

**RULES
OF
THE TENNESSEE DEPARTMENT OF STATE
STATE COORDINATOR OF ELECTIONS**

**CHAPTER 1360-2-12
ELECTRONIC VOTE COUNTING (OPTICAL SCAN) SYSTEMS RULES AND REGULATIONS**

TABLE OF CONTENTS

1360-2-12-.01	Purpose	1360-2-12-.07	Ballot and Program Preparation and Supplies
1360-2-12-.02	Liberal Construction	1360-2-12-.08	Testing and Sealing
1360-2-12-.03	Definitions	1360-2-12-.09	Procedures for Automatic Voter Counters used as Precinct Counters
1360-2-12-.04	Requirements of Electronic Vote Counting Systems	1360-2-12-.10	Procedures for Automatic Vote Counters for Absentee Voting.
1360-2-12-.05	General Authorization for Electronic Vote Counting Systems		
1360-2-12-.06	Procedure and Election Officials and Duties at Polling Place		

1360-2-12-.01 PURPOSE. The purpose of these regulations is to authorize the use of electronic vote counting (optical scan) systems in one or more locations in any election.

Authority: T.C.A. §2-11-201 (c). **Administrative History:** Original rule filed December 9, 1985; effective March 17, 1986.

1360-2-12-.02 LIBERAL CONSTRUCTION. These regulations shall be liberally construed so that the will of the electors will not be defeated by any informality or failure to comply with all of the provision of these regulations.

Authority: T.C. A. §2-11-201 (c). **Administrative History:** Original rule filed December 9, 1985; effective March 17, 1986.

1360-2-12-.03 DEFINITIONS. As used in these regulations and unless otherwise specified the following definitions shall govern:

- (1) *Electronic vote counting system* means a system composed of ballots on which voter marks his choices by use of marking devices and the optical scanning and counting of these votes by use of automatic vote counting equipment or data processing equipment, but shall not include those voting systems authorized under regulations 1360-2-1-.01 through 1360-2-9.
- (2) *Marking Device* means a device for marking a ballot with ink or other substance which will enable the votes on the ballot to be optically scanned and tabulated by the automatic vote counting equipment or data processing equipment.
- (3) *Ballot* means a card or cards upon which a voter directly casts his votes by means of marking device and on which are printed the names of offices and candidates and statements of measures or questions to be voted on.
- (4) *Automatic Vote Counting Equipment or automatic vote counter*, includes apparatus to automatically examine and count votes and/or accumulate votes marked on ballots and such data processing machines which may be used for tabulating election results.
- (5) *Counting Location* means the location or locations selected by the cognizant jurisdiction for the installation of the automatic vote counting equipment to count or process, or both, votes of any primary, general or special election.

(Rule 1360-2-12-.03, continued)

- (6) *Precinct Counter* is an automatic vote counter located at the precinct or polling place and used to tabulate the votes from ballots inserted directly into the automatic vote counter by the voter or by the poll workers in case of emergencies or because of assistance to handicapped or disabled voters.
- (7) *Central Counter* is one or more automatic vote counters or data processing systems centrally located which tabulates votes from absentee ballots which have been received from eligible absentee voters and which are inserted into the central counter by election workers either manually or by automatic ballot feeding mechanisms.

Authority: T.C.A. §2-11-201 (c). **Administrative History:** Original rule filed December 9, 1985; effective March 17, 1986.

1360-2-12-.04 REQUIREMENTS OF ELECTRONIC VOTE COUNTING SYSTEMS. No electronic vote counting system consisting of a marking or voting device in combination with automatic vote counting or tabulating equipment shall be acquired or used in accordance with these regulations unless it shall:

- (1) Provide for voting in secrecy when used with voting booths;
- (2) Permit each voter to vote at any election for all persons and officers for whom and for which he is lawfully entitled to vote; to vote for as many persons for an office as the voter is entitled to vote for; to vote for or against any questions or measure upon which he is entitled to vote;
- (3) Use automatic vote counting equipment which shall reject choices recorded on the voted ballots if the number of choices exceeds the number which the voter is entitled to vote for in each office and on each measure question;
- (4) In primary elections, permit each voter to vote only for candidates for which he is qualified to vote;
- (5) Permit each voter to vote for persons whose names are not printed directly on the ballot by writing in the name and marking the voting position of the person whose name has been written in;
- (6) Be suitably designed for the purpose used, and be of durable construction; and in the conduct of elections be safe, efficient, and accurate;
- (7) Be provided with means for automatically securing the automatic vote counting equipment, when it is used in the precinct as a precinct counter against any further voting after the close of the polls and the last voter has voted and results of the precinct vote has been obtained
- (8) When properly operated, record correctly and count accurately the votes cast;
- (9) Be safely transportable.

