

2023 South Dakota Legislature

House Bill 1199**AMENDMENT 1199A
FOR THE INTRODUCED BILL**

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~~ all records for each ballot tabulated that shows
6 the manner in which the tabulator or system interpreted and tabulated the markings on
7 each ballot.

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

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

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

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

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

23 **12-17B-17.** The State Board of Elections may promulgate rules pursuant to
24 chapter 1-26 concerning:

- 25 (1) The criteria and procedure for approving voting systems pursuant to this chapter;
26 (2) Notices and forms;
27 (3) Test procedures; and
28 (4) The arrangement and conduct of voting, absentee voting, tabulating, preparing
29 returns, ~~and recounts,~~ and postelection audits required under this chapter.

30 **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 § 12-20-47 be AMENDED:**

8 **12-20-47.** Within seven days ~~after the day of election~~ of the completed county
9 canvass, the Board of State Canvassers shall open and examine the returns from each
10 county. However, if the returns from each county have not been received, the board may
11 adjourn, not exceeding ten days, for the purpose of obtaining the returns from each
12 county. The board shall proceed with the canvass after the returns have been received
13 from each county.

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

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

20 Upon ordering the postelection audit, the person in charge of an election shall notify
21 the secretary of state of the postelection audit date, time, and place. The secretary of
22 state shall post the date, time, and place of each postelection audit on the secretary of
23 state's website.

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

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

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

29 All postelection audits must be open to the public.

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

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

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

3 (1) ~~Twenty-five~~Ten percent of the election precincts located in the county or local
 4 jurisdiction, as applicable, or at least two election precincts, whichever is greater,
 5 for a jurisdiction using any automatic tabulating or electronic ballot marking system
 6 for the election; or

7 (2) ~~Five~~Five percent of the election precincts located in the county or local jurisdiction,
 8 as applicable, or at least two election precincts, whichever is greater, for a
 9 jurisdiction not using an automatic tabulating or electronic ballot marking system
 10 for the election.

11 The precincts selected for the audit must be selected at random by the counting
 12 board prior to the start of the vote count on election night. The random drawing must be
 13 completed in full view of the public.

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

15 For a postelection audit of an election precinct where an automatic tabulating or
 16 electronic ballot marking system was used, a ~~comparison of each vote or selection marked~~
 17 ~~on each paper ballot must be made with the original, corresponding automatic tabulating~~
 18 ~~or electronic ballot marking system record and the report used for unofficial results manual~~
 19 ~~hand count must be completed on all selections marked on all paper ballots randomly~~
 20 ~~drawn to be counted and each selection must be compared to the original corresponding~~
 21 ~~automatic tabulating or electronic ballot marking system record or report used for~~
 22 ~~unofficial results.~~

23 Based on the results of the comparison, the person in charge of an election shall
 24 order a manual hand count of each paper ballot for all contests and ballot issues on each
 25 ballot in the ~~selected election districts county~~ if the comparison shows:

26 (1) ~~Discrepancies in ten of one-half~~ percent or more on any office, measure, or
 27 question on the ballot;

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

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

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

32 If there is any variance in vote totals between a tabulator and the hand counted
 33 ballots of a post-election audit, the hand counted totals become the new unofficial results
 34 to be presented to the canvassing board. All reports from both tabulation and hand counts

1 must be delivered by the person in charge of the election. A violation of this is a Class 6
2 felony.

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

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

7 A postelection audit is complete when:

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

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

12 **Section 13. That a NEW SECTION be added to title 12:**

13 AnyExcept as otherwise provided, a violation of this chapter is a Class 2
14 misdemeanor. A second violation of this chapter is a Class 1 misdemeanor.