

# CHAPTER 16

## EARLY VOTING BALLOT BOARD

### NEW LEGISLATION

If an early voting ballot is challenged and rejected, the presiding judge of the early voting ballot board must deliver written notice of the result of the challenge, including the reason for the result, to the challenged voter not later than the 10th day after election day. Previously, the early voting clerk was responsible for sending this notice. [Sec. 88.004]

### SECTION A: PURPOSE

1. The purpose of the Early Voting Ballot Board (hereinafter "the board") is to serve as the authority that processes early voting results from the territory served by the early voting clerk.
2. The board must be created in every election. [Sec. 87.001]

### SECTION B: COMPOSITION OF THE EARLY VOTING BALLOT BOARD

#### COUNTY

1. The board is composed of a presiding judge and at least two other members. [Sec. 87.002(a)]
2. For county elections, the Commissioners Court appoints the presiding judge. [Secs. 87.002(b), 32.002]
3. For primary elections, this appointment is made by the County Chair with the approval of the executive committee. [Sec. 32.006]
4. Once appointed, the presiding judge appoints two clerks. [Sec. 87.002(b)]

#### CITY/SCHOOL/OTHER POLITICAL SUBDIVISION

1. The board is composed of a presiding judge and at least two other members. [Sec. 87.002]
2. The presiding judge is appointed in the same manner as a presiding election judge. [Sec. 87.002(b) & Sec. 32.002-32.006]
3. Once appointed, the presiding judge appoints two clerks in the same manner as precinct election clerks are appointed. [Sec. 32.031 et. seq.]

### SECTION C: ELIGIBILITY TO SERVE ON THE EARLY VOTING BALLOT BOARD

1. A person who is a qualified voter of the territory served by the early voting clerk may serve on the board, if the person meets all the other qualifications of judges or clerks who serve at regular polling places on election day. [Sec. 87.003]
2. Specifically, a person is ineligible to serve on the board if:
  - a. they hold a public elective office;
  - b. they are a candidate in an election held on the same day;
  - .
  - c. they are related to an opposed candidate within the second degree by blood or marriage;
  - d. they are an employee of an opposed candidate; or
  - .
  - e. they are serving as campaign treasurer for a candidate in an election.
  - f. they are serving as campaign manager for a candidate in an election. [Sec. 32.051 et.seq.]

#### SECTION D: COMPENSATION OF THE EARLY VOTING BALLOT BOARD [SEC. 87.005]

1. Members of the board are entitled to receive the same hourly compensation as election judges except:

If the board concludes its work in less than 10 hours, the compensation paid may exceed that regularly payable for the amount of time worked, but cannot exceed the amount payable for ten hours' work; and

Any board member also serving as a precinct officer in the election may not be compensated for both positions.

#### SECTION E: MATERIALS

1. Materials to be used by Board:

The board should obtain the following materials from the authority conducting the election:

- a. Oath of Election Judges and Clerks; [Sec. 62.003]
- .
- b. Poll List of Early Voters, by Mail Voters, or Voters Voting Mail Procedure; [Sec. 87.041(c)]
- .
- c. Challenge of an Early Voter; [Sec. 88.002]
- .
- d. Envelope for Rejected Early Voting Ballots; [Sec. 87.043]
- .

e Tally Sheets; [Sec. 65.004]

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f Return Sheets; [Sec. 65.014]

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g Envelopes for Distribution of Returns and Election Records; [Sec. 66.003]

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h Statement of Compensation; [Sec. 32.094]

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i. Ballot Transmittal Form for Early Voted Ballots; and

j. Notice of Rejection of Early Voted Ballots.

2. The early voting clerk delivers to the board:

a Each ballot box containing ballots voted by personal appearance;

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b The Clerk's key to each ballot box;

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c The jacket envelopes containing ballots voted by mail and the correspondence applications;

d The poll lists (or combination forms) used in voting by personal appearance;

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e The list of registered voters used in conducting voting;

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f The ballot transmittal form; and

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g If voting machines were used to vote by personal appearance, the early voting clerk will also deliver the copies of certificate of proper installation and certificate of secured machine. [Secs. 125.031(c), 125.032(e)]

## SECTION F: TIME AND NOTIFICATION REQUIREMENTS FOR DELIVERY OF MATERIALS TO THE EARLY VOTING BALLOT BOARD

1. Time of Delivery

Ballots counted by automatic tabulating equipment at a central counting station, or regular paper ballots, or the ballots voted by mail when voting machines have been used, may be delivered to the board between the end of early voting by personal appearance and the closing of the polls on election day. [Sec. 87.022 et seq.]

lBallots and materials may be delivered to the signature verification committee, if one has  
.been appointed, as early as the 20th day before election day. [Sec. 87.027(f)]

## 2. Delivery of Second Ballot Box Lock

The custodian of the key to the second ballot box lock must deliver the key for each box to the presiding officer of the board upon that officer's request. [Section 87.025] The constable (or sheriff in certain circumstances) is the custodian of the key to the other lock. [Sec. 66.060]

## 3. Notification [Sec. 87.0221 et seq.]

εThe early voting clerk is required to give notification of delivery in two instances.

