

# FINAL BILL REPORT

## ESHB 2406

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Synopsis as Enacted

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

**Sponsors:** House Committee on State Govt, Elections & IT (originally sponsored by Representatives Hudgins, Stanford and Ormsby).

**House Committee on State Government, Elections & Information Technology**  
**Senate Committee on State Government, Tribal Relations & Elections**  
**Senate Committee on Ways & Means**

### **Background:**

#### Election Audits.

Prior to certification of an election, the county auditor must audit the results of votes cast on the direct recording electronic voting devices (DREs). A DRE is a machine that directly records a voter's choice. All DREs must produce a paper record of each vote that may be accepted or rejected by the voter before finalizing their vote. To audit the DRE, 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.

In addition to an audit of votes cast on the DRE, a random check of the original ballot counting equipment is authorized at the discretion of the county auditor, or upon mutual agreement of the political party observers. Under the random check process, a manual count of ballots is compared to the machine count. The size of the random check may involve up to either three precincts or six batches, depending on the procedures adopted by the county canvassing board.

#### Duplication of Ballots.

The county auditor may refer a physically damaged, unreadable, or uncountable ballot to the county canvassing board or duplicate the ballot if authorized by the county canvassing board. The original and duplicated ballots must be sealed in secured storage, except during duplication, inspection by the canvassing board, or tabulation.

#### Ballot Containers.

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*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.*

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, or by order of the superior court in a contest or election dispute.

#### Reconciliation Report.

The county auditor must prepare, at the time of certification, an election reconciliation report that discloses certain information to reconcile the number of ballots counted with the number of voters credited with voting.

#### Voting Systems.

A voting system is the total combination of mechanical, electromechanical, or electronic equipment including the software, firmware, and documentation required to program, control, and support the equipment that is 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) must inspect and certify all voting systems, or components of a system, prior to its use in the state. Under administrative rule, the Secretary may decertify a voting system or component thereof and withdraw authority for its future use or sale in the state if: (1) the system or component fails to meet the standards set in federal guidelines or state statute or rules; (2) the system or component was materially misrepresented in the certification or application process; or (3) the manufacturer or distributor installed unauthorized modifications to the certified software or hardware.

#### **Summary:**

#### Election Audits.

Prior to certification of the election, the county auditor must conduct an audit of duplicated ballots as well as an audit using at least one of the following audit methods:

1. Audit of the DRE or Other In-Person Ballot Marking System.  
An audit of the DREs is not required unless the county auditor chooses this audit method. If so, all other in-person ballot marking systems (systems) are subject to the same audit requirements as the DREs. An "in-person ballot marking system" is a system that retains or produces an electronic voting record of each vote cast using the system. An audit using this method may be conducted if there are races or issues with greater than 10 votes cast on all DREs or other systems in the county.
2. Random Check of the Ballot Counting Equipment.  
The procedures around random checks are modified to also authorize a random check by comparing an electronic count to the machine count from the original ballot counting equipment. A random check is required upon the mutual agreement of political party observers or at the discretion of the county auditor.
3. Risk-Limiting Audit.  
A risk-limiting audit is an audit protocol that makes use of statistical principles and methods and is designed to limit the risk of certifying an incorrect election outcome. There are two types of risk-limiting audits. The first type is a "comparison risk-

limiting audit," in which the county auditor compares the voter markings on the ballot to the ballot-level cast vote record produced by the ballot counting equipment. The second type is a "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:

- set the risk limit, which is the largest statistical probability that an incorrect reported tabulation outcome is not detected in a risk-limiting audit;
- select at least one statewide contest, and at least one other ballot contest for each county, for audit. If there is no statewide contest, then the county auditor must select a ballot contest for audit; and
- establish procedures for implementation of risk-limiting audits.

4. Independent Electronic Audit of the Original Ballot Counting Equipment.

In an independent electronic audit of the original ballot counting equipment used in the county, the county auditor may choose to audit all ballots cast, or limit the audit to three precincts or six batches. The method of auditing must comply with procedures adopted by the county canvassing board.

The audit tool used must be an independent electronic audit system that is at least: (1) approved by the Secretary; (2) completely independent from all voting systems; (3) distributed or manufactured by a vendor different from the distributor or manufacturer of the original ballot counting equipment; and (4) capable of demonstrating that it can verify and confirm the accuracy of the original ballot counting equipment.

The audit of duplicated ballots must involve a comparison of the duplicated ballot to the original ballot. The county canvassing board must establish procedures for the auditing of duplicated ballots.

The Secretary must establish rules by January 1, 2019, to implement and administer the auditing methods. For each audit method, the Secretary must adopt procedures for expanding the audit to include additional ballots when the initial audit results in a discrepancy. The Secretary must adopt procedures to investigate the cause of any discrepancy found during an audit.

Secretary of State Survey and Report – Random Checks.

By November 1, 2018, the Secretary must survey all random check procedures adopted by the county canvassing board to identify best practices and discrepancies. By December 15, 2018, the Secretary must report to the Legislature on recommendations for adopting best practices and uniform procedures.

Ballot Containers.

The sealed ballot containers may also be opened to conduct an audit of the DRE or other in-person ballot marking system, a risk-limiting audit, or an independent electronic audit of the

original ballot counting equipment. The sealed storage containing duplicated ballots and the originals may be opened to conduct an audit of the duplicated ballots.

Reconciliation Report.

The reconciliation report must also include the number of replacement ballots requested, issued, received, counted, and rejected, as well as other information the Secretary deems necessary to maintain an audit trail.

Voting Systems.

A voting system also includes mechanical, electromechanical, or electronic equipment that is used to perform an audit. A manufacturer or distributor of a certified voting system or component thereof must disclose to the Secretary and Attorney General any breach of the security of its system immediately, and without unreasonable delay, following discovery of the breach if:

- the breach has, or is reasonably likely to have, compromised the security, confidentiality, or integrity of an election in any state; or
- 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 and the personal information was not secured. "Personal information" includes a person's first name or their first initial, and last name, in combination with at least one of the following data elements: (1) Social Security number; (2) driver's license number or state identification card; or (3) the number of an account, credit or debit card, in combination with a code that would permit access to the person's financial account.

The Secretary may decertify a voting system or component thereof and withdraw authority for its future use or sale if the Secretary determines that:

- the system or component fails to meet the standards set forth in applicable federal guidelines;
- the system or component was materially misrepresented in the certification application;
- the applicant has installed unauthorized modifications to the certified software or hardware;
- the manufacturer or distributor of the system or component fails to comply with notification requirements in cases where notification of a breach is required; or
- any other reason authorized by rule adopted by the Secretary.

**Votes on Final Passage:**

House	97	1	
Senate	49	0	(Senate amended)
House			(House refused to concur)
Senate	48	0	(Senate receded/amended)
House	98	0	(House concurred)

**Effective:** June 7, 2018