**South Carolina General Assembly**

123rd Session, 2019-2020

**H. 3616**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Finlay, Bernstein, Norrell, Clary, Rutherford, Funderburk and W. Newton

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Companion/Similar bill(s): 374, 3304, 4293, 4725

Introduced in the House on January 16, 2019

Currently residing in the House Committee on **Judiciary**

Summary: Voting

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/16/2019 House Introduced and read first time ([House Journal‑page 22](file:///h:\hj\20190116.docx))

1/16/2019 House Referred to Committee on **Judiciary** ([House Journal‑page 22](file:///h:\hj\20190116.docx))

1/17/2019 House Member(s) request name added as sponsor: Funderburk

3/12/2019 House Member(s) request name added as sponsor: W.Newton

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**VERSIONS OF THIS BILL**

[1/16/2019](file:///p:\pprever\2019-20\3616_20190116.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 7‑1‑110 SO AS TO ESTABLISH THE SOUTH CAROLINA ELECTION SECURITY COUNCIL, AND TO PROVIDE FOR THE COUNCIL’S COMPOSITION, DUTIES, POWERS, AND RESPONSIBILITIES; BY ADDING SECTION 7‑13‑1625 SO AS TO PROVIDE THAT AFTER THE EFFECTIVE DATE OF THIS ACT, ALL VOTING SYSTEMS USED IN SOUTH CAROLINA SHALL UTILIZE A PAPER‑BASED SYSTEM USING PAPER BALLOTS TABULATED BY OPTICAL SCANNERS AS THE BALLOT OF RECORD, AND TO REQUIRE THE GENERAL ASSEMBLY TO APPROPRIATE THE FUNDS NECESSARY TO PURCHASE THE VOTING SYSTEMS REQUIRED BY THIS SECTION; AND BY ADDING SECTION 7‑13‑1635 SO AS TO PROVIDE THAT BEGINNING WITH THE 2020 GENERAL ELECTION CYCLE, THE STATE ELECTION COMMISSIONIN CONJUNCTION WITH THE COUNTY BOARDS OF VOTER REGISTRATION AND ELECTIONS, AS NECESSARY, SHALL CONDUCT POSTELECTION RISK‑LIMITING AUDITS FOR ALL STATEWIDE PRIMARY, GENERAL, AND SPECIAL ELECTIONS, INCLUDING STATEWIDE RUNOFF ELECTIONS, TO DEFINE RELEVANT TERMS, AND TO AUTHORIZE THE STATE ELECTION COMMISSION TO PROMULGATE REGULATIONS REGARDING THE PROCEDURES AND USE OF RISK‑LIMITING AUDITS.

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

SECTION 1. Chapter 1, Title 7 of the 1976 Code is amended by adding:

“Section 7‑1‑110. (A) There is established the South Carolina Election Security Council, which must be composed of the following nine members:

(1) the Executive Director of the State Election Commission;

(2) the Attorney General, or his designee;

(3) the Adjutant General, or his designee;

(4) two members of the Senate, who may not be members of the same political party, appointed by the President of the Senate;

(5) two members of the House of Representatives, who may not be members of the same political party, appointed by the Speaker of the House of Representatives; and

(6) two members, each of whom must be a director of a county board of voter registration and elections, appointed by the Governor.

(B) Each member shall serve for a term of two years from the date of appointment and is eligible for reappointment without limitation. A vacancy in the council’s membership must be filled in the manner of the original appointment.

(C) Members of the council must be appointed within sixty days after the effective date of this section and shall organize as soon as practicable after the appointment of a majority of its membership. The council shall elect a chair and vice chair from among the council’s appointed members. The Executive Director of the State Election Commission shall appoint an individual from the commission staff to serve as secretary. The council shall meet at the call of the chair and hold meetings at the times and locations he deems appropriate and necessary for the council to fulfill its official duties and responsibilities.

(D) Council members shall serve without compensation, but may be reimbursed for actual mileage incurred and per diem in accordance with state travel regulations.

(E) The council may call upon the State Election Commission to provide additional clerical and administrative services and assistance as needed.

(F) Within one hundred twenty days following each general election after the effective date of this section, the council shall draft and release a report addressing the security of elections conducted in South Carolina during the previous year. Following the implementation of risk‑limiting audits pursuant to Section 7‑13‑1635, the report shall include the results and of these audits and the transition to paper ballots with optical scanners required by Section 7‑13‑1625. The commission shall make recommendations, as necessary, to improve election security in this State.