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lFor each delivery of early voting ballots made prior to the time the polls open, the early  
.voting clerk is required to post notice at the main early voting polling place continuously for at least 24 hours immediately preceding each delivery.

çThe early voting clerk must give at least 24 hours notification to the county chair of each  
.political party before the first delivery of ballots are made to the board.

## SECTION G: QUALIFYING EARLY BALLOTS VOTED BY MAIL

1. The board may meet to qualify and accept ballots at any time after the ballots are delivered to the board, but may not count votes until the polls open on election day. [Sec. 87.0241]

## 2. Signature verification committee [Sec. 87.027]

a If a signature verification committee has been appointed, it may not meet earlier than the  
. 20th day before election day

b The committee must not consist of less than five members, but there is no longer a  
. maximum number of members.

c The committee's single purpose is to compare signatures on applications and  
. corresponding carrier envelopes.

## SECTION H: VOTING MATERIALS [Sec. 87.041]

1. The board's duty is to open each jacket envelope for an early ballot voted by mail and

make a determination whether to accept or reject the voter's ballot.

2. The board should check that each jacket envelope contains:

a an application;

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b the envelope in which the application was mailed to the early voting clerk, if  
. applicable; and

c the carrier envelope containing a ballot envelope and any statements of residence or  
. affidavits.

3. The board may only accept a ballot if [Sec. 87.041]:

a The carrier envelope certificate is properly executed.

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b The voter's signatures on the ballot application and on the carrier envelope certificate  
. were not executed by a person other than the voter, unless signed by a witness.

NOTE: A ballot must be rejected if there is no signature on the carrier envelope.

c The voter's ballot application states a valid reason for voting early by mail.

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(1) The address to which ballot was mailed to voter must be outside the voter's county  
of residence.

(2) If the ballot was submitted after the period for early voting by personal appearance  
began, the application must show that the voter was absent from county when  
application was submitted.

NOTE: Voter checking "expected absence from county" and providing an out of county  
address on official application is sufficient to show absence

NOTE: The early voting clerk now treats ballots returned by improper methods as ballots not  
timely returned. This is no longer part of the board's review. [Sec. 86.006]

d The voter must be registered to vote.

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NOTE: If an "S" appears next to a voter's name on the list of registered voters or if the  
residence address on the application for ballot by mail does not match the residence address  
on the list of registered voters, then voter's ballot may be accepted only if the voter returns a  
statement of residence with the voted ballot. [Sec. 87.041(b)(6)]

e If the presiding judge observes that the carrier envelope has a notation that a statement  
. of residence is enclosed, the statement of residence must have been completed by the  
voter and included in the carrier envelope for the ballot to be accepted.

f The presiding judge reviews the new residence address on the statement of residence . to determine if the voter continues to reside in the political subdivision.

(1) Judge determines that voter LIVES in political subdivision.

--Judge removes ballot envelope from carrier envelope.

--Judge places it with other ballots to be counted.

--Judge places statement of residence in envelope #4.

OR

(2) Judge determines that voter DOES NOT LIVE in political subdivision.

--Judge rejects ballot leaving the ballot in the carrier envelope.

--Judge makes notation on carrier envelope that the ballot was rejected after the carrier envelope was opened.

--Judge places the statement of residence in envelope #4.

--Judge places rejected carrier envelope with other rejected ballots.

OR

(3) Judge does not find statement in carrier envelope.

--Judge opens ballot envelope to see if statement of residence is inside the ballot envelope.

--Judge then follows one of the steps above for accepting or rejecting the ballot.

## SECTION I: CHALLENGE TO AN EARLY BALLOT VOTED BY MAIL

1. Four categories of persons are entitled to challenge an early voter's qualifications:[Sec. 88.001]
  - a. early voting clerk;
  - b. member of the early voting ballot board;
  - c. a pollwatcher observing the early voting ballot board; and
  - d. any registered voter who is eligible to vote in the election.
2. A challenge initiated by any authorized person, except a member of the board, must be in writing and filed with the presiding judge before the voter's ballot is accepted. [Sec. 88.002]
3. The challenge statement must include: [Sec. 88.002]

- a. challenger's name;
- b. grounds for challenge;
- c. challenger's residence address; and
- d. challenger's signature.

