**South Carolina General Assembly**

125th Session, 2023-2024

**H. 5303**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. T. Moore, Long, Magnuson, Kilmartin, May, White, A.M. Morgan and T.A. Morgan

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Summary: Election Transparency Act

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 3/21/2024 House Introduced and read first time (House Journal‑page 14)

 3/21/2024 House Referred to Committee on **Judiciary** (House Journal‑page 14)

 3/27/2024 House Member(s) request name added as sponsor:
 Magnuson, Kilmartin, May, White, A.M.
 Morgan, T.A. Morgan

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**VERSIONS OF THIS BILL**

[03/21/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/5303_20240321.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING SECTION 7‑5‑35 SO AS TO IMPROVE VOTER ACCESS TO CERTAIN RECORDS IN ELECTRONIC FORMAT; BY ADDING SECTION 7‑13‑1180 SO AS TO PROVIDE THAT ALL ELECTIONS SHALL BE FOLLOWED BY A HAND‑COUNT AUDIT IN AT LEAST TEN PERCENT OF PRECINCTS FOR A STATEWIDE PRIMARY OR GENERAL ELECTION; BY ADDING SECTION 7‑13‑1455 SO AS TO PROVIDE CERTAIN REQUIREMENTS WHEN A HAND-COUNT AUDIT REVEALS A DISCREPANCY WITH THE TABULATED VOTE COUNTS EQUAL TO OR GREATER THAN A CERTAIN AMOUNT; AND BY AMENDING SECTION 7‑13‑1330, RELATING TO VOTE RECORDERS AND OPTICAL-SCAN VOTING SYSTEMS, SO AS TO CLARIFY THE CONDITIONS UNDER WHICH A VOTE RECORDER MAY NOT BE APPROVED FOR USE IN THIS STATE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 1, Chapter 5, Title 7 of the S.C. Code is amended by adding:

 Section 7‑5‑35. Each county board of voter registration and elections shall create electronic records of, and furnish copies at no charge, and upon request, to a qualified elector, the following:

 (1) the county voter registration lists or files;

 (2) poll lists or precinct lists;

 (3) cast vote records;

 (4) ballot review and reconciliation reports;

 (5) chain of custody documents;

 (6) polling place incident reports;

 (7) audit logs; and

 (8) poll tapes.

SECTION 2. Article 7, Chapter 13, Title 7 of the S.C. Code is amended by adding:

 Section 7‑13‑1180. (A) Notwithstanding the provisions of Section 7‑3‑20, each county board of voter registration and elections shall conduct a postelection audit of precinct and voting center election results following every statewide party primary and general election in accordance with the provisions of this section.

 (B) The audit must consist of a hand count of all votes cast, including those cast during the early voting period and those cast by absentee ballot, in contested races for no less than ten percent of all precincts and voting centers in the county for that election. The precincts to be hand counted in each county must be randomly selected by the board of voter registration and elections in each county, in a public manner after no less than twenty‑four hours’ notice to the public of the date, time, and location where each selection will take place.

 (C) Hand‑count audits must prioritize races with the narrower margin of victory by tabulation and must include at least three contested races. To the extent feasible, the three or more contested races subject to a hand count audit must include the presidential race, if applicable, and one statewide office.

 (D) The hand counting of votes under this section may only commence after no less than twenty‑four hours’ notice to the public of the date, time, and location where the hand count will be conducted and within twenty‑four hours of the close of polls on election day, unless that time falls on a Sunday.

 (E) Any notice required by the provisions of this section must be published, at a minimum, to a website or webpage managed by, or on behalf of, the State Election Commission and each respective county board of voter registration and elections.

 (F) Candidates or their representatives, party representatives, poll watchers, and observers must be permitted access to observe all aspects of the precinct selection or hand-count processes required by this section.

 (G) A hand-count audit performed according to the provisions of this section must be completed in the following manner:

 (1) Audit or hand-count teams, to the extent necessary to complete an audit or hand count requested under subsection (B), must consist of at least four individuals selected by the county Board of Voter Registration and Elections (BOE) with advice and consent of the county chair of each political party represented in the audited election.

 (2) Participants in the audit must not be regular salaried county BOE staff or board members. As many teams as are considered necessary may be appointed to conduct an audit pursuant to the provisions of this section.

 (3) The public must be allowed sufficient access so that ballots are observable at all times.

 (H) The Legislature may appropriate funds for purposes of carrying out the provisions of this act from any source including, but not limited to, Help America Vote Act of 2002 (HAVA) funding through the Consolidated Appropriations Act of 2023. In the event funds are not appropriated pursuant to this section or are otherwise unavailable, the General Assembly shall appropriate funds to carry out the provisions of this act.

SECTION 3. Article 11, Chapter 13, Title 7 of the S.C. Code is amended by adding:

 Section 7‑13‑1455. (A) Any discrepancy between the post‑election audit results and the tabulated vote counts of equal to or greater than 0.001% must, when confirmed by a mandatory hand recount, be:

 (1) reported to the State Election Commission and the Office of the Inspector General by the director of the county board of voter registrations and elections;

 (2) investigated for election system tampering by a forensic audit team appointed by the Inspector General which shall examine all components including, but not limited to, all hardware, software, and Internet connectivity used by the audited precincts; and

 (3) followed by a hand recount of all vote totals for all races in all precincts in the affected county prior to certification of election results.

 (B) The hand-recount totals will be reported to the county board of canvassers and all political party chairpersons as the final election results.

