
**State Government Operations &
Accountability Committee**

ESSB 5395

Brief Description: Requiring voting devices to produce paper records.

Sponsors: Senate Committee on Government Operations & Elections (originally sponsored by Senators Kastama, Haugen, Roach, Rockefeller, Schmidt, Kohl-Welles, Spanel, Pridemore, Kline, McAuliffe and Franklin).

Brief Summary of Engrossed Substitute Bill

- Requires that electronic voting devices produce a machine-countable paper record and requires county auditors to conduct an audit of electronic voting devices the day after an election.

Hearing Date: 3/11/05

Staff: Marsha Reilly (786-7135).

Background:

Voting systems, voting devices, and vote tallying equipment must be certified and approved by the Secretary of State (Secretary) before they can be used or sold in Washington state. In order to be certified in Washington state, the equipment must meet standards set by the Federal Elections Commission, comply with Washington state law, and be certified and in use in at least one other state.

The certification process requires a vendor to apply for certification, provide extensive information about the system, including independent testing reports and certification documents from other states, and make a deposit to cover costs associated with testing. After the system is satisfactorily tested, the Secretary schedules a public hearing to demonstrate the system. Certification is issued when the Secretary determines that all requirements are met.

Any modification, change, or improvement to a voting system that impairs its accuracy, efficiency, or capacity or extends its function may require examination or certification before it may be used or sold in Washington.

In addition to these certification requirements, the Secretary has proposed additional rules for certification of poll site-based electronic voting systems. By January 1, 2006, these systems must produce a machine-countable paper record for each vote that may be reviewed by any voter before

finalizing his or her vote as a part of the voting process. The rules also require both pre- and post-election logic and accuracy testing.

The Secretary has adopted rules regarding the use, storage, and preservation of paper records as follows:

- the electronic record produced by the voting device is the official record for election purposes, and the paper record is used only in mandatory manual recounts, requested recounts, by order of the canvassing board, or by court order;
- paper records are subject to the same handling, preservation, transit, and storage requirements as other ballots;
- voters may not leave the electronic voting device during the voting process except to verify his or her ballot or to request assistance.

Summary of Bill:

Beginning January 1, 2006, all electronic voting devices must produce an individual paper record that a voter may view before finalizing his or her vote and that must be machine-readable for counting purposes. The paper record may not be removed from the polling place and is subject to the requirements regarding ballot handling, preservation, reconciliation, transit to the counting center, and storage. The electronic record produced and counted by the electronic voting device is the official record for election purposes. Paper records must be preserved in the same manner as ballots and are used only in the following circumstances:

- a mandatory manual recount;
- a requested recount;
- by order of the county canvassing board;
- by order of a court of competent jurisdiction; or
- for use in the random audit of results.

The day after election day, the county auditor is required to audit the results of votes cast on the poll site-based electronic voting devices. The audit must consist of a random selection of up to 4 percent of the poll site-based electronic voting devices or one electronic voting device, whichever is greater, that compares the electronic votes with the paper records. An audit also must be conducted of each device for three randomly selected races or issues. On one-fourth of the machines selected for an audit, the paper records must be tabulated manually, and on the other machines the paper records may be tabulated by a mechanical device determined by the Secretary to be capable of accurately reading the votes. The audit process is open to observation by political party representatives.

Anyone who removes a paper record from the voting device or polling place without authorization is guilty of a class C felony.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.