

# SENATE BILL REPORT

## SB 6202

---

As of January 31, 2018

**Title:** An act relating to ensuring the integrity of elections through strengthening election security practices around auditing and equipment.

**Brief Description:** Concerning election security practices around auditing and equipment.

**Sponsors:** Senators Liias, Miloscia, Hunt and Keiser.

**Brief History:**

**Committee Activity:** State Government, Tribal Relations & Elections: 1/31/18.

**Brief Summary of Bill**

- Requires the county auditor to audit the election results using at least one of four methods prior to election certification.
- Requires voting system manufacturers and distributors to disclose certain security system breaches.
- Provides for decertification of voting systems that no longer conform to generally accepted safety requirements or upon manufacturer or distributor failure to disclose certain security system breaches.

---

### SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS

**Staff:** Samuel Brown (786-7470)

**Background:** Election Audits. Prior to certifying an election, the county auditor must audit the results of votes cast on the direct recording electronic voting devices (DREs), which directly record a voter's choice. The county auditor must randomly select up to 4 percent of the DRE devices or one DRE, whichever is greater, and compare the results recorded electronically on each DRE selected, with the results shown on the paper record produced by the same machine.

At the discretion of the county auditor, or upon mutual agreement of political party observers, a random check of ballot counting equipment may be conducted. Under the

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

random check process, a manual count of ballots, involving either up to three precincts or six batches, is compared to the machine count.

Ballot Containers. After a ballot is tabulated, all ballots must be sealed in containers that identify the specific primary or election. The containers may only be opened by the canvassing board as part of the canvass, to conduct recounts, to conduct a random check of the original ballot counting equipment, or by order of the superior court in a contested election or election dispute.

Voting Systems. A voting system is the mechanical, electromechanical, or electronic equipment required to program, control, and support equipment used to define ballots, cast and count votes, report or display election results, and maintain and produce any audit trail information. The Secretary of State (Secretary) may decertify a voting system or component and withdraw authority for its future use or sale in the state if:

- the system or component fails to meet the standards set in federal guidelines or state statute or rules;
- the system or component was materially misrepresented in the certification or application process; or
- the manufacturer or distributor installed unauthorized modifications to the certified software or hardware.

**Summary of Bill:** Election Audit. Prior to election certification, the county auditor must conduct an audit using at least one of the following methods:

- DRE or in-person ballot marking system audit;
- random check;
- risk-limiting audit; or
- independent electronic audit.

For each audit method, the Secretary must adopt procedures for expanding the audit when the initial audit results in a discrepancy. At the discretion of the county auditor or upon request of a candidate, officer of a political party, or any group of five or more registered voters, additional ballots may be audited. The Secretary determines the number of additional ballots that may be audited. A person who requests a supplemental audit is subject to the same cost structure as for recounts.

The Secretary must establish rules to implement and administer the auditing methods. Sealed ballot containers may be opened to conduct an audit of the DRE or other in-person ballot marking system, a risk-limiting audit, and an independent electronic audit of the original ballot counting equipment.

DRE or In-Person Ballot Marking System Audit. If the county auditor chooses to audit DRE results, all other in-person ballot marking systems are subject to the same audit requirements. This audit method may be used if there are races or issues with more than ten votes cast on all DREs or in-person ballot marking systems in the county, or the number of votes cast on the DREs or in-person ballot marking systems is statistically significant.

Random Check. The county auditor may also conduct a random check, comparing the electronic count to the machine count from the original ballot counting equipment. The

procedures adopted by the county canvassing board for random checks must comply with the rules adopted by the Secretary for the implementation and administration of audits and include a process for expanding the audit where a discrepancy is found.

Risk-Limiting Audit. A risk-limiting audit is an audit protocol that makes use of statistical principles and methods, designed to limit the risk of certifying an incorrect election outcome. There are two types of risk-limiting audits:

- The comparison risk-limiting audit, where the county auditor compares the voter markings on the ballot to the ballot-level cast vote record produced by the ballot counting equipment; and
- The ballot polling risk-limiting audit, which is used in counties where the ballot counting equipment does not produce a ballot-level cast vote record—in a ballot polling risk-limiting audit, the county auditor reports the markings on randomly selected ballots until the pre-specified risk limit is met.

The Secretary must establish procedures for implementation of risk-limiting audits, including setting the risk limit and selecting races for each county to audit.

Independent Electronic Audit. The county auditor may use an independent electronic audit system that is:

- approved by the Secretary;
- completely independent from all voting systems;
- distributed or manufactured by a vendor different from the distributor or manufacturer of the original ballot counting equipment; and
- capable of demonstrating that it can verify and confirm the accuracy of the original ballot counting equipment.

The county auditor may choose to independently audit all ballots cast or limit the audit to three precincts or six batches,

Voting Systems. Mechanical, electromechanical, or electronic audit equipment is added to the definition of voting system. A manufacturer or distributor of a certified voting system or component must immediately disclose to the Secretary and Attorney General any security system breach if:

- the breach has, or is reasonably likely to have, compromised the security, confidentiality, or integrity of an election in any state; or
- unsecured personal information of residents in any state was, or is reasonably believed to have been, acquired by an unauthorized person as a result of the breach.

Voting System Decertification. The Secretary must decertify a voting system or component if the manufacturer or distributor of the system or component fails to comply with breach notification requirements, and may decertify a voting system or component if the Secretary determines that it no longer conforms with statutory requirements, adopted rules, or generally accepted safety requirements.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony:** PRO: One way to restore confidence in our systems is to conduct small audits to show that the election results are correct. This is a common sense and low cost step to detect both honest mistakes and nefarious players at work. Risk-limiting audits should be used in all counties and for all state and national elections. This would make Washington a leader in election security.

OTHER: All voting systems are certified both nationally and at the state level before use. Recounts are a form of audits that we use now.

**Persons Testifying:** PRO: Senator Marko Liias, Prime Sponsor; Kirstin Mueller, League of Women Voters.

OTHER: David Elliot, Office of the Secretary of State.

**Persons Signed In To Testify But Not Testifying:** No one.