
**Technology, Telecommunications
& Energy Committee**

ESSB 6420

Brief Description: Enhancing integrity of voting systems.

Sponsors: Senate Committee on Government Operations & Elections (originally sponsored by Senators Roach, Kastama, Kohl-Welles, Rasmussen, Oke and Winsley; by request of Secretary of State).

Brief Summary of Engrossed Substitute Bill

- Prohibits the use of punchcard voting machines after January 1, 2006.
- Requires Direct Recording Electronic (DRE) voting machines to produce a paper record that a voter may review before finalizing his or her vote.
- Requires county auditors to audit a limited number of DRE's after the election by comparing the electronic result to the paper result for three randomly selected races or issues.
- Requires the Secretary of State (Secretary) to convene a task force of elections and technology experts, as well as members of the Legislature.

Hearing Date: 2/24/04

Staff: Katie Blinn (786-7114).

Background:

Certification:

Voting equipment and vote tallying equipment must be approved by the Secretary in order to be used by county auditors to conduct elections. The Secretary must inspect, evaluate, and publicly test all voting equipment, make a report following each examination, and provide a copy of the report to each county auditor. Any change that does not impair the equipment's accuracy, efficiency or capacity, or extend its function, may be made without another examination or approval.

Voting machines must:

- Maintain secrecy;

- Permit the voter to vote for any person, office, and measure for which he or she has the right to vote;
- Correctly register votes cast;
- Prevent a vote for more than one candidate by a single operation of the device, except for president and vice-president of the United States; and
- Be tested, certified, and used in at least one other state or election jurisdiction, except for functions that are unique to Washington.

Vote tallying equipment must:

- Correctly count the votes on properly marked ballots;
- Ignore improperly marked portions of a ballot while counting the properly marked portions of the ballot;
- Count the number of ballots tallied for each precinct, the number of votes for each candidate, and the number of votes for and against each issue;
- Accommodate name rotation;
- Produce precinct and cumulative totals in printed form; and
- Be tested, certified, and used in at least one other state or election jurisdiction, except for functions that are unique to Washington.

County auditors are responsible for the preparation, maintenance, and operation of equipment used in their counties. An agreement to purchase or lease a voting system is subject to the Secretary's approval that the equipment is actually the same as that certified, and that the equipment is still operating correctly after it is delivered to the county.

Regular Testing and Procedures:

Before an election, the format of each ballot in each machine and the precinct for which the machine has been prepared must be recorded. At least three days prior to each primary and general election, the Secretary must conduct a logic and accuracy test on each vote tallying system. If an error is detected, the cause of the error must be determined and corrected before the election. Voting machines must correctly record the votes on a ballot, and the ballot must be available for audit purposes after the election. At the polling place, voting machines containing ballots for one congressional, legislative or county council district must be grouped together and physically separated from machines containing ballots for other districts.

DRE Voting Machines:

The federal Help America Vote Act of 2002 (HAVA) requires states to place an electronic voting device in each polling place that is accessible to persons with disabilities, allowing them to vote in privacy. The devices currently on the market that meet these requirements are Direct Recording Electronic devices, known as DRE's.

Summary of Bill:

Certification:

A voting device or vote tallying system, or the component software, must be tested and approved by an independent testing authority (ITA) approved by the Federal Election Assistance Commission in order to be certified for use in Washington. The Secretary must publicly demonstrate all voting systems submitted for review, and post the certification reports to the internet. The Secretary may withdraw certification for cause, following a public hearing. After

January 1, 2006, punchcard voting machines are prohibited. A voting system vendor submitting a system to the Secretary for certification must allow the Secretary access to the source code.

Existing equipment certifications remain in effect until January 1, 2006, but equipment purchased after July 1, 2004 must be subject to the new requirements.

Once a voting system has been certified, no changes may be made by a county auditor without notifying the Secretary. The change must be approved by an ITA prior to submission to the Secretary. If the vendor believes that a modification is necessary during the 10 days prior to an election, an emergency examination that is valid only for the upcoming election may be performed by the Secretary without the prior ITA review. A vendor must notify the Secretary anytime a source code is modified and allow access to the modified version.

Regular Testing and Procedures:

County auditors must provide written, signed verification during a logic and accuracy test that the voting system and its component software, in the version used, are certified. The test following a purchase or lease of a voting system to determine if the system is the same as that certified by the Secretary must be conducted by the county auditor as the purchaser or lessee. During the logic and accuracy test conducted prior to an election, the county auditor must again provide proof that the voting system in use is certified, and that all ballot styles have been programmed correctly. Each voting device must be sealed, kept in a secure location, and protected against unauthorized access until election day.

Polling places are no longer required to physically separate voting devices with ballots for one district from voting devices with ballots for another district. Rather, the individual ballot displayed to the voter must only contain the candidates for one district. Ballot counting systems must produce periodic reports in between counting sessions.

Wireless communications may not be used in a voting system. All elements of a ballot counting system must be observable and secured, and may not be connected to, or operated on, any electronic network, including internal office networks, the internet, or the World Wide Web. Transfer of information from the ballot counting system to another system must be made via disk, tape, or other physical means rather than a direct electronic connection. However, vote tallies from poll site-based counting devices may be transmitted electronically if the electronic method is not directly connected to the voting system.

Task Force:

The Secretary must convene a task force of elections and computer security experts known as the Washington Voting Systems Board (Board) to study the potential for election fraud. The Board shall include:

- At least six county auditors;
- At least two computer experts with experience maintaining security of enterprise level computing systems;
- The Director of the Department of Information Services;
- A representative of the Washington disability access group;
- The Director of Elections;
- The Secretary;
- A member of each of the four caucuses of the Legislature; and
- A statistician.

The Secretary shall report to the Legislature during the 2005 and 2006 legislative sessions on the status of a variety of election issues.

DRE Voting Machines:

The DRE voting machines must produce a voter-verified, machine-readable paper record of the votes cast. The DRE must allow the voter to review the paper record prior to finalizing his or her vote, and spoil the record and repeat the voting process if necessary. If the DRE is programmed to display ballots in multiple languages, each paper record must be printed in the language used by the applicable voter. The electronic record is the official record of each vote, but the paper record is stored and maintained for specified circumstances, such as manual recounts. Unauthorized removal of a DRE paper record from a polling place is a class C felony. The day after the election, the county auditor must conduct an audit of votes cast on DRE machines. The auditor must randomly select 4 percent of the DRE machines used, or select one DRE, whichever is greater, and compare the electronic results to the paper results for three randomly selected races or issues.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect July 1, 2004, except for sections 18 through 21, 25, and 26, relating to DRE voting machines, which take effect January 1, 2006.