions to ensure that the machines properly recorded, counted, and tabulated the votes. Each DRE would have to provide the voter with a review screen that summarized the voter's choices so that they could be reviewed before the vote is cast.

During early voting, the early voting clerk would have to conduct a daily audit of the DREs to ensure proper correspondence with the numbers of ballots provided, names on the poll list, and ballots cast on the machine. The general custodian of election records would have to conduct a recount to confirm the accuracy of the vote totals if the machines were being used in an election for the first time.

CSHB 1856 would require that election system ballots be delivered from the polling place to the central counting station in a sealed ballot box.

The bill would require the manager of a central counting station to have the ballots that were counted by automatic tabulating equipment examined to detect any irregularly marked ballots and to determine whether the ballots to be counted automatically could be counted properly. The manager would have to make duplicates of irregularly marked ballots to indicate the voter's intent if it 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.

The Secretary of State would have to prescribe any procedures necessary to implement the provisions regarding DREs as well as rules to implement the provisions of the bill, including those to facilitate the orderly phase-out of the punch-card ballot voting system.

The bill would take effect September 1, 2001.

SUPPORTERS  
SAY:

Last year, the U.S. Supreme Court sent a strong message to the states with its decision in *Bush v. Gore* to “examine ways to improve the mechanisms and machinery for voting.” Florida’s election debacle, which kept the electorate in suspense for more than a month over the outcome of the presidential race, showed that voting procedures in some parts of Texas were outdated and may be confusing to voters, specifically punch-card voting systems. The bill would not prohibit them from being used, since they still would need to be used for early voting by mail.

One reason for the discrepancy in Florida was the trail of dangling, compacted, and mangled chads and the confusing butterfly ballot. Though Texas has not encountered problems of the magnitude of those in Florida, punch-card voting systems need to be phased out. Some counties would need major changes to ensure that all votes were counted and that all eligible voters had a chance to cast their ballots.

Texas has many voting systems, and current law provides few ballot-layout requirements. Although the butterfly ballot is not currently used, it should be expressly prohibited. Although most election administrators routinely clean accumulated chads out the punch-card voting machines, some do not. CSHB 1856 would ensure that the situation in Florida regarding compacted chads would not happen here.

According to the Secretary of State, phasing out punch-card voting systems could cost as much as \$25 million, so such a change should be considered only if funds were available to help counties replace those systems. Since the likelihood of states receiving any federal funds to help with the phasing out of this voting system is speculative at this time, at the very least, the future purchase of punch-card voting systems should be prohibited.

Congress is considering several proposals to reform voting practices, including giving states and localities block grants to upgrade voting technology in phases. An association of the nation's secretaries of state has recommended a list of election reforms, including federal funding. They caution, however, that any funding mechanism from the federal government should not impose a mandate on states.

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 1856 would help provide that clarity.

Tabulation of undervotes and overvotes is not done currently and is not considered a part of the official tabulation. Requiring the tabulation on punch-card voting systems or centrally counted optical scans would become public record for informational purposes and would be a good way to evaluate the effectiveness of the voting system.

Whatever electronic voting system was used at a polling place, it would require voters to deposit the ballot directly into the unit. These units were programmed to automatically return an irregularly marked ballot, so it would be necessary to duplicate a ballot to ascertain the voter's intent. This would go a long way in giving voters confidence that their vote was counted properly.

The use of sealed ballot boxes would be optional so that irregularly marked ballots could be sorted at the polling place. Requiring the use of sealed ballot boxes for transporting electronic voting results from the polling place to the central counting station would give voters the added security that votes could not be tampered with.

Adding a new chapter to the Election Code regarding DRE systems is necessary to apply current voting procedures to DRE systems that already apply to other voting systems.

OPPONENTS SAY: No apparent opposition

NOTES: The committee substitute provided that a voting system that used a punch-card ballot system could be adopted for the purpose of early voting by mail. The substitute removed the requirement that the election office check each voting device at least once during voting hours and after the polls close. The substitute removed provisions relating to punch card readers. The substitute added the provision regarding sealed ballot boxes and modified the provision relating to the handling of irregularly-marked ballots. The bill expanded the reporting requirement for undervotes and overvotes to include centrally-counted optical scan ballots, added a provision regarding the use of DRE machines, and repealed provisions related to preliminary procedures to counting station processing.

A similar bill, HB 1599 by Danburg, related to procedures for counting and recounting voting system ballots, passed the House on May 1.