

PUBLIC CHAPTER NO. 612

HOUSE BILL NO. 614

By Representatives Todd, Tindell, Moore, Watson

Substituted for: Senate Bill No. 872

By Senator Ketron

AN ACT to amend Tennessee Code Annotated, Title 2 and Chapter 1108 of the Public Acts of 2008, relative to elections.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Section 6 of Chapter 1108 of the Public Acts of 2008 is amended by deleting the language “but no later than the general election of 2010” and by substituting instead the language “but no later than the general election of 2012”.

SECTION 2. Tennessee Code Annotated, Section 2-20-101(a), is amended by deleting the language “after January 1, 2009” and substituting instead the language “after August 1, 2011”.

SECTION 3. Tennessee Code Annotated, Section 2-20-101(b)(1), is amended by deleting the language “on or before the November 2010 general election” and substituting instead the language “on or before the November 2012 general election”.

SECTION 4. Tennessee Code Annotated, Section 2-20-104(a)(1), is amended by deleting the language “All electronic voting systems in use on or after January 1, 2009:” and substituting instead the language “All new electronic voting systems purchased or leased on or after August 1, 2011:”.

SECTION 5. Tennessee Code Annotated, Title 2, Chapter 20, Part 1, is amended by adding the following as a new section thereto:

2-20-106.

Every effort shall be made to purchase United States manufactured precinct-based optical scanner voting systems.

SECTION 6. Tennessee Code Annotated, Section 2-1-104(a), is amended by deleting subdivision (31) and by substituting instead the following language:

(31) “Top race” means the presidential race, if the presidential race is on the ballot, or the governor's race, if the governor's race is on the ballot,

SECTION 7. Tennessee Code Annotated, Section 2-20-103, is amended by deleting such section in its entirety and substituting instead the following:

2-20-103.

(a)

(1) Following each November general election the county election commission shall, in accordance with this section, conduct automatic mandatory audits of the voter-verified paper ballots cast for the president of the United States in a presidential election and the governor in a gubernatorial election hereafter referred to as the "top race". The county election commission shall prepare to conduct the audit in the following manner:

(A) Prior to each election, the county election commission shall first assure that each optical scan tabulator used to count absentee by-mail ballots, early voting ballots, and election day ballots have been cleaned of debris by the manufacturer. The manufacturer shall provide the election commission with a certificate that attests to the cleaning of the tabulator prior to the election. The certificate of any optical scan tabulator used during the automatic audit shall be made available to the public prior to the use of the optical scan tabulator in the audit process.

(B) The county election commission shall randomly select at least one (1) precinct-based optical scan tabulator used to count ballots cast during early voting.

(C)

(1) For counties having a population of less than three hundred thousand (300,000), according to the 2000 federal census or any subsequent federal census, the county election commission shall randomly select at least one (1) voting precinct in the county.

(2) For counties having a population of three hundred thousand (300,000) or greater, according to the 2000 federal census or any subsequent federal census, the county election commission shall randomly select at least five (5) voting precincts in the county.

(D) Before an optical scan tabulator may be used for the audit process, a printed tape of the election results must be generated and the electronic election results from the tabulator must be backed up onto a separate laptop. The optical scan tabulator must be cleared and reset. A zero tape from the optical scan tabulator must be printed before the tabulator may be used in the audit process.

(2) Immediately after the polls close and at a place open to the public, the county election commission shall randomly select the voting precinct or precincts, as appropriate, and shall select at least one (1) precinct-based optical scan tabulator used to count ballots during early voting to be used for the automatic mandatory audit and shall announce to the public the results of the random drawing. The random selection utilized by the county election commission shall ensure that all voting precincts in the county and all precinct-based optical scan tabulators used to count ballots cast during early voting have an equal chance of being selected.