(G) Copies of the council’s report must be transmitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and to the chairmen of both Senate and House Judiciary Committees. A copy of the report also must be posted on the State Election Commission’s website.”

SECTION 2. Article 15, Chapter 13, Title 7 of the 1976 Code is amended by adding:

“Section 7‑13‑1625. (A) After the effective date of this section, the State of South Carolina or any state agency, board, commission, or council may not purchase any type of voting system, including an electronic voting system, that does not meet the following requirements:

(1) a voter must be able to mark by hand a paper ballot, which shall be tabulated using an optical scanner;

(2) a voter must be able to insert the marked paper ballot into the optical scanner, unless the voter is entitled to request and has requested assistance to vote pursuant to guidelines under the ‘Americans with Disabilities Act of 1990’ 42 U.S.C. Section 12101, et seq., and in that case the voter shall be assisted;

(3) the optical scanners shall provide a ‘cast vote record’ (CVR) of the individual ballots cast;

(4) the scanners shall adhere to the federal Election Assistance Commission’s Voluntary Voting System Guidelines; and

(5) other requirements, features, or capabilities the State Election Commission deems necessary.

(B)(1) The State Election Commission shall require the county boards of voter registration and elections to maintain all paper ballots cast in an election pursuant to this section for a period of no less than two years following the date of an election. Thereafter, the ballots may be retained in accordance with State Election Commission policy and procedures.

(2) Prior to verification of the election results by the appropriate election authority, the county boards of voter registration and elections shall:

(a) compare and reconcile the number of ballots with the number of voters who signed in at the polling place and who voted by mail‑in, provisional, and military or overseas ballots;

(b) compare and reconcile precinct totals with countywide results to ensure that they add up to the correct sum; and

(c) review and account for all optical scanner memory cards or flash drives to ensure they are properly loaded into the tally server.

(3) After the counties have transitioned to the paper ballot voting system with optical scanners, the county boards of voter registration and elections shall conduct risk‑limiting audits pursuant to the provisions of Section 7‑13‑1635.

(C) The General Assembly shall appropriate the funds necessary to purchase the new equipment, software, and hardware for the paper ballot voting system required by this section and to meet the costs of the risk‑limiting audits required by Section 7‑13‑1635. The State Election Commission is authorized to sell decommissioned voting machines, equipment, and software to other states and retain the proceeds, if any, to support the commission’s training and certification of the members of the county boards of voter registration and elections. The commission also shall apply for grant funding from the United States Election Assistance Commission to help offset these costs.”

SECTION 3. Article 15, Chapter 13, Title 7 of the 1976 Code is amended by adding:

“Section 7‑13‑1635. (A) The General Assembly finds the auditing of election results is necessary to ensure effective election administration and public confidence in the election results. Further, risk‑limiting audits provide a more effective manner of conducting audits than traditional audit methods in that risk‑limiting audit methods typically require only limited resources for election contests with wide margins of victory while investing greater resources in close contests.

(B) For purposes of this section:

(1) ‘Contest’ means a primary or runoff primary, an election or runoff election for an office or for a measure.

(2) ‘Commission’ means the State Election Commission.

(3) ‘Incorrect outcome’ means an outcome that is inconsistent with the election outcome that would be obtained by conducting a full recount.

(4) ‘Risk‑limiting audit’ means an audit protocol that makes use of statistical methods and is designed to limit to acceptable levels the risk of certifying a preliminary election outcome that constitutes an incorrect outcome.

(C) Beginning with the 2020 general election cycle, the commissionin conjunction with the county boards of voter registration and elections, as necessary, shall conduct postelection risk‑limiting audits pursuant to the provisions of this section and commission regulations. While all contested races are eligible for audit, risk‑limiting audits must be conducted for all statewide primary, general, and special elections, including statewide runoff elections. Additional contests to be audited must be selected in accordance with procedures established by the commission.

(D) The commission shall promulgate regulations necessary to implement and administer the requirements of this section. In connection with the promulgation of the regulations, the commission shall consult with recognized statistical experts, including statistical experts with experience in election auditing, equipment vendors, and the county boards of voter registration and elections. The commission also shall consider the best practices for conducting risk‑limiting audits.”

SECTION 4. This act takes effect upon approval by the Governor.

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