



2026 South Dakota Legislature

House Bill 1314

Introduced by: **Representative Kayser**

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

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

4 **Section 1. That § 12-17B-2 be AMENDED:**

5 **12-17B-2.** Any automatic tabulating or electronic ballot marking system used in
 6 an election ~~shall~~ must enable the a voter to cast a vote for all offices and on all measures
 7 on which the voter is entitled to vote. ~~No automatic tabulating, electronic ballot marking,~~
 8 ~~or election voting equipment system may be connected to the internet. No ballot marking~~
 9 ~~device may save or tabulate votes marked on any system.~~

10 Each system ~~shall~~ must fulfill the requirements ~~for election assistance commission~~
 11 ~~standards certification~~ for certification by the United States Election Assistance
 12 Commission, and must be approved by the State Board of Elections ~~prior to distribution~~
 13 ~~and use before the system may be distributed and used~~ in this state. ~~No system may be~~
 14 ~~approved unless the system fulfills the requirements as established by the State Board of~~
 15 ~~Elections.~~ Any changes or modifications to an approved system ~~shall~~ must be approved
 16 by the State Board of Elections ~~prior to distribution and use before the system is~~
 17 ~~distributed and used in this state.~~

18 The State Board of Elections may not approve the use of:

- 19 (1) An automatic tabulating system or electronic ballot marking system that may be
 20 connected to the internet; or
 21 (2) A ballot marking system that can save or tabulate votes marked using the system.

22 **Section 2. That a NEW SECTION be added to chapter 12-17B:**

23 Before the State Board of Elections may approve any automatic tabulating or
 24 electronic ballot marking system, the vendor responsible for the production of the system
 25 must provide a copy of the system's software source code to the secretary of state. The

1 board, in consultation with the vendor and the state chair of each political party, shall
2 select an independent person to examine the system's software source code. Upon
3 completion of the examination, the person shall file with the board a statement indicating
4 whether:

5 (1) The system functions as represented by the vendor; and

6 (2) The system's software source code is free from defects or other errors.

7 Any system's software source code is not open to public inspection. The
8 independent person conducting the examination of the system's software source code may
9 not disclose the system's software source code to any other person.

10 **Section 3. That a NEW SECTION be added to chapter 12-17B:**

11 Upon the approval of a new automatic tabulating system or electronic ballot
12 marking system, any system previously approved is no longer approved as of December
13 thirty-first following the approval of the new automatic tabulating or electronic ballot
14 marking system.

15 Upon the approval of an update to a system's software or operating system, any
16 software or operating system previously approved is no longer approved as of December
17 thirty-first following the approval of the update to software or operating system.

18 Any system approved prior to January 1, 2026, is no longer approved as of July 1,
19 2026, and must be approved by the State Board of Elections before the system is
20 distributed and used in this state.

21 **Section 4. That a NEW SECTION be added to chapter 12-17B:**

22 The vendor of an automatic tabulating system approved by the State Board of
23 Elections, pursuant to this chapter, and used by a jurisdiction in the conduct of an election
24 shall maintain the election system's software or operating system.

25 The vendor of an election system shall ensure that each election system is updated
26 to operate using the most current version of the system's operating system, software
27 patches, and antivirus software. Any election system that has not been updated to operate
28 using the most current version of the system's operating system, antivirus software, or
29 software patches is not approved and may not be used in an election.

30 If a system may not be used at an election, pursuant to this section, the jurisdiction
31 must tabulate the election results using a hand count of the ballots, and all costs incurred
32 by the jurisdiction as a result of conducting a manual count of the ballots must be paid by
33 the vendor of the system.

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

2 **12-17B-5.** ~~Not more than ten days prior to an election, the~~ The person in charge
3 of the election shall conduct a test of the automatic tabulating equipment on the first
4 Saturday preceding the sixtieth day before the election, at nine a.m. local time, to
5 ascertain ~~that whether~~ the equipment will correctly count the votes cast for all offices and
6 on all measures. The test must be open to the public.

7 The person in charge of the election shall notify the county chair of each political
8 party with a candidate on the ballot, any independent candidate or candidate without party
9 affiliation on the ballot, and the ballot question committees for or against an initiated or
10 referred measure or initiated constitutional amendment, of the testing of the automatic
11 tabulating equipment, ~~one week~~ two weeks before the test is conducted. The person in
12 charge of the election shall post notice of the time and place of the test in the same
13 manner as a public meeting agenda, pursuant to § 1-25-1.1. The person in charge of the
14 election shall post the notice of the time and place of the test to the secretary of state's
15 website.

