

## 2023 South Dakota Legislature

**House Bill 1124****AMENDMENT 1124C  
FOR THE HOUSE 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. Public  
13 notice of the test shall be given at least forty eight hours prior to the test by publication  
14 once in the official newspaper of the election jurisdiction. The test shall be open to the  
15 public. The person in charge of the election shall post notice of the time and place of the  
16 test in the same manner as a public meeting agenda, pursuant to § 1-25-1.1.

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

21 If ~~any~~ an error is detected, the cause of the error shall be determined and  
22 corrected and an errorless count shall be made before the automatic tabulating equipment  
23 is approved. Once the error is corrected, the person in charge of the election shall conduct  
24 a new test of the automatic tabulating equipment. The person in charge of the election  
25 may not approve the automatic tabulating equipment until an errorless count is made.

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

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

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

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

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

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

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

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