Authority: T.C.A. §2-11-201 (c). **Administrative History:** Original rule filed December 9, 1985; effective March 17, 1986.

1360-2-12-.05 GENERAL AUTHORIZATION FOR ELECTRONIC VOTE COUNTING

- (1) Ballot Form – The ballots to be counted by automatic vote counting system may be of size, composition, texture, but shall be printed in any black ink that will be suitable for use in the automatic vote counting equipment in which they are intended to be placed.

(Rule 1360-2-12-.05, continued)

- (2) Ballot Printing – The ballots shall contain printed or punched code marks necessary for distinguishing ballot types and combinations. Other spaces on the ballot for legally required signatures or other official printing or stamping must be positioned so that such signatures, printing or stamping will not interfere with the automatic vote counting system’s ability to count the votes.
- (3) Ballot Printing Format – The ballot may be divided into parts and printed on both sides. Where all candidates and propositions cannot be placed on the front face of the ballot, the candidates and propositions may be carried on both the front and back face of the ballot. If all candidates and propositions cannot be placed on the front and back of one ballot, the ballot material may be divided into suitable parts. If more than one ballot is used, the first ballot may contain a statement that other matters to be voted on appear on another ballot. The names of all candidates for the same office must be printed on the same ballot card. In primaries, each candidate listed alphabetically according to first letter of surname. In general elections, majority party nominees, minority party nominees, followed by independent.
- (4) Absentee Voting – The automatic vote counting system may be used in counting votes from ballots resulting from absentee voting either by personal appearance or by mail or both with the procedures for vote tabulation subject to the following:
 - (a) The write in votes on the ballots may be counted before or after tabulation at the discretion of the cognizant election officials.
 - (b) In case a ballot cannot be read by the automatic vote counting system, for whatever reason, a true copy may be made of the absentee ballot on unvoted ballot cards following procedures for Ballot Duplicates and counted on the automatic vote counter in the same manner as the other ballots.
 - (c) Other procedures for use of automatic vote counting systems to count absentee votes will follow procedures used for ordinary paper ballots insofar as it is practical and applicable.
- (5) Ballot Duplicates – Ballots which cannot be read on the automatic vote counting system, for any reason, may be duplicated on another blank ballot by making a true machine readable copy of the original ballot following the intention of the voter insofar as it can be ascertained from the defective ballot and from which the votes can be counted by the automatic vote counting system. All duplicate ballots shall be clearly labeled as a “duplicate” and shall bear a serial number which shall also be recorded on the defective ballot as well.
- (6) Sample Ballots and Instructions – The county election holding the election shall provide sample ballots and printed instructions in accordance with the general election laws of the state but printed so as to prevent the inadvertent use of the sample ballot as an official ballot.
- (7) Casting of Votes – Instructions are to be given to voters that to cast a vote, a voter must fill in the voting position opposite his choice or choices with the marking device provided. Further, if a voter “writes-in” a name, the voting position opposite the “write-in” name must also be filled with the marking device for the “write-in” vote to be counted. Instruction on casting votes may be printed on each ballot as well as posted conspicuously at the polls. Failure to make a cross (X) or other mark will not invalidate the vote unless the will of the voter cannot be ascertained.

Authority: T.C.A. §2-11-201 (c). **Administrative History:** Original rule filed December 9, 1985; effective March 17, 1986.

1360-2-12-.06 PROCEDURE AND ELECTION OFFICIALS AND DUTIES AT POLLING PLACE.

