

# HOUSE BILL REPORT

## ESHB 1158

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**As Passed House:**

March 13, 2003

**Title:** An act relating to voting systems certification.

**Brief Description:** Enhancing voting systems certification.

**Sponsors:** By House Committee on State Government (originally sponsored by Representatives Miloscia, Shabro, Hunt, Haigh, McDermott, Tom and Kenney; by request of Secretary of State).

**Brief History:**

**Committee Activity:**

State Government: 1/28/03, 2/27/03 [DPS].

**Floor Activity:**

Passed House: 3/13/03, 96-0.

**Brief Summary of Engrossed Substitute Bill**

- Changes the process for certifying voting and vote tallying equipment.
- Prohibits punch card voting after January 1, 2006, if federal funding for new equipment is provided by January 1, 2005.
- Makes tampering with or impeding use of or access to an electronic voting, electronic vote recording, vote reporting, and elections results reporting system a gross misdemeanor.

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**HOUSE COMMITTEE ON STATE GOVERNMENT**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Haigh, Chair; Miloscia, Vice Chair; Armstrong, Ranking Minority Member; Shabro, Assistant Ranking Minority Member; Hunt, McDermott, Nixon, Tom and Wallace.

**Staff:** Katie Blinn (786-7114).

**Background:**

Voting equipment and vote tallying equipment must be approved by the Secretary of State (Secretary) in order to be used by county auditors to conduct elections. The Secretary 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:

- Maintain secrecy;
- Permit the voter to vote for any person, office, and measure for which he or she has the right to vote;
- Correctly register votes cast;
- Prevent a vote for more than one candidate by a single operation of the device, except for president and vice-president of the United States; and
- Be tested, certified, and used in at least one other state or election jurisdiction, except for functions that are unique to Washington.

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 the Secretary's 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. At the polling place, voting machines containing ballots for one congressional, legislative or county council district must be grouped together and physically separated from machines containing ballots for other districts.

Vote tallying equipment must:

- Correctly count the votes on properly marked ballots;
- Ignore improperly marked portions of a ballot, but correctly count the properly marked portions of the ballot;
- Count the number of ballots tallied for each precinct, the number of votes for each candidate, and the number of votes for and against each issue;
- Accommodate name rotation;
- Produce precinct and cumulative totals in printed form; and
- Be tested, certified, and used in at least one other state or election jurisdiction, except for functions that are unique to Washington.

Before an election, the format of each ballot in each machine and the precinct for which the machine has been prepared must be recorded. At least three days prior to each primary and general election, the Secretary must test each vote tallying system. If an error is detected, the cause of the error must be determined and corrected before the election. The county auditor and party observers must certify that the test was conducted in accordance with law. Voting machines must correctly record the votes on a ballot, and the ballot must be available for audit purposes after the election.

Knowingly deceiving any voter in the recording of his or her vote by providing incorrect or misleading information, or by providing faulty election equipment or records constitutes a gross misdemeanor. Knowingly recording a vote in a manner other than as designated by the voter constitutes a gross misdemeanor.

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**Summary of Engrossed Substitute Bill:**

The Secretary must determine, as part of the equipment certification process, whether a voting system accommodates ranked voting. The Secretary is no longer required to publicly test voting systems, but must hold a public demonstration. Once the Secretary completes a certification report, it must be posted "to a publicly available electronic medium." All changes to voting systems must be submitted to the Secretary for review, but based on that review, only those that impair the system's accuracy, efficiency or capacity, or extend its function, must be submitted for another examination or approval.

County auditors must provide proof that voting systems and their component software, in the version used, are state certified. The test following a purchase or lease of a voting system to determine if the system is the same as that certified by the Secretary must be conducted by the purchaser or lessee. Approval of a voting device or vote tallying system no longer requires that the device or system be tested, certified and used in at least one other state, but instead requires that it be tested and approved by an appropriate independent testing authority approved by the Federal Elections Commission. During the test conducted at least three days prior to the election, the county auditor must again provide proof that the voting system and software in use are state certified.

Polling places are no longer required to physically separate voting machines with ballots for one district from voting machines with ballots for another district. Rather, the ballot displayed to the voter must contain names for candidates for only one district. Punch card voting machines may not be used after January 1, 2006, if federal funding for new equipment is provided by January 1, 2005.

A person is guilty of a gross misdemeanor if he or she knowingly tampers with or impedes the use of an electronic voting or vote recording system, or tampers with or impedes access to a vote tabulation system or an election results reporting system.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed, except for the elimination of punch-card voting equipment which is contingent on federal funding by January 1, 2005.

**Testimony For:** Congress is currently debating legislation that will provide partial funding, rather than full funding, for the replacement of election equipment. Instant runoff voting and proportional voting should be accommodated in all new voting equipment. Counties should be provided funding for the phase out of punch-card voting machines. Electronic voting equipment will actually facilitate an audit trail. The bill does not preclude counties from buying machines that accommodate instant runoff voting and proportional voting. It does not make sense to bind those counties not interested in instant runoff voting to a requirement that all machines must accommodate it. Vendors will charge a surcharge for providing hardware and software that accommodates ranked voting. There is currently only one vendor of software that is compatible with instant runoff voting.

(With concerns) Voting equipment should provide an audit trail. A paper trail is not absolutely necessary but some type of audit trail is necessary.

**Testimony Against:** None.

**Testified:** (In support) Dean Logan, Office of the Secretary of State; Donna Eldridge, Jefferson County Auditor; and Jody Grage Haug and Jim Dees, Green Party.

(With concerns) Representative Moeller; Cherie Davidson, League of Women Voters; Elden Rodgers; Brent White, Coalition for Instant Runoff Voting; Ivy Sager-Rosenthal, Washington Public Interest Research Group; and Alan Mountjoy-Venning.