16 If an errorless count by an automatic tabulating machine is achieved by the test,
17 the person in charge of the election ~~shall~~ must certify the machine. The State Board of
18 Elections shall promulgate rules, pursuant to chapter 1-26, prescribing the certification of
19 properly functioning automatic tabulating equipment under this section.

20 If an error is detected, the cause of the error ~~shall~~ must be determined and
21 corrected. 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. If
24 the automatic tabulating equipment does not produce an errorless count by the fiftieth
25 day before the election, the person in charge of the election may not use any automatic
26 tabulating equipment to tabulate the results of the election.

27 ~~Any~~ All additional testing required to achieve an errorless count must be open to
28 the public. The person in charge of the election shall post notice of the time and place of
29 an additional test in the same manner as a public meeting agenda, pursuant to § 1-25-
30 1.1. The person in charge of the election shall notify the county chair of each political
31 party with a candidate on the ballot, any independent candidate or candidate without party
32 affiliation on the ballot, and the ballot question committees for or against an initiated or
33 referred measure or initiated constitutional amendment of the testing of the automatic
34 tabulating equipment ~~twenty-four hours~~ one week prior to the test. The person in charge

1 of the election shall post the notice of the time and place of the additional test to the
2 secretary of state's website.

3 A copy of each report produced by the automatic tabulating equipment during the
4 testing of the equipment must be available for public inspection at no charge, during
5 regular office hours, within twenty-four hours after the completion of a test conducted
6 pursuant to this section.

7 The secretary of state shall provide each county auditor with the contact
8 information for any independent candidate, candidate without party affiliation appearing
9 on the ballot, and the ballot question committees for or against an initiated or referred
10 measure or initiated constitutional amendment in the auditor's county.

11 **Section 6. That § 12-17B-5.1 be AMENDED:**

12 **12-17B-5.1.** The person in charge of the election shall test the automatic
13 tabulating equipment by processing a predetermined number of ballots on which are
14 recorded a predetermined number of valid votes for each candidate and measure. The
15 test of the automatic tabulating equipment must also include at least one ballot for each
16 office that has votes exceeding the number allowed by law in order to test the ability of
17 the automatic tabulating equipment to reject invalid votes. During the test, a different
18 number of valid votes must be assigned to each candidate for an office and for and against
19 each measure. A ballot used to test the automatic tabulating equipment must be clearly
20 marked as a test ballot. After each test, the testing materials and the predetermined
21 number of ballots used during the test must be sealed and retained in the same manner
22 as election materials after an election.

23 If the person in charge of the election fails to test the automatic tabulating
24 equipment in the way required by this section, the automatic tabulating equipment may
25 not be used to tabulate the votes cast at the election.

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

27 **12-17B-12.** The test required by § 12-17B-5 shall be repeated immediately before
28 the start of the official count of the ballots.

29 A copy of each report produced by the automatic tabulating equipment during the
30 testing of the equipment must be available for public inspection at no charge, during
31 regular office hours, within twenty-four hours after the completion of a test conducted
32 pursuant to this section.

1 **Section 8. That § 12-17B-18 be AMENDED:**

2 **12-17B-18.** ~~Within fifteen days following the completion of the state canvassing~~
 3 ~~of a primary or general election, If the results of a primary or general election are~~
 4 ~~tabulated using automatic tabulating equipment, the auditor of each county shall conduct~~
 5 a post-election audit of the ballots cast in the election following the procedures listed in
 6 this section and §§ 12-17B-19 to 12-17B-25, inclusive, beginning at nine a.m. local time
 7 on the first Friday following the primary or general election. The county auditor shall
 8 appoint a county auditing board of sufficient size to promptly complete the audit.

9 The members of the county auditing board may not all be members of the same
 10 political party. A member of the county auditing board must be a registered voter in the
 11 county in which the audit takes place. An individual may not serve on the county auditing
 12 board if the individual is a candidate for the office that is on the ballot being audited.

13 The State Board of Elections shall promulgate rules, pursuant to chapter 1-26,
 14 prescribing the oath that each member of a county auditing board must take prior to
 15 discharging any duties.

16 **Section 9. That § 12-17B-19 be AMENDED:**

17 **12-17B-19.** The office of the secretary of state shall reimburse each county for
 18 the cost of any post-election audit required by §§ 12-17B-18 to ~~12-17B-25~~ 12-17B-22,
 19 inclusive. The State Board of Elections shall promulgate rules, pursuant to chapter 1-26,
 20 administering the reimbursement process and defining reimbursable expenses and
 21 reimbursement rates for post-election audits.