(b)

(1) After the unofficial election results, excluding provisional ballots, have been determined and made public, a county election commissioner from the majority party and a county election commissioner from the minority party shall have all absentee by-mail ballots, all ballots cast during the early voting period, and all ballots cast on election day locked and sealed pursuant to § 2-6-311 until the county election commission convenes to conduct the audit. The county election commission shall also lock and secure each precinct-based optical scan tabulator used in the election process until the county election commission convenes to conduct the audit.

(2) Before one (1) o'clock p.m. local time on the day following election day the automatic audit shall be conducted in the following manner:

(A) At a time and place open to the public, the county election commission shall identify those ballot boxes containing the absentee by-mail ballots cast in the randomly selected voting precinct or precincts and identify those ballot boxes containing the election day ballots cast in the randomly selected voting precinct or precincts. The election commission must include in the audit only those absentee by-mail ballots which were counted by an optical scan tabulator rather than by hand. A county election commissioner from the majority party and a county election commissioner from the minority party, personally holding the keys to such ballot box or boxes, shall unlock the ballot box or boxes.

(B) The election commission shall identify and remove from the respective ballot box or boxes each ballot cast in the absentee by-mail voting process in the selected precincts which were counted by an optical scan tabulator and each ballot cast on election day in the selected precinct or precincts.

(C)

(1) In auditing the precinct-based optical scan tabulator which had been used to originally count the early voting voter-verified paper ballots, the county election commission shall remove the early voting ballots contained in the ballot box of the optical scan tabulator and shall verify the accuracy of the unofficial election results by inserting such early voting ballots into the randomly selected optical scan tabulator. The county election commission shall compare the results of the top race obtained during the automatic audit of such optical scan tabulator with the unofficial election results of the top race. The election commission shall publicly announce the results.

(2) In auditing the absentee by-mail ballots which were counted by an optical scan tabulator, the county election commission shall take the absentee by-mail ballots from the randomly selected voting precinct or precincts, and shall verify the accuracy of the unofficial election results by inserting the subject absentee by-mail in a different precinct-based optical scan tabulator than that used to originally count the absentee ballots.

(3) In auditing the election day ballots, the county election commission shall take the election day ballots from the randomly selected voting precinct or precincts, and shall verify the accuracy of the unofficial election results by inserting the subject election day ballots in a different precinct-based optical scan tabulator than that used to originally count the election day ballots.

(4) To judge the accuracy of the unofficial election results, the county election commission shall compare the results of the top race obtained during the automatic audit with the unofficial election results of the top race obtained on election night. The election commission shall publicly announce the results.

(D)

(1) If as a result of the automatic audit, the county election commission finds that there is a variance of less than one percent (1%) between the unofficial election results of the top race and the

automatic audit, no hand count audit shall be required and the county election commission shall certify the election results as originally determined.

(2) If as a result of the automatic audit, the county election commission finds that there is a variance of more than one percent (1%) between the unofficial election results of the top race and the automatic audit, the county election commission shall randomly select at least three percent (3%) of the voting precincts in the county. The county election commission may include the voting precincts previously audited. The county election commission must identify the ballot box or boxes from the subject voting precincts, obtain the ballots out of those ballot boxes, and then insert such ballots into a different optical scan tabulator than that used to originally count the ballots. In addition, the county election commission may conduct a manual hand count of the same ballots subjected to the automatic audit described in this subdivision (D)(2). The automatic audit or the manual hand count audit, if one is conducted, shall be of the top race on the ballot in such voting precincts used in the expanded audit. The county election commission shall publicly announce the results of the automatic audit and the manual hand count, if a manual hand count is conducted.

(3) The results of any difference between precinct-based optical scan tabulations or the hand count audit shall be available for use in any election contest filed pursuant to title 2, chapter 17.

SECTION 8. Tennessee Code Annotated, Section 2-5-209, is amended by deleting the language "promulgate rules to".

SECTION 9. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: January 12, 2010



KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES



RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 22nd day of January 2010



PHIL BREDESEN, GOVERNOR