(1) Procedure –

- (a) Voter signs application for ballot.
- (b) Applications given to precinct registrar-signature comparison. If compare, precinct registrar initials application and has voter sign poll list.
- (c) Voter hands initialed application to ballot judge and in the presence of said judge, signs the ballot stub. Judge issues ballot sleeve with ballot, gives application to machine judge.
- (d) Voter marks ballot in secret unless entitled to assistance under *T.C.A. §2-7-116*.
- (e) Voter places ballot in ballot sleeve and goes to machine judge. Judge compares signature on stub with application, if compare, ballot stub removed and voter instructed to feed ballot into tabulator. Stub and application placed into stub box.

(2) Election Officials and Duties -

- (a) Officer, three judges, precinct and assistant precinct registrars. One assistant precinct registrar shall be designated the demonstration clerk and shall be available to explain voting system to voters and otherwise answer voter's questions regarding voting system.
- (b) Officer – duties as set out in general law.
- (c) Judges – one ballot judge, two machine judges

(3) Ballot Requirements –

- (a) All ballots printed in black ink. For primaries, Democratic ballots shall be *white*, Republicans shall be *blue* and the general election *buff*.
- (b) Ballots are to be pre-scored for the precinct in which they are assigned and in such a manner the tabulator will reject a ballot which is placed into a tabulator of a precinct other than the one for which it was programmed and/or pre-scored.
- (c) Arrangement on ballot – same as in *T.C.A. §2-5-208*.
- (d) Candidates name on ballots – Alphabetically in primaries, In general – majority party, minority party, then independents. Write-in space left after each listing.
- (e) Length – width – To be prescribed by the Coordinator of Election for each election.

(4) Procedure – Close of Polls – Officer and three (3) judges cause tabulator to print out preliminary tally which is recorded by two (2) precinct registrars.

Authority: *T.C.A. §2-11-201 (c)* **Administrative History:** *Original rule filed December 9, 1985; effective March 17, 1986.*

1360-2-12-.07 BALLOT AND PROGRAM PREPARATION AND SUPPLIES. The ballots shall be prepared and procured for an election under the same regulations as ordinary paper ballots.

Authority: T.C.A. §2-11-201 (c). *Administrative History:* Original rule filed December 9, 1985; effective March 17, 1986

1360-2-12-.08 TESTING AND SEALING. Before the automatic vote counting systems are prepared for delivery to the counting locations, each device shall be tested by the election officials in charge of the election to insure that they will operate correctly and accurately and perform the functions for which it is intended to be used. The testing procedure is as follows:

- (1) A series of properly marked test ballots from the manufacturer or an independent auditing firm of CPA's shall be inserted in each vote counter to insure that the vote counter will accurately count votes for each candidate and each proposition or measure.
- (2) A series of improperly marked test ballots shall also be inserted into the vote counter to ensure that votes will not be counted contrary to the program and election requirements.
- (3) The testing shall be open to the public and held no later than 2 days before the election. At least 5 days prior to testing, the presiding officer of the authority holding the election shall cause to be published in the public press and posted in the county courthouse or other public location(s) the date, time, and place the testing will be conducted. The candidates or their representatives, as well as representatives of the news media and, in partisan elections, representatives of the political parties, shall be permitted to observe all testing procedures.
- (4) The test ballots shall be either a special color or voided official ballots and be printed in sufficient quantity for this testing procedure.
- (5) The test ballots and the results of the testing shall be sealed and retained by the county election commission.
- (6) The automatic voter counter to be used as precinct counter which is delivered to a precinct or polling place, shall be reset so that its totals are zero at the opening of the polls. The automatic vote counter shall then be sealed or locked for delivery to the precinct.
- (7) The automatic vote counter to be used in a central location as the central counter for absentee ballots, it shall be reset so that its totals are zero at the beginning of counting.

Authority: T.C.A. §2-11-201 (c). *Administrative History:* Original rule filed December 9, 1985; effective March 17, 1986

1360-2-12-.09 PROCEDURES FOR AUTOMATIC VOTER COUNTERS USED AS PRECINCT COUNTERS. Detailed procedures for voting and for using automatic vote counting equipment at the precinct will be issued by the election officials in charge of the election. Procedures issued on the use of automatic vote counting equipment at the precinct shall include the following:

- (1) Before the automatic vote counting equipment may be assembled for voting, the precinct officials at each polling place shall compare the number on the seal or lock number written on the tag attached to the tabulator or included on a form in the precinct supplies. If the numbers do not correspond, the precinct officials shall not assemble the automatic vote counter, but shall call the appropriate officer in charge of the delivery of the counters for assistance. If the numbers do correspond, the precinct officials may proceed with the opening procedures as they have been instructed.