NOTE: A challenge filed by a registered voter or the early voting clerk must be filed with the presiding judge of the board prior to the convening of the early voting ballot board. A registered voter filing a challenge is not entitled to file the challenge with the presiding judge while the board is meeting. Members of the public are not entitled to be present while the board is meeting. [Section 87.026]

#### SECTION J: DISPOSING OF A CHALLENGE TO A BALLOT VOTED BY MAIL [SECS. 88.003, 88.004]

1. The presiding judge of the board makes the final decision on a challenge.
2. The presiding judge may only reject a challenged ballot on the basis of a governmental record as proof of the ground of challenge, unless the voter appears in person before the board.
  - a. A "governmental record" is defined as a document filed, prepared, or preserved under the Election Code OR as a document belonging to, received by, or kept by the state, a political subdivision or any branch or agency of the state.
  - b. For example, the items listed below would be considered to be "governmental records:"
    - (1) list of registered voters (because it might show a birthday);
    - (2) birth certificate;
    - (3) court record indicating the applicant was finally convicted of a felony, or an abstract of a final felony conviction; or
    - (4) certified copy of judge's order declaring a person mentally incompetent.
  - c. Governmental records are generally insufficient to disprove an early ballot voted on the basis of:
    - (1) sickness or physical disability; or
    - (2) residence of the applicant.
3. Ballot Rejected After a Challenge

- a. The presiding judge of the early voting ballot board must notify the voter within 10 days after the election if the voter's ballot was challenged and rejected.
  - b. These notifications must contain an explanation of the reason that the ballot was rejected.
  - c. Once a ballot is rejected after a challenge, the presiding judge of the board must:
    - (1) place the unopened carrier envelope in the envelope for "Rejected Early Ballots";
    - (2) attach the written challenge to the early voting ballot application and place them in the jacket envelope, and write "Challenged and Rejected" on the jacket envelope; and
    - (3) indicate on the written challenge the disposition of the challenge and the date.
4. Ballot Accepted After a Challenge
- a. A ballot accepted after a challenge is handled in the same manner as other accepted ballots.
  - b. After attaching the written challenge, note in writing the disposition of the challenge and the date the action was taken and place these documents in the jacket envelope.  
[Sec. 88.003(f)]

#### SECTION K: EARLY BALLOTS WHICH ARE ACCEPTED FOR VOTING

1. The applicant's ballot must be qualified in order for the ballot to be accepted for voting. (Refer to "Qualifying Early Ballots.") [Sec. 87.041]
2. The qualified, accepted ballot is handled in the following manner: [Sec. 87.042]
  - a. Without defacing the certificate, open the carrier envelope and remove the ballot envelope.
  - b Place the unopened ballot envelope in the ballot box containing the ballots voted early . by personal appearance.
  - c. Enter the voter's name on the poll list for early voters.
  - d Place the application and the envelope that was used to mail the application (if . applicable), the carrier envelope, and any accompanying papers back in the jacket envelope.
  - e. Place any affidavits in Envelope Number 4.



3. Counting of the early ballots by mail may not begin until at least ten early ballots voted by mail are qualified. [Sec. 65.002(b)]

NOT When early votes by mail are to be entered on a mechanical voting machine, the board  
E: must first read and enter on the returns the votes cast on the machine by personal appearance, or must use a separate machine.

#### SECTION L: EARLY BALLOTS REJECTED

1. If an application and carrier envelope do not meet all the requirements of section 87.041 (See "Qualifying Early Ballots"), the ballot must be rejected and may not be counted.

2. The rejected ballot should be handled by: [Sec. 87.043]

awriting the word "Rejected" on the carrier envelope;

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twriting the word "Rejected" on the corresponding jacket envelope;

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placing the unopened carrier envelope containing rejected ballot in the large envelope or  
. container marked "Rejected Early Ballots";

having the presiding judge sign and seal the "Rejected Early Ballot" envelope;

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(1) The presiding judge must also write the date and nature of the election on the envelope.

(2) A record must be kept of the number of rejected ballots placed in the "Rejected Early Ballot" envelope.

making a notation on the carrier envelope of any ballot which was rejected after the  
. carrier envelope was opened, stating the reason the carrier envelope was opened and rejected; and

placing the application, the envelope used to mail the application to the early voting  
. clerk (if applicable), and any accompanying papers and affidavits in the jacket envelope.

NOTE: In addition to the notice to the voter from the presiding judge of the early voting ballot board when a ballot is challenged and rejected, the presiding judge of the board must now deliver notice of the reason for any rejection of a ballot to the residence address of the voter listed on the application within ten days of the election. [Sec. 87.0431]

#### SECTION M: REPORTING EARLY VOTES

1. The presiding judge of the board must deliver the counted ballots, the early voting election returns, other early voting election records, and ballot box keys to the appropriate authorities. [Sec. 66.051]
2. If part of the early ballots are counted by automatic tabulating equipment at a central counting station, these records shall be delivered to the presiding judge of the central counting station.
3. The early voting totals must reflect the number of early votes for each candidate or measure by election precinct.

NOTE: In 1991, the legislature amended section 87.1231 to require that early votes be reported by precinct by polling place location. However, this section has been declared unconstitutional by a Travis County District Judge. Therefore, early votes are required to be reported by precinct. Ignore references to reporting early votes by polling place location in sections 87.1231 and 67.004.