State Government Operations & Accountability Committee

HB 2532

Brief Description: Providing for election audits.

Sponsors: Representative Nixon.

Brief Summary of Bill

- Requires the county auditor to conduct an audit of the votes counted by all optical scan counting device, used in that county prior to certification of any election or machine recount.

Hearing Date: 1/25/06

Staff: Kathryn Leathers (786-7114).

Background:

Washington Voting System Certification Requirements

The Secretary of State (Secretary) is responsible for the inspection, evaluation, and testing of voting systems in the state. Voting systems, voting devices, and vote tallying systems must be certified and approved by the Secretary before they can be used or sold in the state. Both optical scan and direct recording electronic (DRE) voting systems are used in Washington.

To be certified in Washington, a voting device must:

- secure to the voter secrecy in the act of voting;
- permit the voter to vote for any person for any office and upon any measure that he or she has the right to vote for;
- permit the voter to vote for all the candidates of one party or in part for the candidates of one or more other parties;
- correctly register all votes cast for any and all persons and for or against any and all measures;
- provide that a vote for more than one candidate cannot be cast by one single operation of the voting device or vote tally system except when voting for president and vice president of the United States; and
- except for functions or capabilities unique to this state, has been tested, certified, and used in at least one other state or election jurisdiction.

A vote tallying system must:

- correctly count votes on ballots on which the proper number of votes have been marked for any office or issue;
- ignore votes marked for any office or issue where more than the allowable number of votes have been marked, but correctly counts the properly voted portions of the ballot;
- accumulate a count of the specific number of ballots tallied for each precinct, total votes by candidate for each office, and total votes for and against each issue of the ballot in that precinct;
- produce precinct and cumulative totals in printed form; and
- except for functions or capabilities unique to this state, been tested, certified, and used in at least one other state or election jurisdiction.

Any system certified for use in Washington also must meet the Federal Elections Commission Standards. The Secretary may, at the expense of the vendor, contract with independent testing authorities or laboratories or appropriate experts for examination of the voting system or a component of the system if the documentation provided by the vendor is not satisfactory.

Once a system has been certified for use by the Secretary, a county must perform acceptance tests of the equipment prior to it being used for an election. Acceptance testing must include processing a substantial number of test ballots of various types, including split precincts, rotated races, multiple candidates, precinct committee officer local races, cumulative reports, precinct reports, canvass reports, and any other tests as determined by the county elections authority.

National Voting System Standards

The Help America Vote Act (HAVA) required the U.S. Election Assistance Commission (EAC) to issue Voluntary Voting System Guidelines that would update and augment the 2002 Voting System Standards (Standards) to reflect advances in voting technology, to incorporate requirements of the HAVA, and to address the proliferation of electronic voting systems. The HAVA also required the EAC to develop a national program for accrediting voting system testing laboratories and to oversee the certification of voting systems. This has been done in the past by the National Association of State Election Directors.

The Standards for vote accuracy require that all systems must:
- record the election contests, candidates, and issues exactly as defined by election officials;
- record the appropriate options for casting and recording votes;
- record each vote precisely as cast and be able to produce an accurate report of all votes cast;
- include control logic and data processing methods incorporating parity and check-sums (or equivalent error detection and correction methods) to demonstrate that the system has been designed for accuracy; and
- provide software that monitors the overall quality of data read-write and transfer quality status, checking the number and types of errors that occur in any of the relevant operations on data and how they were corrected.

In addition, DRE systems must be able to record and retain redundant copies of the original ballot image.

Voting equipment vendors must submit hardware, firmware, and software to an Independent Test Authority (ITA) for evaluation against the Standards.

Data accuracy is defined in terms of ballot position error rate. Each location on a paper ballot card or electronic ballot image where a vote may be entered represents a ballot position.
This rate applies to the voting functions and supporting equipment that capture, record, store, consolidate and report the specific selections, and absence of selections, made by the voter for each ballot position.

In 1994, the national testing program was initiated. Overseen by the National Association of State Election Directors' (NASED) Voting System Board, the program requires vendors to submit hardware, firmware, and software to an Independent Test authority (ITA) for evaluation against the Standards as follows:

• For each processing function, the system must achieve a target error rate of no more than one in 10,000,000 ballot positions, with a maximum acceptable error rate in the test process of one in 500,000 ballot positions. This error rate includes errors from any source while testing a specific processing function and its related equipment.
• If the system makes one error before counting 26,997 consecutive ballot positions correctly, it will be rejected. The vendor is then required to improve the system.
• If the system reads at least 1,549,703 consecutive ballot positions correctly, it will be accepted.
• If the system correctly reads more than 26,997 ballot positions but less than 1,549,703 when the first error occurs, the testing will have to be continued until another 1,576,701 consecutive ballot positions are counted without error (a total of 3,126,404 with one error).

Washington Pre-Election Audits
At least three days prior to any primary, general, or special election, the Secretary is required to perform a logic and accuracy test on each vote tallying system to verify that the system will correctly count the vote. The test is conducted by processing a group of ballots marked with a predetermined number of votes for each candidate or for or against each measure. Any discrepancies in the vote count must be resolved before the equipment is certified for use in an election.

Summary of Bill:

In counties that use optical scan counting devices, the county auditor must conduct an audit of the votes counted by the optical scan counting devices used in the county before certification of any election or machine recount.
The audits must be conducted using the following process:
• the county auditor first determines how many voters make up two percent of the registered voters in that county;
• the county canvassing board then selects, by lot, precincts to be audited until the total number of voters in the selected precincts exceeds two percent of the registered voters in the county;
• on the day of the election, the list of precincts selected for audit is released;
• after the list is released, the county auditor selects, by lot, three races or issues, or a combination thereof, in each selected precinct for a manual recount.
• the county canvassing board determines the date, time, and location of where the manual audit will take place, and the public is given notice thereof at least seventy-two hours in advance;

- at the designated place, the canvassing board opens the sealed containers containing the ballots, and conducts a manual count of the votes for the offices or issues selected for the audit.

If there is a difference between the machine count and the manual count, the results of the manual count will be the official count for the election for the affected races or issues. The auditor must document and explain the reason for any difference between the machine and the manual recount. If the difference cannot be explained by any reason other than a machine counting error, any party, candidate, or person representing either side of a ballot measure may request a complete recount of votes for that particular office or issue.

Results of the audit must be posted on the auditor's website.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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