22 The secretary of state may not reimburse a county for the cost of a post-election
 23 audit if the person in charge of the election did not test the automatic tabulating equipment
 24 as required by § 12-17B-5 or 12-17B-5.1.

25 **Section 10. That § 12-17B-20 be AMENDED:**

26 **12-17B-20.** The post-election audit must be conducted in ~~five percent of the~~
 27 ~~precincts~~ each precinct in the county by manually counting all votes cast in ~~two~~ all contests
 28 and comparing the results of the manual count to the results for those precincts at the
 29 county canvass. ~~The county auditor shall select the precincts for the audit at random~~
 30 ~~without the use of a computer in public during the meeting of the county canvassing board.~~
 31 ~~If the combined total of all ballots cast in the precincts selected does not exceed one~~
 32 ~~hundred ballots, then additional precincts must be randomly selected until the total of all~~

1 ~~ballots exceeds one hundred ballots. For the purposes of this section, the term precinct~~
2 ~~includes vote centers, but does not include any precinct designated as an absentee~~
3 ~~precinct.~~

4 ~~The county auditor shall select the contests for the audit at random without the~~
5 ~~use of a computer in public during the meeting of the county canvassing board. One~~
6 ~~contest randomly selected for the audit must be a statewide contest. If there are no~~
7 ~~statewide contests on the ballot, the auditor randomly shall select another contest on the~~
8 ~~ballot. If there is only one contest on the ballot, that contest must be audited.~~

9 Upon completion of the post-election audit, the person in charge of the election
10 shall reseal and retain the ballots as provided in § 12-20-20.

11 **Section 11. That § 12-17B-22 be AMENDED:**

12 **12-17B-22.** ~~The county auditor shall send the results of the post-election audit to~~
13 ~~the secretary of state and present the results of the audit to the county commission at its~~
14 ~~next meeting. The results of the audit shall be included in the minutes of the county~~
15 ~~commission meeting canvassing board.~~

16 The secretary of state shall publish the results of the post-election audit on the
17 secretary of state's website.

18 **Section 12. That § 12-20-38 be AMENDED:**

19 **12-20-38.** ~~The Board of Canvassers canvassing board for both primary and~~
20 ~~general elections shall at the time provided by § 12-20-36 proceed to ~~open the returns~~~~
21 ~~the results of the post-election audit conducted pursuant to §§ 12-17B-18 to 12-17B-22,~~
22 ~~inclusive, from the various voting precincts in the county, and make abstracts of the votes~~
23 ~~cast for each of the candidates and each of the issues. ~~Each of the abstracts~~ The~~
24 ~~canvassers shall sign and certify each abstract of the votes made ~~shall be signed and~~~~
25 ~~certified by the canvassers, under the seal of the county auditor, and ~~be deposited~~ shall~~
26 ~~deposit the abstracts in the office of the auditor.~~

27 **Section 13. That a NEW SECTION be added to chapter 12-21:**

28 If a recount is conducted pursuant to this chapter, the recount must be conducted
29 by manually counting all the votes cast in the election subject to the recount.

30 The person in charge of the election shall sign and seal the new returns and make
31 the new returns public.

1 **Section 14. That § 12-17B-16 be REPEALED.**

2 ~~Automatic tabulating equipment must be tested prior to a recount or election~~
3 ~~contest as provided in §§ 12-17B-5 to 12-17B-5.2, inclusive, and then the official ballots~~
4 ~~must be recounted. The recount board shall certify the new returns printed by the~~
5 ~~automatic tabulating equipment as the official returns for the election. The person in~~
6 ~~charge of the election shall sign and seal the new returns printed by the automatic~~
7 ~~tabulating equipment and make the new returns public.~~

8 **Section 15. That § 12-17B-23 be REPEALED.**

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

16 **Section 16. That § 12-17B-24 be REPEALED.**

17 ~~If a recount of any contest is conducted in a county, the county auditor is not~~
18 ~~required to conduct a post-election audit pursuant to § 12-17B-18.~~

19 **Section 17. That § 12-17B-25 be REPEALED.**

20 ~~The county auditor shall reseal and retain the ballots upon the completion of a~~
21 ~~post-election audit pursuant to § 12-20-31.~~

22 **Section 18.** Any automatic tabulating or electronic ballot marking system that had been
23 previously approved by the State Board of Elections on or before June 30, 2026, must receive
24 approval from the State Board of Elections on or after July 1, 2026, before the system may
25 be used in an election conducted in this state.