

2021 Regular Session

HOUSE BILL NO. 704 (Substitute for House Bill No. 599 by Representative Hodges)

BY REPRESENTATIVE HODGES

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ELECTIONS: Provides relative to elections

1 AN ACT

2 To amend and reenact R.S. 18:18(A)(7), 435(A)(4) and (B)(2), and 1351 and to enact  
3 R.S.18:435(A)(1)(c) and (5) and (B)(1)(c), 1309(N), 1366, and 1366.1, relative to  
4 elections; to provide relative to the powers and duties of the secretary of state; to  
5 provide for the appointment of poll watchers; to provide for definitions relative to  
6 voting, voting machines, and vote counting equipment; to provide requirements for  
7 voting systems; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 18:18(A)(7), 435(A)(4) and (B)(2), and 1351 are hereby amended  
10 and reenacted and R.S. 18:435(A)(1)(c) and (5) and (B)(1)(c), 1309(N), 1366, and 1366.1  
11 are hereby enacted to read as follows:

12 §18. Secretary of state; powers and duties

13 A. The secretary of state shall administer the laws relating to custody of  
14 voting machines and voter registration, and for this purpose he shall:

15 \* \* \*

16 (7) Prescribe uniform rules, regulations, forms, and instructions as to the use  
17 of ~~electronic~~ voting machines, as defined by R.S. 18:1351, in the conduct of early  
18 voting, which shall be approved by the attorney general and thereafter shall be  
19 applied uniformly by each registrar of voters in the state.

20 \* \* \*

1 §435. Watchers; appointment and commission

2 A.(1)

3 \* \* \*

4 (c) A state central committee of a political party recognized pursuant to R.S.  
5 18:441, and having at least twenty-five percent of the registered voters in the state  
6 registered as being affiliated with the political party, is entitled to have one watcher  
7 at every precinct on election day where a candidate affiliated with the political party  
8 is on the ballot. The chairman of the state central committee shall sign and file one  
9 list of watchers on a form provided by the secretary of state or on a form which  
10 contains the same information as required by the form provided by the secretary of  
11 state.

12 \* \* \*

13 (4)(a) The state central committee of a recognized political party having at  
14 least twenty-five percent of the registered voters in the state registered as being  
15 affiliated with such political party is entitled to have political party super watchers  
16 in each parish in which a candidate affiliated with such political party is on the  
17 ballot. The designation of political party super watchers shall be made in accordance  
18 with this Section and as provided in Subparagraph (b) of this Paragraph.

19 (b)(i) In a parish with fewer than fifty thousand registered voters, the state  
20 central committee of such a recognized political party may designate one political  
21 party super watcher.

22 (ii) In a parish with fifty thousand or more but fewer than one hundred  
23 thousand registered voters, the state central committee of such a recognized political  
24 party may designate two political party super watchers.

25 (iii) In a parish with one hundred thousand or more but fewer than one  
26 hundred-fifty thousand registered voters, the state central committee of such a  
27 recognized political party may designate three political party super watchers.

1           (iv) In a parish with one hundred-fifty thousand or more but fewer than two  
2           hundred thousand registered voters, the state central committee of such a recognized  
3           political party may designate four political party super watchers.

4           (v) In a parish with two hundred thousand or more registered voters, the state  
5           central committee of such a recognized political party may designate five political  
6           party super watchers.

7           (c) Each political party super watcher shall have the qualifications, powers,  
8           and duties of watchers provided for by R.S. 18:427 and shall be admitted as a  
9           watcher in every precinct in the designated parish where a candidate affiliated with  
10          his political party is on the ballot, except that not more than one political party super  
11          watcher may serve at a single precinct at the same time.

12          (d) The chairman of the state central committee of the political party shall  
13          sign and be responsible for filing the list of political party super watchers.

14          (5) The commissioners shall regulate the number of watchers inside the  
15          polling place as provided in R.S. 18:427.

16          B.(1)

17                                   \*       \*       \*

18          (c) A list of political party super watchers submitted by a party for the  
19          primary election may be used for the general election only if the chairman of the  
20          state central committee of the party notifies the clerk of court in writing by 4:30 p.m.  
21          on the tenth business day before the general election that he wants to use the same  
22          list of political party super watchers.

