



March 2018, Number 85-6

General Government

## Attorney general opinion addresses definition of electronic voting machine

[March 5](#) — A Texas attorney general [opinion](#) issued in October says a voting machine producing marked paper ballots as an added security measure qualifies as a direct recording electronic (DRE) voting machine under Texas law as long as it meets additional statutory requirements.

Election Code, [sec. 121.003 \(12\)](#) defines a DRE voting machine as “a voting machine that is designed to allow a direct vote on the machine by the manual touch of a screen, monitor, or other device and that records the individual votes and vote totals electronically.”

In response to public concerns about the vulnerability to tampering of paperless electronic voting systems, some manufacturers have developed systems that produce marked paper ballots of electronic votes that are available if needed for an audit or recount. These systems typically work by having the voter make selections electronically, then receive a marked paper ballot, which is sometimes placed in a physically separate scanner and tabulator. Other paper ballot-producing systems require voters to feed the marked paper ballot into the same device they used to vote. Like a traditional DRE voting machine, a paper ballot-producing DRE system records a voter’s selections on a removable data storage component that is taken elsewhere for tabulation at the end of voting.

The chair of the House Committee on Natural Resources in October 2017 [requested an opinion](#) on whether paper ballot-producing systems qualify as DRE voting machines, whether such systems may include more than a single piece of equipment, and whether systems that produce paper ballots are eligible for the state’s countywide polling place program.

According to the attorney general’s opinion, the fact that electronic voting machines “provide the added benefit of a marked paper ballot to better protect against voter fraud” does not disqualify them as direct recording electronic voting machines. The opinion also says a court likely would conclude that the Legislature did not intend to limit DRE voting machines to those that operate using a single piece of equipment.

The opinion also says a county may use electronic voting machines with a paper-based component in a countywide polling place program as long as these systems meet the other requirements of DRE voting machines. Under Election Code, [sec. 43.007](#), the countywide polling place program allows some counties to eliminate precinct voting locations in most elections by establishing countywide polling places, known as super precincts or Election Day vote centers, which may be located anywhere from grocery stores to shopping malls. Participation is limited to counties that use DRE voting systems and provide a computerized voter registration list at each countywide polling place that can verify instantly that a voter has not already voted elsewhere. According to a [report](#) from the Texas secretary of state for the November 2016 election, 45 counties participated in the program.

— Rita Barr

General Government

## Texas reviews how court rulings affect public information law

[March 22](#) — Lawmakers continue to review the effects of a 2015 Texas Supreme Court ruling that allows certain government contracting information to be withheld from public disclosure. *Boeing v. Paxton* addressed a provision of the Texas [Public Information Act](#) (PIA) that allows information to be withheld if it would provide an advantage to a competitor or bidder.

Since the ruling, the case has been cited in more than 2,000 open records letter rulings from the attorney general's Open Records Division. The 85th Legislature in 2017 considered, but did not enact, several proposals that would have amended the statutory exception to public disclosure that was the basis for the *Boeing* decision.

The exception to disclosure addressed in *Boeing* traditionally has been raised by governmental entities to protect their purchasing interests during the ongoing bidding period for a contract. The Supreme Court's decision allows not only governmental entities but private companies contracting with the government to assert that requested information be withheld if it would provide an advantage to another bidder or competitor, including after a contract has been awarded.

The Legislature in 2017 also considered, but did not enact, proposals stemming from a second Texas Supreme Court ruling, *Greater Houston Partnership v. Paxton*, which determined when a private entity that receives public funds for economic development is subject to the PIA.

The House Committee on Government Transparency and Operation has a [hearing](#) scheduled for Tuesday, March 27 on an interim charge to evaluate the impact of recent court rulings on transparency and accountability in government contracting and procurement.

For more on the effect of the court rulings on the PIA and related legislation, see the recent House Research Organization article, [Lawmakers may review effects of court ruling on public information law](#).

— Janet Elliott