



## 2023 South Dakota Legislature

# Senate Bill 160

Introduced by: **Senator Wheeler**

1 **An Act to establish post-election audits.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That chapter 12-17B be amended with a NEW SECTION:**

4 Within fifteen days following the completion of the state canvassing of a primary  
 5 or general election, the auditor of each county shall conduct a post-election audit of the  
 6 ballots cast in the election following the procedures listed in this Act. The county auditor  
 7 shall appoint a county auditing board of sufficient size to promptly complete the audit.  
 8 The members of the county auditing board may not all be members of the same political  
 9 party.

10 **Section 2. That chapter 12-17B be amended with a NEW SECTION:**

11 The office of the secretary of state shall reimburse each county for the cost of any  
 12 post-election audit required by this Act.

13 **Section 3. That chapter 12-17B be amended with a NEW SECTION:**

14 The post-election audit must be conducted in five percent of the precincts in the  
 15 county by hand counting all votes cast in two statewide contests and comparing the results  
 16 of the hand count to the results for those precincts at the county canvass. The precincts  
 17 selected for the audit must be selected at random by the county auditor without the use  
 18 of a computer. If the combined total of all ballots cast in the precincts selected does not  
 19 exceed one hundred ballots, then additional precincts must be randomly selected until the  
 20 total of all ballots exceeds one hundred ballots.

21 The two statewide contests selected for audit must be the two contests that had  
 22 the closest statewide margin based upon the number of votes cast. If there is only one  
 23 statewide contest on the ballot, the county auditor shall select the contest with the closest  
 24 margin based on the number of votes cast as the second contest to be audited. If there

1 are not statewide contests on the ballot, the auditor shall select the two contests on the  
2 ballot with the closest margin based on the number of votes cast. If there is only one  
3 contest on the ballot, that contest must be audited.

4 **Section 4. That chapter 12-17B be amended with a NEW SECTION:**

5 A post-election audit conducted pursuant to this Act must be open to the public.  
6 The county auditor shall post notice of the time and place of the audit in the same manner  
7 as a public meeting agenda pursuant to § 1-25-1.1 and provide the notice to the county  
8 chair of each political party that has a candidate on the ballot.

9 **Section 5. That chapter 12-17B be amended with a NEW SECTION:**

10 The county auditor shall send the results of the post-election audit to the secretary  
11 of state and present the results of the audit to the county commission at its next meeting.  
12 The results of the audit shall be included in the minutes of the county commission meeting.  
13 The secretary of state shall publish the results of the post-election audit on the  
14 secretary of state's website.

15 **Section 6. That chapter 12-17B be amended with a NEW SECTION:**

16 If the results of the post-election audit show a discrepancy in the results greater  
17 than the margin by which any contest for elected office on the ballot in the county was  
18 decided, the auditor shall notify the candidates for that office. Any candidate who receives  
19 a notification from the county auditor shall have an additional seven days from the date  
20 from when the auditor sends the notification to file a verified petition requesting a recount  
21 of the official returns pursuant to §§ 12-21-10 or 12-21-11. The petition may be filed  
22 regardless of the margin by which the contest was decided.

23 **Section 7. That chapter 12-17B be amended with a NEW SECTION:**

24 If a recount of any contest is conducted in a county, the county auditor is not  
25 required to conduct a post-election audit pursuant to section 1 of this Act.

26 **Section 8. That chapter 12-17B be amended with a NEW SECTION:**

27 The county auditor shall reseal and retain the ballots upon the completion of a  
28 post-election audit.

1 **Section 9. That § 12-20-52 be AMENDED:**

2 **12-20-52.** The State Board of Elections may, ~~by rule,~~ in accordance with chapter  
3 1-26, promulgate rules and regulations to clarify the procedure by which ballots are  
4 counted, audited, and canvassed in all elections.