

# SENATE BILL REPORT

## ESSB 6420

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As Passed Senate, February 17, 2004

**Title:** An act relating to voting systems, including establishing paper record requirements for electronic voting devices.

**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 History:**

**Committee Activity:** Government Operations & Elections: 1/30/04 [DPS].

Passed Senate: 2/17/04, 47-2.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Majority Report:** That Substitute Senate Bill No. 6420 be substituted therefor, and the substitute bill do pass.

Signed by Senators Roach, Chair; Berkey, Fairley, Kastama and McCaslin.

**Staff:** Mac Nicholson (786-7445)

**Background:** Voting equipment and vote tallying equipment must be approved by the Secretary of State (SOS) in order to be used by county auditors to conduct elections. The SOS 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 correctly record the votes on a ballot, and the ballot must be available for audit purposes after the election.

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 SOS 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.

The Help America Vote Act of 2002 (HAVA) requires elimination of punch card voting systems and makes funding available for such purposes.

**Summary of Bill:** Poll site based electronic voting systems must produce a paper record that each voter may review before finalizing his or her vote. Paper records are treated as ballots and are subject to the same secure handling, preservation and transit requirements as ballots.

The paper records are only used for mandatory and requested hand recounts; by order of the county canvassing board or a court; or for the random audit of the voting devices.

Consistent with federal law, punch card ballots cannot be used to conduct elections after January 1, 2006.

Voting systems and component software must be certified by an independent testing authority approved by the Federal Election Assistance Commission. County auditors must provide written verification of software certification. Notice of modifications, changes, redesigns or improvements to voting systems must be given to the SOS for reexamination or reapproval. The modification must be approved by an appropriate independent testing authority prior to SOS approval. Emergency approval may be granted if the modification must be made during the period ten days before an election to assure proper system operation. The vendor must submit a sworn statement regarding the modification subject to penalty of perjury and loss of certification. The SOS is given the authority to decertify any voting system for cause. A public hearing is necessary prior to decertification.

A vendor of a voting system or component of a voting system must provide the SOS access to the source code of the system or components at the time of certification and each time the source code is modified. The source code is exempt from public disclosure.

Logic and accuracy testing of electronic voting systems must be performed prior to elections. Ballot counting devices cannot be connected to, or operated on, any electronic network, including the internet. Wireless communications cannot be used in any way.

The Washington Voting Systems Board is created to study the potential for election fraud. The board is composed of the SOS, six county auditors, two computer experts, the director of the Department of Information Services, the Secretary of State, a representative of a Washington disability access group, the four corners of the Legislature, and a statistician provided by one of the four-year universities in the state. The board must report to the Legislature in 2005 and 2006 on the progress of voting systems technology, testing, security, and fraud.

Random audits of poll-site based electronic voting devices must be performed. Up to 4 percent of the devices must be selected by lot, and then three races on those machines must be randomly selected and the results recorded by the devices must be compared with the paper records created by that device.

Anyone who removes a paper record produced by an electronic voting system from a polling place without authorization is guilty of a class C felony.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Testimony For:** This bill brings us into compliance with federal law by eliminating punch card voting. Concerns about the new voting technology have been addressed with the paper record requirements and certification requirements of software. The bill also includes security measures to protect against hacking and changing the results.

**Testimony Against:** The ten minute time limit is unreasonable. There are no citizens on the newly created voting advisory board. The SOS is not qualified to review code and has no way to make sure that patches and modifications don't jeopardize the integrity of the system.

**Testified:** PRO: Sam Reed, Secretary of State; Dave Elliot, State Elections Director; CON: John Gideon II, Verifiedvoting.org; Linda Franz, Whatcom Fair Voting; Andy Stephenson.

Signed In/Did Not Testify: PRO: Pat McCarthy, Pierce County Auditor; Kim Wyman, Thurston County Auditor.