 (C) A director of the county board of voter registrations and elections who fails to report as provided in section (A)(1) prior to certification of results is guilty of corrupt conduct of an election officer as provided for in Section 7‑25‑170.

SECTION 4. Section 7‑13‑1330 of the S.C. Code is amended to read:

 Section 7‑13‑1330. (A) Before a decision is made to procure a statewide voting system, the State Election Commission must provide a public comment period of not less than thirty days. The input must be considered in the procurement of a statewide voting system.

 (B) Before any kind of optical scan voting system is used at any election, it must be approved by the State Election Commission, which shall examine the optical scan voting system and make and file in the commission’s office a report, attested by the signature of the commission’s executive director, stating whether, in the commission’s opinion, the kind of optical scan voting system examined may be accurately and efficiently used by electors at elections, as provided by law. An optical scan voting system may not be approved for use in the State unless certified by a testing laboratory accredited by the Federal Election Assistance Commission as meeting or exceeding the minimum requirements of the latest federal voting system standards and guidelines. If the federal voting system standards and guidelines have been amended less than thirty‑six months prior to an election, then the State Election Commission may approve and certify a voting system that meets the prior standards after determining:

 (1) the effect that such approval would have on the integrity and security of elections; and

 (2) the procedure and cost involved to bring the voting system into compliance with the amended standards.

 (C) No kind of vote recorder not approved pursuant to this section shall be used at any election. and if, upon the reexamination of any type vote recorder previously approved, it appears that the vote recorder so reexamined can no longer be accurately and efficiently used by electors at elections as provided by law,

 (D) theThe approval of the vote recorder must immediately be revoked by the State Election Commission, and no such type vote recorder shall thereafter be purchased for use or used in this State., if:

 (1) upon reexamination of the vote recorder, it appears that the vote recorder so reexamined can no longer be accurately and efficiently used; or

 (2) an error rate equal to or greater than 0.001% is reported for that kind of vote recorder in one or more precincts providing results from a post‑election audit.

 (D)(E) If a vote recorder, including an optical scan voting system, which was approved for use before July 1, 1999, is improved or otherwise changed in a way since its approval that does not impair its accuracy, efficiency, or capacity, the vote recorder may be used in elections. However, if the software, hardware, or firmware of the system is improved or otherwise changed, the system must comply with the requirements of subsection (B).

 (E)(F) Any person or company who requests an examination of any type of vote recorder or optical scan voting system shall pay a nonrefundable examination fee of one thousand dollars for a new voting system and a nonrefundable examination fee of five hundred dollars for an upgrade to any existing system to the State Election Commission. The State Election Commission may at any time, in its discretion, reexamine any vote recorder or optical scan voting system when evidence is presented to the commission that the accuracy or the ability of the system to be used satisfactorily in the conduct of elections is in question.

 (F)(G) Any person or company who seeks approval for any vote recorder or optical scan voting system in this State must file with the State Election Commission a list of all states or jurisdictions in which the system has been approved for use. This list must state how long the system has been used in the state; contain the name, address, and telephone number of that state or jurisdiction’s chief election official; and must disclose any reports compiled by state or local government concerning the performance of the system. The vendor is responsible for filing this information on an ongoing basis.

 (G)(H) Any person or company who seeks approval for any vote recorder or optical scan voting system must file with the State Election Commission copies of all contracts and maintenance agreements used in connection with the sale of the voting system. All changes to standard contracts and maintenance agreements must be filed with the State Election Commission.

 (H)(I) Any person or company who seeks approval for any vote recorder or optical scan voting system must conduct, under the supervision of the State Election Commission and any county board of voter registration and elections, a field test for any new voting system, as part of the certification process. The field test shall involve South Carolina voters and election officials and must be conducted as part of a scheduled primary, general, or special election. This test must be held in two or more precincts, and all costs relating to the voting system must be borne by the vendor. The test must be designed to gauge voter reaction to the system, problems that voters have with the system, and the number of voting units required for the efficient operation of an election. The test must also demonstrate the accuracy of votes cast and reported on the system.

 (I)(J) Before an optical scan voting system may be used in elections in the State, all source codes for the system must be placed in escrow by the manufacturer, at the manufacturer’s expense, with the authority approved by the Federal Election Assistance Commission. These source codes must be available to the State Election Commission in case the company goes out of business, pursuant to court order, or if the State Election Commission determines that an examination of these source codes is necessary. The manufacturer shall place all updates of these source codes in escrow, and notify the State Election Commission that this requirement has been met.

 (J)(K) After a vote recorder or optical scan voting system is approved, an improvement or change in the system must be submitted to the State Election Commission for approval pursuant to this section; however, this requirement does not apply to the technical capability of a general purpose computer or printer to accurately reproduce vote totals.

 (K)(L) If the State Election Commission determines that a vote recorder or optical scan voting system that was approved no longer meets the requirements set forth in subsections (B) and (D) or Section 7‑13‑1340, the commission may decertify that system. A decertified system shall not be used in elections unless the system is reapproved by the commission under subsections (B) and (D).

 (L)(M) Neither a member of the State Election Commission, any county board of voter registration and elections or custodian, nor a member of a county governing body shall have any pecuniary interest in any vote recorder, or in the manufacture or sale of the vote recorder.

 (M)(N) An optical scan voting system must maintain an image of each ballot that is cast in a manner that protects the integrity of the data and the anonymity of each voter.

 (N)(O) All electronic records for a statewide election must be preserved for not less than twenty‑four months following the election.

SECTION 5. This act takes effect upon approval by the Governor.

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