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**HOUSE BILL 2111**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Representatives Boehnke, Tarleton, Hoff, Wylie, Smith, Shea, and Van Werven; by request of Secretary of State

AN ACT Relating to enhancing cybersecurity by eliminating the return of ballots by fax and email; amending RCW 29A.40.091 and 29A.60.235; reenacting and amending RCW 29A.40.110; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature finds that:

(1) The threat to election security posed by cyber criminals wishing to impair the election process is continually growing. The secretary of state and election officials are committed to secure elections. In order to maintain secure elections, election administrators work with multiple national and state security partners. The secretary of state and local election officials have been alerted to evidence of ongoing illegal attempts to gain access to, and interfere with, electronic systems used during an election. While none of these attempts were successful, security experts have recently advised Washington elections officials to take steps to reduce opportunities for bad actors to attempt to interfere with Washington elections through electronic means.

(2) This act addresses cybersecurity attacks and reduces vulnerability and the risk of election tampering. This is accomplished by eliminating email and fax submission of ballots. The existing electronic ballot return process for overseas and service voters required submission of many types of computer files, from many unsecured locations, introducing the potential for spear-phishing attacks, malware, viruses, denial of service, and other cyber attacks on the election system. The secretary of state maintains a commitment to the ongoing process of ensuring maximum access to the vote for overseas and service voters working with national, state, and local election officials.

**Sec.**  RCW 29A.40.091 and 2016 c 83 s 3 are each amended to read as follows:

(1) The county auditor shall send each voter a ballot, a security envelope in which to conceal the ballot after voting, a larger envelope in which to return the security envelope, a declaration that the voter must sign, and instructions on how to obtain information about the election, how to mark the ballot, and how to return the ballot to the county auditor.

(2) The voter must swear under penalty of perjury that he or she meets the qualifications to vote, and has not voted in any other jurisdiction at this election. The declaration must clearly inform the voter that it is illegal to vote if he or she is not a United States citizen; it is illegal to vote if he or she has been convicted of a felony and has not had his or her voting rights restored; and it is illegal to cast a ballot or sign a ballot declaration on behalf of another voter. The ballot materials must provide space for the voter to sign the declaration, indicate the date on which the ballot was voted, and include a telephone number.

(3) For overseas and service voters, the signed declaration constitutes the equivalent of a voter registration. Return envelopes for overseas and service voters must enable the ballot to be returned postage free if mailed through the United States postal service, United States armed forces postal service, or the postal service of a United States foreign embassy under 39 U.S.C. 3406.

(4) The voter must be instructed to either return the ballot to the county auditor no later than 8:00 p.m. the day of the election or primary, or mail the ballot to the county auditor with a postmark no later than the day of the election or primary. ((~~Service and overseas voters must be provided with instructions and a privacy sheet for returning the ballot and signed declaration by fax or email. A voted ballot and signed declaration returned by fax or email must be received by 8:00 p.m. on the day of the election or primary.~~))

(5) The county auditor's name may not appear on the security envelope, the return envelope, or on any voting instructions or materials included with the ballot if he or she is a candidate for office during the same year.

**Sec.**  RCW 29A.40.110 and 2011 c 349 s 18, 2011 c 348 s 4, and 2011 c 10 s 41 are each amended to read as follows:

(1) The opening and subsequent processing of return envelopes for any primary or election may begin upon receipt. The tabulation of absentee ballots must not commence until after 8:00 p.m. on the day of the primary or election.

(2) All received return envelopes must be placed in secure locations from the time of delivery to the county auditor until their subsequent opening. After opening the return envelopes, the county canvassing board shall place all of the ballots in secure storage until processing. Ballots may be taken from the inner envelopes and all the normal procedural steps may be performed to prepare these ballots for tabulation.

