

JAN 19 2023

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# A BILL FOR AN ACT

RELATING TO ELECTIONS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 16-41, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "§16-41 Definitions. Whenever used in this title, unless  
4 the context otherwise requires:

5           "Counting center" means the computer facilities and  
6 surrounding premises designated by the chief election officer or  
7 the clerk in county elections where electronic voting system  
8 ballots are counted.

9           "Defective ballot" means any ballot delivered to the  
10 counting center in accordance with section 11-152 that cannot be  
11 read by the ballot reading device.

12           "Direct recording electronic voting system" means a system  
13 that generates a voter verifiable paper audit trail and utilizes  
14 electronic components, which are logically and physically  
15 integrated into a single unit, for the functions of ballot  
16 presentation, vote capture, vote recording, and tabulation.



1        "Electronic voting system" means the method of recording  
2 votes which are counted by automatic tabulating equipment. The  
3 term includes, but is not limited to, the mechanical tabulation  
4 system, including a marksense ballot voting system, that  
5 involves the tabulation of paper ballots, and the direct  
6 recording electronic voting system that generates a voter  
7 verifiable paper audit trail.

8        "Marksense ballot voting system" means a mechanical  
9 tabulation system using paper ballots and optical scanning,  
10 digital scanning, or similar technology equipment, for which:

11        (1) The voter manually records votes by marking the  
12 appropriate voting position on the ballot, with a  
13 prescribed marking device, in the manner instructed by  
14 the chief election officer; and

15        (2) The marks on the ballots are subsequently read by the  
16 optical scan, digital scan, or similar technology  
17 device, in conformance with the specifications of the  
18 voting system selected by the chief election officer.

19        "Mechanical tabulation system" means an automatic  
20 tabulation system, including a marksense ballot voting system,



1 that tabulates paper ballots. The term does not include a  
2 direct recording electronic voting system.

3 "Voter verifiable paper audit trail" means the paper record  
4 that constitutes a complete record of ballot selections that is  
5 verified by the voter. The record may also be used to assess  
6 the accuracy of the voting machine's electronic record and to  
7 verify the election results."

8 SECTION 2. Section 16-42, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "§16-42 Electronic voting requirements. (a) When used at  
11 primary or special primary elections, the automatic tabulating  
12 equipment of the electronic voting system shall count only votes  
13 for the candidates of one party, or nonpartisans. In all  
14 elections, the equipment shall reject all votes for an office  
15 when the number of votes therefor exceeds the number that the  
16 voter is entitled to cast.

17 No electronic voting system shall be used in any election  
18 unless it [~~generates~~] involves a paper ballot or voter  
19 verifiable paper audit trail [~~that may be inspected and~~  
20 ~~corrected by the voter before the vote is cast, and unless every~~  
21 ~~paper ballot or voter verifiable paper audit trail is retained~~



1 ~~as the definitive record of the vote cast]~~. The chief election  
2 officer shall prescribe the method of marking the ballot and  
3 associated instructions for voting associated with the  
4 electronic voting system.

5 (b) The chief election officer [~~may rely on electronic~~  
6 ~~tallies created directly by electronic voting systems, in lieu~~  
7 ~~of counting the paper ballots by hand or with a mechanical~~  
8 ~~tabulation system if+]~~, in using an electronic voting system,  
9 shall ensure that:

- 10 (1) The electronic voting system is subject to inspection,  
11 audit, and experimental testing, by qualified  
12 observers, before and after the election, pursuant to  
13 administrative rules adopted by the chief election  
14 officer under chapter 91;
- 15 (2) No upgrades, patches, fixes, or alterations shall be  
16 applied to the system through thirty days after the  
17 election;
- 18 (3) The chief election officer conducts a post-election,  
19 pre-certification audit of [~~a random sample of]~~ not  
20 less than ten per cent of the precincts [~~employing the~~  
21 ~~electronic voting system]~~, to verify that the



1           ~~[electronic tallies generated by]~~ results from the  
2           system ~~[in these precincts]~~ with respect to a selected  
3           contest or ballot question equal ~~[hand tallies]~~ a  
4           tally of the ~~[paper]~~ ballots ~~[generated by the system~~  
5           ~~in these precincts; and]~~ or voter verifiable paper  
6           audit trails;

7           (4) The audit may be conducted with scanned images of the  
8           ballots or voter verifiable paper audit trails and  
9           involve a contest or ballot question. To the extent  
10          technology permits other forms of duplication or  
11          reproduction, the technology likewise may be used in  
12          lieu of the physical paper ballots or voter verifiable  
13          paper audit trails;

14          (5) Any counting of ballots or voter verifiable paper  
15          audit trails for purposes of the audit shall be  
16          conducted in accordance with any marking and vote  
17          disposition rules relating to the electronic voting  
18          system that the ballots or voter verifiable paper  
19          audit trails were associated with;



- 1        (6) A discrepancy or difference in results shall not be  
2        considered to reflect misreporting if the discrepancy  
3        is not related to misreporting a proper mark;
- 4        ~~[(4)]~~ (7) If [~~discrepancies appear~~] misreporting appears in  
5        the pre-certification audits [~~in paragraph (3)~~], the  
6        chief election officer, pursuant to administrative  
7        rules, shall immediately conduct an expanded audit to  
8        determine the extent of misreporting in the system[~~]~~;
- 9        (8) Any counting of ballots to correct misreporting for  
10       isolated devices shall involve the specific type of  
11       mechanical tabulation system, such as the marksense  
12       ballot voting system, that was originally associated  
13       with the ballot after appropriate steps are taken to  
14       use devices that did not experience misreporting, or  
15       the misreporting devices have been repaired to the  
16       satisfaction of the chief election officer. All  
17       contests and ballot questions on the impacted ballots  
18       shall be counted by the voting system and those  
19       results shall replace the prior contests and ballot  
20       question results; and



1        (9) To the extent that misreporting occurs with a direct  
2        recording electronic voting system, the voter  
3        verifiable paper audit trails or reproductions  
4        associated with the isolated misreporting devices  
5        shall be counted in their entirety and those results  
6        shall replace the prior misreported results.

7        (c) In the event of a county only election not held in  
8        conjunction with a regularly scheduled federal or state  
9        election, all references to the chief election officer shall be  
10       understood to refer to the clerk."

11       SECTION 3. This Act does not affect rights and duties that  
12       matured, penalties that were incurred, and proceedings that were  
13       begun before its effective date.

14       SECTION 4. Statutory material to be repealed is bracketed  
15       and stricken. New statutory material is underscored.

16       SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:   
By Request



# S.B. NO. 180

**Report Title:**

Office of Elections Package; Electronic Voting System;  
Definitions; Electronic Voting Requirements

**Description:**

Defines "direct recording electronic voting system", "marksense ballot voting system", and "mechanical tabulation system". Amends the definition of "electronic voting system" to include the mechanical tabulation system and marksense ballot voting system. Specifies additional requirements and procedures with which the Chief Election Officer must comply when using an electronic voting system, including procedures for conducting the post-election, pre-certification audit.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