23          (2) Except for a candidate, state central committee of a recognized political  
24          party filing a list of political party super watchers, or recognized political party filing  
25          for a slate of candidates for presidential elector, any person filing a list of watchers  
26          ~~must~~ shall attach a certified statement that the report required by R.S. 18:1486 has  
27          been filed with the supervisory committee in compliance with the Campaign Finance  
28          Disclosure Act.

29                                   \*       \*       \*

1 §1309. Early voting; verification

2 \* \* \*

3 N.(1) The state central committee of a recognized political party having at  
4 least twenty-five percent of the registered voters in the state registered as being  
5 affiliated with such political party is entitled to have an early voting watcher at each  
6 early voting location, as space permits, at which a candidate affiliated with the  
7 political party is on the ballot.

8 (2) A qualified voter of the state who is not entitled to assistance in voting  
9 and is not a candidate in the election may serve as an early voting watcher.

10 (3) A watcher shall be admitted within the designated early voting location  
11 during the conduct of early voting where a candidate affiliated with such political  
12 party is on the ballot and shall call any infraction of the law to the attention of the  
13 registrar of voters or deputy registrar. An early voting watcher may keep notes on  
14 the conduct of early voting, but he shall not take part in performing the procedures  
15 of Subsections D, E, and F of this Section. An early voting watcher shall not  
16 electioneer, engage in political discussions, or unnecessarily delay a voter at the  
17 polling place. An early voting watcher is subject to the authority of the registrar of  
18 voters or deputy registrar and shall not interfere with the registrar or deputy registrar  
19 in the performance of their duties. A state central committee of a political party shall  
20 be entitled to have both a watcher and alternate watcher serve at the same early  
21 voting location, except that the early voting watcher and alternate watcher may not  
22 serve at a single voting location at the same time.

23 (4) The registrar of voters or deputy registrar shall regulate the number of  
24 watchers inside the early voting location as provided in R.S. 18:427.

25 (5) A list of early voting watchers shall be filed with the registrar of voters  
26 by hand delivery, facsimile, mail, or commercial courier before 4:30 p.m. on the  
27 fourteenth business day before the first day of early voting for the primary or general  
28 election; however, if the fourteenth business day before the first day of early voting  
29 for the primary or general election falls on a Saturday, Sunday, or other legal

1 holiday, the list shall be filed on the next day which is not a Saturday, Sunday, or  
2 other legal holiday. For purposes of this Paragraph, "commercial courier" shall have  
3 the same meaning as provided in R.S. 13:3204(D).

4 (6) The chairman of the state central committee of the political party shall  
5 sign and be responsible for filing the list of early voting watchers. If candidates  
6 affiliated with the political party are on the ballot in more than one parish, a list of  
7 watchers shall be filed with the registrar of voters in each parish where the political  
8 party will have early voting watchers.

9 (7) A list of early voting watchers submitted for the primary election may  
10 be used for the general election only if the chairman of the state central committee  
11 of the political party notifies the registrar of voters in writing by 4:30 p.m. on the  
12 tenth business day before the start of early voting for the general election that he  
13 wants to use the same list of early voting watchers.

14 (8) A list of early voting watchers shall contain only one early voting  
15 watcher and one alternate watcher for each early voting location where the state  
16 central committee of the political party is entitled to have an early voting watcher.  
17 The list shall be typed or legibly written, and it shall contain the name and mailing  
18 address of each early voting watcher and alternate watcher and a designation of the  
19 early voting location where each is to serve.

20 \* \* \*

21 §1351. Definitions

22 As used in this Chapter, unless otherwise specified, the following terms shall  
23 have the meanings herein ascribed to each:

24 (1) "Absentee by mail and early voting counting equipment" means a device  
25 capable of counting and producing results of votes cast on paper absentee by mail  
26 and early voting ballots.

27 ~~(4)~~(2) "Election" means and includes all elections held in Louisiana, whether  
28 primary, general, or special.