(3) The canvassing board, or its designated representatives, shall examine the postmark on the return envelope and signature on the declaration before processing the ballot. The ballot must either be received no later than 8:00 p.m. on the day of the primary or election, or must be postmarked no later than the day of the primary or election. All personnel assigned to verify signatures must receive training on statewide standards for signature verification. Personnel shall verify that the voter's signature on the ballot declaration is the same as the signature of that voter in the registration files of the county. Verification may be conducted by an automated verification system approved by the secretary of state. A variation between the signature of the voter on the ballot declaration and the signature of that voter in the registration files due to the substitution of initials or the use of common nicknames is permitted so long as the surname and handwriting are clearly the same.

(4) If the postmark is missing or illegible, the date on the ballot declaration to which the voter has attested determines the validity, as to the time of voting, for that ballot. For overseas voters and service voters, the date on the declaration to which the voter has attested determines the validity, as to the time of voting, for that ballot. ((~~Any overseas voter or service voter may return the signed declaration and voted ballot by fax or email by 8:00 p.m. on the day of the primary or election, and the county auditor must use established procedures to maintain the secrecy of the ballot.~~))

**Sec.**  RCW 29A.60.235 and 2018 c 218 s 9 are each amended to read as follows:

(1) The county auditor shall prepare at the time of certification an election reconciliation report that discloses the following information:

(a) The number of registered voters;

(b) The number of ballots issued;

(c) The number of ballots received;

(d) The number of ballots counted;

(e) The number of ballots rejected;

(f) The number of provisional ballots issued;

(g) The number of provisional ballots received;

(h) The number of provisional ballots counted;

(i) The number of provisional ballots rejected;

(j) The number of federal write-in ballots received;

(k) The number of federal write-in ballots counted;

(l) The number of federal write-in ballots rejected;

(m) The number of overseas and service ballots issued by mail, email, web site link, or facsimile;

(n) The number of overseas and service ballots received ((~~by mail, email, or facsimile~~));

(o) The number of overseas and service ballots counted ((~~by mail, email, or facsimile~~));

(p) The number of overseas and service ballots rejected ((~~by mail, email, or facsimile~~));

(q) The number of nonoverseas and nonservice ballots sent by email, web site link, or facsimile;

(r) ((~~The number of nonoverseas and nonservice ballots received by email or facsimile;~~

~~(s)~~)) The number of nonoverseas and nonservice ballots that were rejected for((~~:~~

~~(i) Failing to send an original or hard copy of the ballot by the certification deadline; or~~

~~(ii)~~)) any ((~~other~~)) reason, including the reason for rejection;

((~~(t)~~)) (s) The number of voters credited with voting;

((~~(u)~~)) (t) The number of replacement ballots requested;

((~~(v)~~)) (u) The number of replacement ballots issued;

((~~(w)~~)) (v) The number of replacement ballots received;

((~~(x)~~)) (w) The number of replacement ballots counted;

((~~(y)~~)) (x) The number of replacement ballots rejected; and

((~~(z)~~)) (y) Any other information the auditor or secretary of state deems necessary to reconcile the number of ballots counted with the number of voters credited with voting, and to maintain an audit trail.

(2) The county auditor must make the report available to the public at the auditor's office and must publish the report on the auditor's web site at the time of certification. The county auditor must submit the report to the secretary of state at the time of certification in any form determined by the secretary of state.

(3)(a) The secretary of state must collect the reconciliation reports from each county auditor and prepare a statewide reconciliation report for each state primary and general election. The report may be produced in a form determined by the secretary that includes the information as described in this subsection (3). The report must be prepared and published on the secretary of state's web site within two months after the last county's election results have been certified.

(b) The state report must include a comparison among counties on rates of votes received, counted, and rejected, including provisional, write-in, and overseas ballots((~~, and ballots transmitted electronically~~)). The comparison information may be in the form of rankings, percentages, or other relevant quantifiable data that can be used to measure performance and trends.

(c) The state report must also include an analysis of the data that can be used to develop a better understanding of election administration and policy. The analysis must combine data, as available, over multiple years to provide broader comparisons and trends regarding voter registration and turnout and ballot counting. The analysis must incorporate national election statistics to the extent such information is available.

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