

HOUSE BILL REPORT

ESSB 5395

As Reported by House Committee On:
State Government Operations & Accountability
Appropriations

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:

State Government Operations & Accountability: 3/11/05, 4/1/05 [DPA];
Appropriations: 4/2/05 [DPA(SGOA)].

Brief Summary of Engrossed Substitute Bill
(As Amended by House Committee)

- Requires that electronic voting devices produce a machine readable and countable paper record.
- Requires county auditors to conduct an audit of direct recording electronic voting devices prior to election certification.

HOUSE COMMITTEE ON STATE GOVERNMENT OPERATIONS & ACCOUNTABILITY

Majority Report: Do pass as amended. Signed by 9 members: Representatives Haigh, Chair; Green, Vice Chair; Nixon, Ranking Minority Member; Clements, Assistant Ranking Minority Member; Hunt, McDermott, Miloscia, Schindler and Sump.

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. In order to be certified in Washington, the equipment must meet standards set by the Federal Elections

Commission, comply with Washington 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 also 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 Amended Bill:

Beginning January 1, 2006, all electronic voting devices must produce a 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 must be handled the same as that required for ballot handling, preservation, reconciliation, transit to the counting center, and storage. The electronic record produced and counted by the electronic voting devices is the official record for election purposes. However, the paper record becomes the official record 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.

Prior to election certification, the county auditor is required to audit the results of votes cast on the direct recording electronic (DRE) voting devices. The audit must consist of a random selection of up to 4 percent of the DRE voting devices or one DRE voting device, whichever is greater, that compares the electronic votes with the paper records. 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. An audit also must be conducted of each device for three randomly selected races or issues. 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.

Amended Bill Compared to Engrossed Substitute Bill:

The amendment makes technical corrections to place provisions of the act into the proper chapters within Title 29A and to remove a duplicative section. The requirement that the paper records be "individual" paper records is removed. It is clarified that a paper record must be printed in the language used by that voter, not the language used by any voter. It also clarifies that the paper records must be maintained for any type of manual recount, whether mandatory or requested, and that the paper record becomes the official record under certain conditions. The terms "poll-site" and "poll-site based" are removed. It removes the provision allowing a voter to leave the electronic voting device to verify his or her ballot. The voter may only leave to request assistance. The time for the post-election audit is changed from the day after the election to sometime prior to certification. Clarifies that the 4 percent audit is for DRE voting devices, not all voting devices.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (In support of original bill) People are demanding that the Legislature pass a paper trail bill after the last election. Retrofitting the direct recording electronic voting devices (DREs) will cost about \$500 per machine, and the audit will also cost money. We the people must have oversight of our voting systems. It is the only way, through our representatives, that we can control how we vote. It is not the purview of one individual, agency, or board to dictate how we vote. The people support voter verified paper records and ballots and this bill will finally put that requirement in law. For voter trust in elections, for accountable elections, we must require this verification of our vote, a true and accurate representation of our intent that insures transparency of elections and maintains the people's sovereignty over those elections. Voting must be transparent to all, a process that any citizen can participate in, including the counting of ballots. It's the only way to create voter trust in

elections. It's our system, our money, our vote. We want that voter verified paper record or ballot. Emerging technologies will always be coming. Transparency in the process is what is important and to have that we must have technology that will produce a paper record. There may be additional printing costs for counties that have DREs just coming to the market. An audit of all systems should be included.

Testimony Against: (Opposed to original bill) The reality is that the cost is closer to \$1,000 per machine and the associated software needed will bring that figure up even more. Snohomish County has 1,000 machines and Yakima County has 200 machines that will need to be retrofitted. The biggest concern is when the audit is completed. If the audit is completed by election certification it gives auditors time to recanvass to rectify any problems found. The Secretary of State did pass a rule to require a paper record for all electronic voting equipment. This requirement should remain in the Washington Administrative Code to retain flexibility as new technologies emerge. As more counties move to entirely vote by mail, the DREs will primarily be used by voters who are visually impaired and those voters cannot confirm what is on the paper record. We recommend changes to remove the word "individual" since it implies that the paper would need to be cut, and also that the record must be printed in the language of "the" voter instead of "a" voter. The audit should be limited to DREs. As it reads now, the audit requirement would apply to optical scan.

Persons Testifying: (In support of original bill) Senator Kastama, prime sponsor; James Zukowski; and Linda Franz.

(Opposed to original bill) Katie Blinn, Office of the Secretary of State; and Bob Terwilliger and Evelyn Arnold, Washington State Association of County Auditors.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on State Government Operations & Accountability. Signed by 28 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Bailey, Buri, Clements, Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hinkle, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Miloscia, Pearson, Priest, Schual-Berke, Talcott and Walsh.

Staff: Nona Snell (786-7153).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On State Government Operations & Accountability:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: None.

Testimony Against: Requiring a paper trail on touch screen voting machines would not impose new costs for counties that currently have touch screen voting equipment. The Secretary of State has adopted the requirement through rules and believes the requirement should be by rule, not by statute.

Paper trail technology is new and verification is still being improved. Vendors increased the cost of the paper trail equipment when the paper trail rule was adopted. Snohomish County has 1,000 touch screen voting machines, and each machine is required to have a paper trail, effective January 1, 2006. Counties will bear the cost but can apply for grants through the Help American Vote Act.

The Secretary of State supports vote-by-mail. It may limit the number of touch screen voting machines that counties purchase to those used for sight impaired people.

Persons Testifying: Katie Blinn, Office of the Secretary of State.

Persons Signed In To Testify But Not Testifying: None.