1           ~~(5) "Electronic voting machine" means a voting machine that displays a~~  
2           ~~full-face ballot, whereby votes are cast by pushing a vote indicator button on the face~~  
3           ~~of the machine or a voting machine that displays a paging ballot, whereby votes are~~  
4           ~~cast by selecting a vote indicator by touching the screen or using available tools on~~  
5           ~~the voting system.~~

6           ~~(7)(3) "Official ballot" means the list of candidates, offices, amendments,~~  
7           ~~questions, or propositions prominently displayed on the front of~~ on ~~the voting~~  
8           ~~machine or paper ballot as certified by the secretary of state, and may include a hand~~  
9           ~~marked secure paper ballot to be used as an option for day of voting.~~

10           ~~(8)(4) "Parish custodian" refers to the parish custodian of voting machines~~  
11           ~~and means the persons designated as such by R.S. 18:1354.~~

12           ~~(9)(5) "Protective counter" means a counter, tabulator, or protective device~~  
13           ~~that will register each time the machine is~~ operated voted ~~during the life of the~~  
14           ~~machine.~~

15           ~~(10)(6) "Public counter" means a counter, tabulator, or~~ other protective  
16           ~~device on the outside or on the face of the machine, which shall at all times~~ that  
17           ~~incrementally records and indicate the number of times~~ indicates each time ~~votes~~  
18           ~~have been cast on a machine at~~ during ~~an election.~~

19           ~~(11)(7) "Question" means an amendment, proposition, or like matter to be~~  
20           ~~voted on in an election.~~

21           ~~(8) "Vote-capture device" means a component of a voting system including~~  
22           ~~hardware which may include an optical scanner or tabulator, software, and firmware,~~  
23           ~~that captures and counts voter selections from paper or electronic ballots that meet~~  
24           ~~the security requirements of R.S. 18:1366.~~

25           ~~(12)(9) "Vote indicator" means the device on a voting machine with which~~  
26           ~~votes upon a candidate or question are indicated.~~

27           ~~(10) "Secure paper ballot" means a unique layered paper ballot that supports~~  
28           ~~watermarks or crypto marking capability produced per election by the secretary of~~  
29           ~~state and distributed based on inventory-controlled counters printed on the forms and~~

1 accounted for per precinct with all ballots including used, unused, and spoiled  
2 ballots, returned at the end of each election.

3 ~~(13)~~(11) "Voting machine" means the enclosure occupied by the voter when  
4 voting, as formed by the ~~machine~~ vote-capture device, its screen and privacy shield;  
5 ~~which shall include electronic voting machines.~~ The voting machine may include  
6 voter-facing optical scanners or any other vote-capture device or technology used to  
7 secure the vote.

8 ~~(14)~~(12) "Voting system" means the total combination of equipment,  
9 materials, and documentation, including voting machines, voter-verified paper  
10 records and paper ballots, hardware, software, and firmware for which the secretary  
11 of state controls the source code for every election used to:

- 12 ~~(a) define ballots~~ Define elections and ballot styles.
- 13 (b) Configure voting equipment.
- 14 (c) Identify and validate voting equipment configurations.
- 15 (d) Perform logic and accuracy tests.
- 16 (e) Activate ballots for voters.
- 17 (f) Scan paper ballots.
- 18 ~~(g) cast~~ Cast and count votes.
- 19 (h) Generate reports.
- 20 (i) Export election data including election results.
- 21 (j) Archive election data.

22 (k) Report or display election results, and maintain and produce any auditable  
23 data and the software, firmware, hardware, and documentation required to program,  
24 control, and support such equipment. "Voting system" also includes the vendor's  
25 practices and documentation used to identify system components and versions of  
26 such components, test the system during its development and maintenance, maintain  
27 records of system errors and defects, determine specific system changes made after  
28 initial certification, and make available any materials to the voter.

29 \* \* \*

1        §1366. Requirements for voting systems

2                Any new voting system procured by the secretary of state according to the  
3        provisions of R.S. 18:1362 after January 1, 2022, shall comply with all of the  
4        following:

5                (1) Voting machines and tabulators shall not be capable of establishing a  
6        wireless connection or connecting to the internet.

7                (2) Access to physical ports on any voting machine shall be restricted and  
8        sealed until the termination of voting in the manner provided by R.S. 18:571.  
9        However, access to physical ports on any voting machine may be used to activate the  
10       voting machine for each voter's voting session, to repair the voting machine in the  
11       manner provided by R.S. 18:553(C) or to tabulate and count absentee by mail and  
12       early voting ballots in the manner provided by R.S. 18:1313 or 1313.1.

