

**SUBJECT:** Requiring risk-limiting audits of election results, paper audit trails

**COMMITTEE:** Elections — favorable, without amendment

**VOTE:** 9 ayes — Cain, J. González, Beckley, Bucy, Clardy, Fierro, Jetton, Schofield, Swanson

0 nays

**SENATE VOTE:** On final passage, April 12 — 31-0

**WITNESSES:** For — Laura Pressley, True Texas Elections, LLC; Marcia Strickler, Wilco We Thee People; (*Registered, but did not testify:* Steph Gomez, Common Cause Texas; Joanne Richards, Common Ground for Texans; Gerald Welty, Convention of States; Cary Roberts, County and District Clerks' Association of Texas; Angela Smith, Fredericksburg Tea Party; Alan Vera, Harris County Republican Party Ballot Security Committee; Rene Perez, Libertarian Party of Texas; Jill Glover, Republican Party of Texas; Anne Mazuca, Secure Democracy; Chris Davis, Texas Association of Elections Administrators; Darcy Caballero and Glen Maxey, Texas Democratic Party; Joshua Houston, Texas Impact; Chad Ennis, Texas Public Policy Foundation; and 17 individuals)

Against — (*Registered, but did not testify:* Lorri Haden)

On — Keith Ingram, Texas Secretary of State; Robert L. Green, Travis County Republican Party Election Integrity Committee; Bill Sargent; (*Registered, but did not testify:* Christina Adkins, Texas Secretary of State; Henry Bohnert)

**BACKGROUND:** Interested parties have suggested that Texas should require risk-limiting audits of election results and paper audit trails to reduce the threat of electronic interference with elections in the state.

**DIGEST:** SB 598 would require risk-limiting audits of certain election results, require the secretary of state to conduct a pilot program, and require paper

audit trails, among other provisions.

**Risk-limiting audits.** A general custodian of election records would have to conduct a risk-limiting audit for a selected statewide race or measure within 24 hours after all ballots in the election had been counted. The general custodian would have to post a notice of the date, hour, and place of the audit in the custodian's office and on the county website, if applicable.

Provisions of the bill relating to the risk-limiting audit program would apply to an election that occurred after August 31, 2026, that contained a race or measure that was voted on statewide, and in which an auditable voting system was used.

The secretary of state would have to select the precincts to be counted and the office or proposition to be counted. The secretary could appoint personnel to assist with the audit, including applicable voting system technicians or representatives and persons who had assisted with the design and implementation of the audit. The results of a risk-limiting audit would have to be published on the secretary's internet website within three days after the completion of the audit.

The secretary of state would have to adopt rules prescribing procedures necessary to implement the risk-limiting audit program, including a rule, using widely accepted statistical methods, that provided for the number or percentage of paper records that would have to be counted in an audit.

A watcher could be present for the audit if appointed by a candidate in the election. A watcher would have to deliver a certificate of appointment that met certain specifications listed in the bill to the general custodian at the time the watcher reported for service.

**Audit pilot program.** The secretary of state would have to conduct a pilot program of the risk-limiting audit program established by the bill beginning with the election taking place November 8, 2022. The secretary would have to select at least five counties to participate in the pilot

program, at least one of which had a population of at least 500,000.

After each election conducted under the pilot program, the secretary would have 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.

Provisions relating to the pilot program would expire August 31, 2026.

**Paper audit trail.** A voting system that consisted of direct recording electronic voting machines could not be used in an election unless the system was an auditable voting system. The bill would define “auditable voting system” as a voting system that used, created, or displayed a paper record that could be read by a voter and was not capable of being connected to the internet or any other computer network or electronic device.

The electronic vote would be the official record of the vote cast if a risk-limiting audit produced strong evidence that the reported outcome of the election matched the results that a full counting of the paper records would reveal. The paper record would be the official record:

- for a recount, including a recount of ballots cast on a system involving direct recording electronic voting machines;
- for certain election contests; or
- if a risk-limiting audit failed to produce strong evidence that the reported outcome of the election matched the results that a full counting of the paper records would reveal.

The above provisions pertaining to a paper audit trail would not apply to an election held before September 1, 2026.

An authority that purchased a voting system other than an auditable voting system between September 1, 2014, and September 1, 2021, could use available federal funding and, if such funds were not available, available

state funding to convert the purchased system into an auditable system. If the voting system was converted by the November 8, 2022, election, the authority would be eligible to have 100 percent of the conversion cost reimbursed. If the authority was not eligible for a 100 percent reimbursement and the voting system was converted by the November 3, 2026, election, the authority would be eligible to have half of the conversion cost reimbursed.

The secretary of state could use any available funds to assist an authority with the purchase of an auditable voting system if the funds had been appropriated for that purpose.

A paper record generated by an auditable voting system could be used only for its specified purposes and could not be retained by the voter.

A voter unable to enter a polling place could use a direct recording electronic voting machine regardless of whether the direct recording electronic voting machine was part of an auditable voting system.

**Network connections.** Beginning September 1, 2026, a voting system could not be capable of being connected to any external or internal communications network, including the internet, or have the capability of permitting wireless communication.

**Waivers prohibited.** The secretary of state could not waive any requirements relating to risk-limiting audits, paper audit trails, or the network connection and wireless technology of voting systems.

**Implementation.** The secretary of state would have to implement a provision of the bill only if the Legislature appropriated money for that purpose. If the Legislature did not appropriate money, the secretary of state could, but would not be required to, implement a provision of the bill using other appropriations available for that purpose.

The bill would take effect September 1, 2021.

NOTES: According to the Legislative Budget Board, the bill would have a negative impact of \$38.7 million to general revenue through fiscal 2023.