



2023 South Dakota Legislature

House Bill 1199

Introduced by: **Representative Auch**

1 **An Act to require postelection audits.**

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

3 **Section 1. That § 9-13-24 be AMENDED:**

4 **9-13-24.** The election returns ~~shall~~ must be reported as soon as possible to the
5 finance officer, ~~and within seven days of the election.~~

6 After a postelection audit, as required by section 8 of this Act, has been completed,
7 the governing body ~~shall~~ must:

8 (1) ~~canvass~~ Canvass the election returns; ~~and~~

9 (2) ~~declare~~ Declare the result; ~~and~~

10 (3) ~~enter~~ Record the result ~~on~~ in its journal of record.

11 **Section 2. That § 12-1-9 be AMENDED:**

12 **12-1-9.** The State Board of Elections shall promulgate rules, pursuant to chapter
13 1-26, concerning:

14 (1) Forms for voter registration and voter file maintenance;

15 (2) Forms and color of ballots;

16 (3) Forms for notices;

17 (4) The uniformity of election procedures;

18 (5) The operation of the State Board of Elections;

19 (6) The procedure to accept a petition and verify petition signatures;

20 (7) Petition forms, including petition size and petition font size;

21 (8) Envelopes for absentee voting;

22 (9) Instructions to voters and absentee voters; ~~and~~

23 (10) Recounts; and

24 (11) Postelection audits.

1 **Section 3. That § 12-17B-4 be AMENDED:**

2 **12-17B-4.** The governing body of a political subdivision may contract with any
3 county for the use of an automatic tabulating or electronic ballot marking system that is
4 capable of storing aggregated ballot-level data for elections within the political subdivision.
5 The data must consist of a single record for each ballot tabulated that shows the manner
6 in which the tabulator or system interpreted and tabulated the markings on each ballot.

7 **Section 4. That § 12-17B-5 be AMENDED:**

8 **12-17B-5.** Not more than ten days prior to an election and at least two days before
9 any postelection audit, the person in charge of the election shall conduct a test of the
10 automatic tabulating equipment to ascertain that the equipment will correctly count the
11 votes cast for all offices and on all measures. Public notice of the test ~~shall~~ must be given
12 at least forty-eight hours prior to the test by publication once in the official newspaper of
13 the election jurisdiction. The test ~~shall~~ must be open to the public. If any error is detected,
14 the cause of the error ~~shall~~ must be determined and corrected and an errorless count ~~shall~~
15 must be made before the automatic tabulating equipment is approved. A violation of this
16 section is a Class 2 misdemeanor.

17 **Section 5. That § 12-17B-12 be AMENDED:**

18 **12-17B-12.** The test required by § 12-17B-5 ~~shall~~ must be repeated immediately
19 before the start of the official count of the ballots and before the start of any postelection
20 audit, if automatic tabulating equipment was used in the election.

21 **Section 6. That § 12-17B-17 be AMENDED:**

22 **12-17B-17.** The State Board of Elections may promulgate rules pursuant to
23 chapter 1-26 concerning:
24 (1) The criteria and procedure for approving voting systems pursuant to this chapter;
25 (2) Notices and forms;
26 (3) Test procedures; and
27 (4) The arrangement and conduct of voting, absentee voting, tabulating, preparing
28 returns, ~~and~~ recounts, and postelection audits required under this chapter.

29 **Section 7. That § 12-20-36 be AMENDED:**

1 **12-20-36.** Within six calendar days after the ~~close of any election~~ postelection
 2 audit, the officer in charge of the election, with the assistance of a majority of the
 3 governing board as the canvassing board, shall make the canvass of votes. Each member
 4 of the governing board may name and have on file with the officer in charge of the election
 5 a person to represent the member at the official canvass in the event of the member's
 6 absence for cause.

7 **Section 8. That a NEW SECTION be added to title 12:**

8 Within ten days after each primary, general, or special election, the person in
 9 charge of an election shall order and conduct a postelection audit of the ballots cast in an
 10 election as required by this chapter. The person in charge of an election shall determine
 11 the date, time, and place of the postelection audit. However, the postelection audit must
 12 be held at least five business days after the order for the audit is made.

13 Upon ordering the postelection audit, the person in charge of an election shall notify
 14 the secretary of state of the postelection audit date, time, and place. The secretary of
 15 state shall post the date, time, and place of each postelection audit on the secretary of
 16 state's website.

17 The person in charge of the election shall publish public notice of the postelection
 18 audit no less than forty-eight hours before the audit:

19 (1) In at least one legal newspaper in the election jurisdiction; or

20 (2) For any county or political subdivision that maintains an official public website, on
 21 the county or political subdivision's website.

22 All postelection audits must be open to the public.

23 This chapter applies to all political subdivisions and any primary, general, or special
 24 election.

25 **Section 9. That a NEW SECTION be added to title 12:**

26 The postelection audit, required by section 8 of this Act, must be conducted in at
 27 least:

28 (1) Twenty-five percent of the election precincts located in the county or local
 29 jurisdiction, as applicable, or at least two election precincts, whichever is greater,
 30 for a jurisdiction using any automatic tabulating or electronic ballot marking system
 31 for the election; or

32 (2) Ten percent of the election precincts located in the county or local jurisdiction, as
 33 applicable, or at least two election precincts, whichever is greater, for a jurisdiction

1 not using an automatic tabulating or electronic ballot marking system for the
2 election.

3 **Section 10. That a NEW SECTION be added to title 12:**

4 For a postelection audit of an election precinct where an automatic tabulating or
5 electronic ballot marking system was used, a comparison of each vote or selection marked
6 on each paper ballot must be made with the original, corresponding automatic tabulating
7 or electronic ballot marking system record and the report used for unofficial results.

8 Based on the results of the comparison, the person in charge of an election shall
9 order a manual hand count of each paper ballot for all contests and ballot issues on each
10 ballot in the selected election districts if the comparison shows:

11 (1) Discrepancies in ten percent or more on any office, measure, or question on the
12 ballot;

13 (2) A discrepancy that would change the outcome of any office, measure, or question;

14 (3) The number of paper ballots processed is different than the number recorded; or

15 (4) Five percent or more of the paper ballots have irregularities or insufficiencies.

16 A person in charge of an election that did not use any automatic tabulating or
17 electronic ballot marking system shall conduct the postelection audit by manual hand
18 count of each paper ballot for all races and ballot issues in the selected election precincts.

19 **Section 11. That a NEW SECTION be added to title 12:**

20 A postelection audit is complete when:

21 (1) The audit conducted by comparison results in no discrepancies or differences
22 between each marked ballot and each automatic tabulating or electronic ballot
23 marking system record or report used for the unofficial results; or

24 (2) The audit conducted by manual hand count arrives at the same totals twice.

25 **Section 12. That a NEW SECTION be added to title 12:**

26 Any violation of this chapter is a Class 2 misdemeanor. A second violation of this
27 chapter is a Class 1 misdemeanor.