13               (3) Software or firmware updates shall be loaded onto voting machines using  
14       a non-network connection and installed by state employees of the secretary of state.  
15       If the secretary of state does not have an adequate number of employees or have  
16       employees with the sufficient level of skills necessary for the installation, he shall  
17       promptly report that to the speaker of the House of Representatives, the president of  
18       the Senate, the governor, and the division of administration's office of technology  
19       services.

20               (4) Tabulation of fractional votes shall be prohibited. If any voting  
21       equipment is capable of calculating fractional votes, such feature shall be disabled  
22       no later than thirty days prior to the commencement of early voting and remain  
23       disabled until all votes have been tabulated and properly certified.

24               (5) The voting system shall produce an auditable voter-verifiable paper  
25       record of the voter's ballot selections presented in a human-readable format. Such  
26       record shall be used for risk limiting audits.

27               (6) The secretary of state shall deploy procedures for the secretary of state  
28       to verify that the software and firmware, including any updates, installed on each  
29       voting machine was not altered after it was installed on the voting machine.



1           (7) The voting system shall maintain an internal record of the number of  
2           ballots tabulated, including any ballots that are rescanned.

3           (8) The voting system servers shall be located within the state. No voting  
4           system server shall be located in another state or country.

5           (9) Hand marked paper ballots shall have counterfeit protection and shall not  
6           be printed at any polling location.

7           (10) The voting system vendor shall provide documentation to the secretary  
8           of state regarding financial disclosures, equity holdings, and ownership structure.  
9           Voting systems of a vendor owned in whole or in part by foreign persons or entities  
10          shall be prohibited.

11          (11) Notwithstanding any other provision of law to the contrary, no contract  
12          for a voting system that uses computer hardware, software, or firmware shall be  
13          sought or executed and no purchase of such a voting system shall be made unless the  
14          contract for purchase provides for all of the following:

15               (a) Any computer voting system that is purchased by the state of Louisiana  
16               shall have the ability for the state of Louisiana, through the secretary of state, to  
17               control its own voting system computer hardware, software, or firmware to the  
18               degree necessary for the secretary of state to configure and prepare for an election  
19               and which allows the secretary of state to verify and validate that the security  
20               policies and procedures as required by this Section are being carried out.

21               (b) In order for the state of Louisiana to secure and audit its voting systems,  
22               any voting system which uses computer hardware, software, or firmware that is  
23               purchased by the state of Louisiana pursuant to this Title shall provide that such  
24               purchase include any administrative passwords, encryptions keys, source codes,  
25               parity keys, or any other administrative tools necessary to audit the voting system  
26               and any such tools shall be in the sole possession of the state of Louisiana, through  
27               the secretary of state.

1                   (12) The voting system shall meet all relevant requirements of the Louisiana  
2                   Election Code, Help America Vote Act, and any other relevant state and federal  
3                   laws.

4                   §1366.1. Voting systems; vendor prohibitions  
5                   Vendors of any voting system or equipment and contractors providing  
6                   election related services shall not engage in any of the following activities:

7                   (1) Urging any elector to vote for or against any candidate or proposition on  
8                   an election ballot.

9                   (2) Expending resources in support for or against any candidate or  
10                   proposition before Louisiana voters.

11                   (3) Lobbying for or against any proposition or matter having the effect of  
12                   law being considered by the Louisiana legislature or any local governing authority.

13                   Section 2. This Act shall become effective on January 1, 2022.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 704 Reengrossed

2021 Regular Session

Hodges

**Abstract:** Provides relative to elections.

Present law provides that the secretary of state shall administer the laws relating to custody of voting machines and voter registration and shall prescribe uniform rules, regulations, forms, and instructions as to the use of electronic voting machines in the conduct of early voting.

Proposed law removes the reference to "electronic" relative to voting machines.

Present law provides that a candidate may designate watchers to serve at every precinct on election day where the office he seeks is voted on in an election. Further provides for the procedure of designating such watchers. Authorizes a candidate to appoint a super watcher who shall be admitted to every precinct in the parish where the candidate is on the ballot.

Proposed law provides that a state central committee of a political party recognized having at least 25% of the registered voters in the state may designate one watcher at every precinct on election day where a candidate affiliated with the political party is on the ballot.

