

# SENATE BILL REPORT

## ESSB 5395

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As Passed Senate, March 4, 2005

**Title:** An act relating to requiring electronic voting devices to produce paper records.

**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 History:**

**Committee Activity:** Government Operations & Elections: 1/27/05, 2/17/05 [DPS].

Passed Senate: 3/4/05, 48-0.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Majority Report:** That Substitute Senate Bill No. 5395 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kastama, Chair; Berkey, Vice Chair; Roach, Ranking Minority Member; Fairley, Haugen, Kline, McCaslin, Mulliken and Pridemore.

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

**Background:** The Secretary of State must certify voting devices and their component software prior to use in any election in the state. Two counties in the state currently use poll site based electronic voting systems. The machines used in those counties are not currently required to produce a paper record. The Secretary of State has adopted rules preventing certification of poll site based electronic voting systems unless, beginning January 1, 2006, they produce a paper record that may be reviewed by each voter prior to finalizing his or her vote. The Secretary has also adopted rules regarding the use, storage, and preservation of paper records as follows:

- 1) 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;
- 2) paper records are subject to the same handling, preservation, transit, and storage requirements as other ballots;
- 3) 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 is human readable without an interface. 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, by court order, or for random audit purposes. 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.

Before the close of business on the day after election day, the county auditor must audit results of votes cast on the electronic voting devices by comparing the results recorded by the device with the results recorded on the paper records. Up to four percent of the electronic voting devices or one device, whichever is greater, must be randomly selected and three random races or issues must be audited on each machine. 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 of State to be capable of accurately reading the votes. The audit process is open to observation.

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.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** A paper trail gives the voter confidence in the system, as they can see whether or not the machine correctly marked their votes. The Secretary of State supports the concept of a paper trail, but feels the rule making process is the appropriate place to require one, as it gives the Secretary flexibility to pursue new technology as it evolves.

**Testimony Against:** Its not a good idea to allow electronic voting, as all software has bugs, intentional or otherwise, and it takes time to sort them all out. There is no guarantee that DREs correctly register all votes or that the ballots on the machines are complete. The audit provision in the bill is not strong enough, and it should be a hand count used in the audit process. Secrecy is compromised using electronic voting machines. There is a large cost associated with modifying current electronic machines so they can print a paper record. Performing an audit the day after an election is problematic, as is determining whether the results of an audit are statistically significant.

**Who Testified:** PRO: Bob Terwilliger, Snohomish County Auditor; Shane Hamlin, Paul Miller, Katie Blinn, Office of the Secretary of State; Ellen Theisen, Votersunite.org; James Zukowski.

CON: John Gideon, Votersunite.org.

**House Amendment(s):** The House amendment provides that audits must be done on direct recording electronic voting devices rather than poll-site based electronic voting devices. The audits must occur prior to certification rather than before the close of business on the day after the election. When the paper record is used in manual recounts, by canvassing board or court order, or the random audit, it is the official record of the election. References to poll-site based electronic voting devices are changed to electronic voting devices. The House amendment provides that a

voter voting on an electronic voting device may leave the device during the voting process only to request assistance from the precinct election officers, whereas the underlying bill allowed a voter to leave the device to request assistance and to verify his or her ballot.

Passed House: 95-1.