



2023 South Dakota Legislature

Senate Bill 160

SENATE STATE AFFAIRS ENGROSSED

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 manually counting all votes cast in two statewide contests and comparing the
 16 results of the manual count to the results for those precincts at the county canvass. The
 17 precincts selected for the audit must be selected at random by the county auditor without
 18 the use of a computer. If the combined total of all ballots cast in the precincts selected
 19 does not exceed one hundred ballots, then additional precincts must be randomly selected
 20 until the total of all ballots exceeds one hundred ballots. For the purposes of this section,
 21 the term precinct includes vote centers, but does not include any precinct designated as
 22 an absentee precinct.

23 The two statewide contests selected for audit must be the two contests that had
 24 the closest statewide margin based upon the number of votes cast. If there is only one

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

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

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

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

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

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

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

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

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

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

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

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

4 **12-20-52.** The State Board of Elections may, ~~by rule,~~ in accordance with chapter
5 1-26, promulgate rules and regulations to clarify the procedure by which ballots are
6 counted, audited, and canvassed in all elections.