Proposed law provides that each recognized political party having at least 25% of the registered voters in the state may designate super watchers in each parish in which a candidate affiliated with the party is on the ballot. Further provides for the number of super watchers that may be designated by a recognized political party based on the number of registered voters in the parish.

Proposed law retains present law and adds a provision allowing the state central committee of a political party having at least 25% of the registered voters in the state to have an early voting watcher at each early voting location, as space permits, at which a candidate affiliated with such political party is on the ballot. Further provides for the qualifications, powers, and duties of such watcher. Also provides for the procedure for nominating such watcher.

Present law provides definitions relative to voting, voting machines, and vote counting equipment; to provide requirements for voting systems.

Proposed law removes the definition of "electronic voting machine"; defines "vote-capture device" and "secure paper ballot"; modifies the definitions of "voting machine", "voting system", and "official ballot".

Proposed law provides for requirements for voting systems as follows:

- (1) Voting machines shall not be capable of establishing a wireless connection or connecting to the internet.
- (2) Access to physical ports shall be restricted and sealed until the termination of voting unless being used to repair the voting machine or conduct tabulation and counting of ballots.
- (3) Software or firmware updates shall be loaded using a non-network connection by employees of the secretary of state.
- (4) Tabulation of fractional votes shall be prohibited. If any voting equipment is capable of calculating fractional votes, such feature shall be disabled no later than 30 days prior to the commencement of early voting and remain disabled until all votes have been tabulated and properly certified.
- (5) The voting system shall produce an auditable voter-verifiable paper record of the voter's ballot selections, presented in a human-readable format. Such record shall be used for risk-limiting audits.
- (6) The secretary of state shall deploy procedures for the secretary of state to verify that the software and firmware was not altered after it was installed.
- (7) The voting system shall maintain an internal record of the number of ballots tabulated.
- (8) The voting system servers shall be located within the state.
- (9) Hand marked paper ballots shall have counterfeit protection and shall not be printed at any polling location.
- (10) The voting system vendor shall provide documentation to the secretary of state regarding financial disclosures, equity holdings, and ownership structure. Voting systems of a vendor owned in whole or in part by foreign persons or entities shall be prohibited.
- (11) The contract for the voting system shall include the following:
  - (a) The voting system shall have the ability for the secretary of state to control its own voting system computer hardware, software, or firmware.
  - (b) The secretary of state shall have sole possession of any administrative passwords, encryptions keys, source codes, parity keys, or any other administrative tools necessary to audit the voting system.

- (12) The voting system shall meet all relevant requirements of the La. Election Code, Help America Vote Act, and any other relevant state and federal laws.

Proposed law prohibits vendors of any voting system or equipment and contractors providing election related services from any of the following:

- (1) Urging any elector to vote for or against any candidate or proposition on an election ballot.
- (2) Expending resources in support for or against any candidate or proposition before Louisiana voters.
- (3) Lobbying for or against any proposition or matter having the effect of law being considered by the La. legislature or any local governing authority.

Effective January 1, 2022.

(Amends R.S. 18:18(A)(7), 435(A)(4) and (B)(2), and 1351; Adds 18:435(A)(1)(c) and (5) and (B)(1)(c), 1309(N), 1366, and 1366.1)

#### Summary of Amendments Adopted by House

##### The House Floor Amendments to the engrossed bill:

1. Add a provision allowing certain political parties to have one watcher at every precinct on election day where a candidate affiliated with the political party is on the ballot.
2. Add a provision allowing use of hand marked secure paper ballots for day of voting.
3. Expand definition of "vote-capture device" to include optical scanners or tabulators.
4. Expand definition of "voting machine" to include tabulators.
5. Add definition of secure paper ballot.
6. Modify proposed law requiring that access to physical ports be restricted and sealed during an election; requires ports to be sealed until the termination of voting unless being used to repair the voting machine or conduct tabulation and counting of ballots.
7. Add requirement that software or firmware updates of voting systems be installed by an employee of the secretary of state.
8. Add requirement that any voting equipment capable of calculating fractional votes to be disabled.
9. Add requirement that hand marked paper ballots have counterfeit protection and prohibit such ballots from being printed at any polling location.
10. Prohibit use of voting systems of a vendor owned in whole or in part by foreign persons or entities.
11. Prohibit certain actions by vendors of any voting system or equipment and contractors providing election related services.