(Rule 1360-2-12-.09, continued)

- (2) Precinct officials shall assemble and lock the automatic vote counter in accordance with the instructions given to them by the election officials in charge of the election. The precinct officials shall then insure that the counters' totals are zero by obtaining a 'zero' printout as instructed.
- (3) The conduct of the voting at polling places where automatic vote counters are used shall be generally the same as at polling places where ordinary ballots are used insofar as practical and not otherwise provided for in this directive or in subsequent official procedures. The conduct of voting under these regulations shall include these procedures.
 - (a) The voter shall mark the ballot in secret with the marking device provided by the precinct officials.
 - (b) If the vote counter becomes inoperative, or cannot be used for any reason, the voter shall place his voted ballot into a locked ballot box known as the auxiliary or emergency ballot box until the problem with the counter has been corrected. After the polling place has closed, the precinct official, in the presence of the poll watchers, if any, shall unlock the auxiliary or emergency ballot box and insert the voted ballots into the automatic vote counter as if they had actually been inserted by the voters. If at the time the polls close, the automatic vote counter is not functioning, the officials in charge of the election may direct the precinct officials to manually count all ballots or to use a substitute automatic vote counter to count all of the ballots including those in the auxiliary or emergency ballot box.
- (4) Before obtaining the precinct vote count, the precinct officials shall insert any ballots in the auxiliary ballot box into the automatic vote counting equipment. The precinct official shall then obtain the vote counts as instructed by the election officials in charge of the election.
- (5) The precinct officials shall examine the ballots not read or with "write-in" votes and manually count the votes which should be lawfully counted and be added to votes counted by the automatic vote counting equipment.

Authority: T.C.A. §2-11-201 (c). **Administrative History:** Original rule filed December 9, 1985; effective March 17, 1986

1360-2-12-.10 PROCEDURES FOR AUTOMATIC VOTE COUNTERS FOR ABSENTEE VOTING.

- (1) The procedure for counting absentee ballots shall be substantially the same procedure for paper absentee ballots. Processing of voted ballots after opening of polls: As soon as the polls are opened the ABC board shall remove the voted ballots from the ballot container. The ABC board shall next count the number of ballot cards and certify the number of voters cast on the voting roster. If there is any discrepancy between the number of voters listed in the roster and the number of ballots voted, this fact shall be noted with an explanation of the difference and signed by all the members of the ABC board.
- (2) Tabulation of write-in votes procedures: The ABC board at the commission office shall examine the ballots and count the votes cast for candidates whose names have been written in. All valid write-in votes shall be tabulated and certified to the election officials on forms provided for this purpose, and the write-in votes shall be added to the results of the count of the ballots at the counting place and be included in the official's return for the precinct.

(Rule 1360-2-12-.10, continued)

- (3) Central Counting Proceedings: All proceedings at the central absentee ballot counting center shall be the same as set forth in *T.C.A. §§2-6-117 and 2-6-118*. All persons who are engaged in the processing and counting of the ballots shall be deputized and take an oath that they will faithfully perform their assigned duties. If any ballot is damaged or defective so that it cannot properly be counted by the electronic vote counting equipment, a true duplicate copy shall be made of the damaged ballot. The duplicate ballots shall be clearly labeled as such and shall bear a serial number which shall be recorded on the damaged ballot. (See duplicate ballots) The electronic or printed results of tabulation of votes by the automatic vote counter(s), to which have been added write-in votes, shall, when certified by the election officials, constitute the official return of each precinct.
- (4) Posting results no required: Precincts using electronic vote counting systems shall not be required to post the abstract of the count of votes at the precinct after the closing of the polls.

Authority: *T.C.A. §2-11-201 (c)*. **Administrative History:** *Original rule filed December 9, 1985; effective March 17, 1986*