



2023 South Dakota Legislature

House Bill 1124

HOUSE STATE AFFAIRS ENGROSSED

Introduced by: **Representative Tordsen**

1 **An Act to modify provisions pertaining to the testing of automatic tabulating**
 2 **equipment.**

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

4 **Section 1. That § 12-17B-5 be AMENDED:**

5 **12-17B-5.** Not more than ten days prior to an election, the person in charge of
 6 the election shall conduct a test of the automatic tabulating equipment to ascertain that
 7 the equipment will correctly count the votes cast for all offices and on all measures. The
 8 test must be open to the public. The person in charge of the election shall notify the county
 9 chair of each political party with a candidate on the ballot and the ballot question
 10 committees for or against an initiated or referred measure or initiated constitutional
 11 amendment of the testing of the automatic tabulating equipment one week before the test
 12 is conducted. ~~Public notice of the test shall be given at least forty-eight hours prior to the~~
 13 ~~test by publication once in the official newspaper of the election jurisdiction. The test shall~~
 14 ~~be open to the public. The person in charge of the election shall post notice of the time and~~
 15 place of the test in the same manner as a public meeting agenda, pursuant to § 1-25-1.1,
 16 and provide the notice to the county chair of each political party that has a candidate on
 17 the ballot and the ballot question committees for or against any initiated or referred
 18 measure or initiated constitutional amendment.

19 ~~If any an error is detected, the cause of the error shall be determined and~~
 20 ~~corrected and an errorless count shall be made before the automatic tabulating equipment~~
 21 ~~is approved.~~ Once the error is corrected, the person in charge of the election shall conduct
 22 a new test of the automatic tabulating equipment. The person in charge of the election
 23 may not approve the automatic tabulating equipment until an errorless count is made.
 24 Any additional testing required, pursuant to this section, must be open to the public.

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

1 The person in charge of the election shall test the automatic tabulating equipment
2 by processing a predetermined number of ballots on which are recorded a predetermined
3 number of valid votes for each candidate and measure. The test of the automatic
4 tabulating equipment must also include at least one ballot for each office that has votes
5 exceeding the number allowed by law in order to test the ability of the automatic tabulating
6 equipment to reject invalid votes. During the test, a different number of valid votes must
7 be assigned to each candidate for an office and for and against each measure. A ballot
8 used to test the automatic tabulating equipment must be clearly marked as a test ballot.
9 After each test, the testing materials and the predetermined number of ballots used during
10 the test must be sealed and retained in the same manner as election materials after an
11 election.

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

13 After the conclusion of the testing of the automatic tabulating equipment, no
14 software or firmware updates may be made to the automatic tabulating equipment until
15 after the certification of the election results. Each automatic tabulating device must be
16 sealed with a unique numbered seal. The person in charge of the election shall verify
17 immediately prior to the official counting of the ballots that the seal has not been tampered
18 with.

19 **Section 4. That § 12-17B-16 be AMENDED:**

20 **12-17B-16.** Automatic tabulating equipment shall must be tested prior to a
21 recount or election contest as provided in § 12-17B-5 and sections 2 and 3 of this Act,
22 and then the official ballots shall must be recounted. The recount board shall certify the
23 new returns printed by the automatic tabulating equipment shall be certified by the
24 recount board as the official returns for the election. They The person in charge of the
25 election shall be signed and sealed by the person in charge of the election and made public
26 sign and seal the new returns printed by the automatic tabulating equipment and make
27 the new returns public.