

## **BILL ANALYSIS**

Senate Research Center  
87R17320 ADM-D

C.S.S.B. 598  
By: Kolkhorst  
State Affairs  
3/31/2021  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

#### Background

Elections are the bedrock of our system of government. Ensuring that our elections are conducted to the highest standards possible is important to instill faith in the governance of our state. Advances in technology have increased the threat of electronic interference with elections, but also the tools available to prevent that interference. Texas is one of only 13 states without a statutory requirement for voting machines to have a paper trail, per the National Conference on State Legislatures.

S.B. 598 seeks to address these issues by requiring a voter-verifiable paper audit trail for election systems and instituting a pilot program to use that paper trail to ensure that the tabulated results match the votes cast with increased certainty.

#### Key Provisions

- Requires the general custodian of election records, not later than 24 hours after all ballots have been counted in an election, to conduct a risk-limiting audit for a selected statewide race or measure.
- Requires the secretary of state to adopt rules as necessary to implement this subchapter, including a rule, using widely accepted statistical methods, that provides for the number or percentage of paper records that must be counted in a risk-limiting audit.
- Requires that the results of a risk-limiting audit conducted under this subchapter be published on the Internet website of the secretary of state not later than three days after the completion of the audit.
- Requires the secretary of state to conduct a pilot program, beginning with the election taking place November 8, 2022, of the risk-limiting audit program created under this subchapter.
- Prohibits a voting system that consists of direct recording electronic voting machines from being used in an election unless the system is an auditable voting system.

#### Changes in the committee substitute

- In SECTION 3 of the bill in Section 129.054, Election Code, the bill prohibits any voting system from being capable of being connected to any external or internal communications network or permitting wireless communication.
- Adds the Nelson fiscal responsibility amendment.

C.S.S.B. 598 amends current law relating to auditable voting systems.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the secretary of state in SECTION 1 (Sections 127.303 and 127.305, Election Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 127, Election Code, by adding Subchapter I, as follows:

## SUBCHAPTER I. RISK-LIMITING AUDIT

Sec. 127.301. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter applies to an election:

- (1) that occurs after August 31, 2026;
- (2) that contains a race or measure that is voted on statewide; and
- (3) in which an auditable voting system described by Section 129.003(a) is used.

Sec. 127.302. RISK-LIMITING AUDIT. (a) Requires the general custodian of election records, not later than 24 hours after all ballots have been counted in an election, to conduct a risk-limiting audit for a selected statewide race or measure.

(b) Requires the secretary of state (SOS) to select the precincts to be counted and the office or proposition to be counted in accordance with rules adopted by SOS.

(c) Requires the general custodian of election records to complete the audit not later than 24 hours before the time for conducting the canvass of the election.

(d) Requires the general custodian of election records to post a notice of the date, hour, and place of the audit in the custodian's office and on the county's Internet website, if the county maintains a website.

(e) Authorizes a watcher to be present for the audit if appointed by a candidate in the election. Requires a watcher to deliver a certificate of appointment to the general custodian of election records at the time the watcher reports for service. Requires that the certificate be in writing and include the printed name and signature of the watcher, the election subject to the audit, and the printed name and signature of the candidate making the appointment.

(f) Authorizes SOS to appoint personnel to assist with the audit, including applicable voting system technicians or representatives and persons who have assisted with the design and implementation of the audit.

Sec. 127.303. RULES. (a) Requires SOS to adopt rules prescribing procedures necessary to implement this subchapter.

(b) Requires that rules adopted under this subchapter include a rule, using widely accepted statistical methods, that provides for the number or percentage of paper records that is required to be counted in a risk-limiting audit under Section 127.302.

Sec. 127.304. PUBLICATION OF RESULTS. Requires that the results of a risk-limiting audit conducted under this subchapter be published on the Internet website of SOS not later than three days after the completion of the audit.

Sec. 127.305. PILOT PROGRAM. (a) Requires SOS, notwithstanding Section 127.301(1), to conduct a pilot program, beginning with the election taking place November 8, 2022, of the risk-limiting audit program created under this subchapter.

(b) Requires SOS to select at least five counties to participate in the pilot program. Requires that at least one county participating in the pilot program have a population of at least 500,000.

(c) Requires SOS, after each election conducted under the pilot program, to send a detailed report to each member of the legislature evaluating the success of the program and making a recommendation as to whether the legislature should act to delay the statewide implementation of the program.

(d) Requires SOS to adopt rules as necessary to implement this section.

(e) Provides that this section expires August 31, 2026.

SECTION 2. Amends Subchapter A, Chapter 129, Election Code, by adding Section 129.003, as follows:

Sec. 129.003. PAPER AUDIT TRAIL REQUIRED. (a) Defines "auditable voting system" to mean a voting system that:

(1) uses, creates, or displays a paper record that may be read by the voter; and

(2) is not capable of being connected to the Internet or any other computer network or electronic device.

(b) Prohibits a voting system that consists of direct recording electronic voting machines from being used in an election unless the system is an auditable voting system, except as otherwise provided by this section.

(c) Provides that the electronic vote is the official record of the vote cast if a risk-limiting audit conducted under Section 127.302 produces strong evidence that the reported outcome of the election matches the results that a full counting of the paper records would reveal.

(d) Provides that the paper record is the official record of the vote cast for a recount under Title 13 (Recounts), including a recount of ballots cast on a system involving direct recording electronic voting machines, or if a risk-limiting audit conducted under Section 127.302 fails to produce strong evidence that the reported outcome of the election matches the results that a full counting of the paper records would reveal.

(e) Authorizes an authority that purchased a voting system other than an auditable voting system after September 1, 2014, and before September 1, 2021, to use available federal funding and, if federal funding is not available, available state funding to convert the purchased voting system into an auditable voting system in accordance with the following schedule:

(1) if the voting system was converted into an auditable voting system not later than the election taking place November 8, 2022, the authority is eligible to have 100 percent of the cost of conversion reimbursed under this section; and

(2) if the authority is not eligible for a 100 percent reimbursement of cost under Subdivision (1) and the voting system was converted into an auditable voting system not later than the election taking place November 3, 2026, the authority is eligible to have 50 percent of the cost of conversion reimbursed under this section.

(f) Authorizes SOS to use any available funds to assist an authority with the purchase of an auditable voting system if the funds have been appropriated for that purpose.

(g) Provides that Subsections (b), (c), and (d) do not apply to an election held before September 1, 2026.

(h) Provides that a paper record generated by an auditable voting system is authorized to be used only for the purposes described by this section and is prohibited from being retained by the voter.

(i) Authorizes a voter voting under Section 64.009 (Voter Unable to Enter Polling Place), notwithstanding Subsection (b), to use a direct recording electronic voting machine regardless of whether the direct recording electronic voting machine is part of an auditable voting system.

SECTION 3. Amends Section 129.054, Election Code, as follows:

Sec. 129.054. NETWORK CONNECTIONS AND WIRELESS TECHNOLOGY. (a) Prohibits a voting system, beginning September 1, 2026, from being capable of being connected to any external or internal communications network, including the Internet.

(b) Prohibits a voting system, beginning September 1, 2026, from having the capability of permitting wireless communication.

SECTION 4. Requires the secretary of state to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. Provides that if the legislature does not appropriate money specifically for that purpose, the secretary of state is authorized, but is not required, to implement a provision of this Act using other appropriations that are available for that purpose.

SECTION 5. Effective date: September 1, 2021.