

## **BILL ANALYSIS**

S.B. 598  
By: Kolkhorst  
Elections  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Elections are the bedrock of a democratic system of government. Ensuring that elections are conducted under the highest standards possible is critical to instilling faith in state governance. Advances in technology have increased the threat of electronic interference with elections but also have provided the tools available to prevent that interference. There have been calls for Texas to utilize voting machines that display a paper record to help ensure elections in Texas remain fair and free of interference. 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.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the secretary of state in SECTION 1 of this bill.

### **ANALYSIS**

S.B. 598 amends the Election Code to require 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. The bill requires the secretary of state to select, in accordance with rules adopted by the secretary, the precincts to be counted and the office or proposition to be counted. The bill authorizes the secretary of state 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. The bill 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 and to post a notice of the date, hour, and place of the audit in the custodian's office and on the county's website, if the county maintains a website.

S.B. 598 authorizes a watcher to be present for the audit if appointed by a candidate in the election but requires a watcher to deliver a certificate of appointment to the general custodian at the time the watcher reports for service. The bill requires the certificate to be in writing and include specific information about the watcher and the audit.

S.B. 598 requires the secretary of state to adopt rules prescribing procedures necessary to implement the audit and requires the rules to include a rule, using widely accepted statistical methods, that provides for the number or percentage of paper records that must be counted in such an audit. The bill requires the results of the audit to be published on the secretary of state's website not later than three days after the completion of the audit. The bill's provisions relating

to the risk-limiting audit and the publication of audit results apply to an election that occurs after August 31, 2026, that contains a race or measure that is voted on statewide, and in which an auditable voting system is used.

S.B. 598 requires the secretary of state to conduct a pilot program of the risk-limiting audit program beginning with the election taking place November 8, 2022. The bill requires the secretary of state to select at least five counties to participate in the pilot program and requires at least one county participating in the program to have a population of at least 500,000. After each election conducted under the pilot program, the secretary of state must 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. The bill requires the secretary of state to adopt rules as necessary to implement the pilot program, which expires August 31, 2026.

S.B. 598 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, as defined by the bill. The bill establishes the conditions under which the electronic vote or the paper record is the official record of the vote cast. These provisions do not apply to an election held before September 1, 2026.

S.B. 598 establishes that a paper record generated by an auditable voting system may be used only for purposes of the paper audit trail and may not be retained by the voter. The bill provides a schedule by which an authority that purchased a voting system other than an auditable voting system after September 1, 2014, and before September 1, 2021, may 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. The bill authorizes the secretary of state 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. The bill authorizes a voter who is physically unable to enter the polling place without personal assistance or likelihood of injuring the voter's health to use a direct recording electronic voting machine regardless of whether the direct recording electronic voting machine is part of an auditable voting system.

S.B. 598 prohibits a voting system, beginning September 1, 2026, from being capable of connecting to any external or internal communications network, including the Internet, and from having the capability of permitting wireless communication. The bill prohibits the secretary of state from waiving any requirements established by the bill. Implementation of the bill's provisions by the secretary of state is mandatory only if a specific appropriation is made for that purpose.

#### **EFFECTIVE DATE**

September 1, 2021.