

## 2023 South Dakota Legislature

**House Bill 1124****AMENDMENT 1124B  
FOR THE HOUSE STATE AFFAIRS ENGROSSED BILL**

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, ~~any independent candidate or~~  
10 candidate without party affiliation on the ballot, and the ballot question committees for or  
11 against an initiated or referred measure or initiated constitutional amendment of the  
12 testing of the automatic tabulating equipment one week before the test is conducted.  
13 ~~Public notice of the test shall be given at least forty-eight hours prior to the test by~~  
14 ~~publication once in the official newspaper of the election jurisdiction. The test shall be~~  
15 ~~open to the public. The person in charge of the election shall post notice of the time and~~  
16 ~~place of the test in the same manner as a public meeting agenda, pursuant to § 1-25-1.1,~~  
17 ~~and provide the notice to the county chair of each political party that has a candidate on~~  
18 ~~the ballot and the ballot question committees for or against any initiated or referred~~  
19 ~~measure or initiated constitutional amendment.~~

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

24 ~~If any an error is detected, the cause of the error shall be determined and~~  
25 ~~corrected and an errorless count shall be made before the automatic tabulating equipment~~  
26 ~~is approved. Once the error is corrected, the person in charge of the election shall conduct~~

1 a new test of the automatic tabulating equipment. The person in charge of the election  
2 may not approve the automatic tabulating equipment until an errorless count is made.

3 Any additional testing required to achieve an errorless count, pursuant to this  
4 section, must be open to the public. The person in charge of the election shall post notice  
5 of the time and place of an additional test in the same manner as a public meeting agenda,  
6 pursuant to § 1-25-1.1. The person in charge of the election shall notify the county chair  
7 of each political party with a candidate on the ballot, any independent candidate or  
8 candidate without party affiliation on the ballot, and the ballot question committees for or  
9 against an initiated or referred measure or initiated constitutional amendment of the  
10 testing of the automatic tabulating equipment twenty-four hours prior to the test.

11 The secretary of state shall provide each county auditor with the contact  
12 information for any independent candidate or candidate without party affiliation appearing  
13 on the ballot in the auditor's county,

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

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

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

27 After the conclusion of the testing of the automatic tabulating equipment, no  
28 software or firmware updates may be made to the automatic tabulating equipment until  
29 after the certification of the election results. Each automatic tabulating device must be  
30 sealed with a unique numbered seal. The person in charge of the election shall verify  
31 immediately prior to the official counting of the ballots that the seal has not been tampered  
32 with since the testing period and certification process pursuant to section 1 of this Act.

1 The State Board of Elections shall promulgate rules, pursuant to chapter 1-26, prescribing  
2 the method of sealing automatic tabulating equipment pursuant to this section.

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

4 **12-17B-16.** Automatic tabulating equipment ~~shall~~ must be tested prior to a  
5 recount or election contest as provided in § 12-17B-5 and sections 2 and 3 of this Act,  
6 and then the official ballots ~~shall~~ must be recounted. The recount board shall certify the  
7 new returns printed by the automatic tabulating equipment ~~shall be certified by the~~  
8 ~~recount board~~ as the official returns for the election. They The person in charge of the  
9 election shall be signed and sealed by the person in charge of the election and made public  
10 sign and seal the new returns printed by the automatic tabulating equipment and make  
11 the new returns public.