



2023 South Dakota Legislature  
**House Bill 1124**  
**ENROLLED**

AN ACT

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

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

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

**12-17B-5.** Not more than ten days prior to an election, the person in charge of the election shall conduct a test of the automatic tabulating equipment to ascertain that the equipment will correctly count the votes cast for all offices and on all measures. The test must be open to the public. The person in charge of the election shall notify the county chair of each political party with a candidate on the ballot, any independent candidate or candidate without party affiliation on the ballot, and the ballot question committees for or against an initiated or referred measure or initiated constitutional amendment of the testing of the automatic tabulating equipment one week before the test is conducted. The person in charge of the election shall post notice of the time and place of the test in the same manner as a public meeting agenda, pursuant to § 1-25-1.1.

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

If an error is detected, the cause of the error shall be determined and corrected. Once the error is corrected, the person in charge of the election shall conduct a new test of the automatic tabulating equipment. The person in charge of the election may not approve the automatic tabulating equipment until an errorless count is made.

Any additional testing required to achieve an errorless count must be open to the public. The person in charge of the election shall post notice of the time and place of an additional test in the same manner as a public meeting agenda, pursuant to § 1-25-1.1. The person in charge of the election shall notify the county chair of each political party

with a candidate on the ballot, any independent candidate or candidate without party affiliation on the ballot, and the ballot question committees for or against an initiated or referred measure or initiated constitutional amendment of the testing of the automatic tabulating equipment twenty-four hours prior to the test.

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

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

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

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

After the conclusion of the testing of the automatic tabulating equipment, no software or firmware updates may be made to the automatic tabulating equipment until after the certification of the election results. Each automatic tabulating device must be sealed with a unique numbered seal. The person in charge of the election shall verify immediately prior to the official counting of the ballots that the seal has not been tampered with since the testing period and certification process pursuant to section 1 of this Act. The State Board of Elections shall promulgate rules, pursuant to chapter 1-26, prescribing the method of sealing automatic tabulating equipment pursuant to this section.

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

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

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

I certify that the attached Act originated in the:  
House as Bill No. 1124

Received at this Executive Office this \_\_\_\_ day of \_\_\_\_\_, 2023 at \_\_\_\_\_ M.

\_\_\_\_\_  
Chief Clerk

By \_\_\_\_\_ for the Governor

\_\_\_\_\_  
Speaker of the House

The attached Act is hereby approved this \_\_\_\_ day of \_\_\_\_\_, A.D., 2023

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
Governor

**STATE OF SOUTH DAKOTA,**

ss.

Office of the Secretary of State

\_\_\_\_\_  
President of the Senate

Attest:

Filed \_\_\_\_\_, 2023 at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Secretary of State

House Bill No. 1124  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

By \_\_\_\_\_  
Asst. Secretary of State