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**HOUSE BILL 1998**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Representative Sutherland

Read first time 01/14/22. Referred to Committee on State Government & Tribal Relations.

1 AN ACT Relating to only permitting the return and count of  
2 ballots that contain an official watermark; amending RCW 29A.36.111,  
3 29A.40.070, 29A.36.115, 29A.60.195, 29A.60.125, 29A.40.091, and  
4 29A.60.235; reenacting and amending RCW 29A.40.110; and adding a new  
5 section to chapter 29A.60 RCW.

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

7 **Sec. 1.** RCW 29A.36.111 and 2009 c 414 s 1 are each amended to  
8 read as follows:

9 (1) Every ballot for a single combination of issues, offices, and  
10 candidates shall be uniform within a precinct and shall identify the  
11 type of primary or election, the county, and the date of the primary  
12 or election, and the ballot or voting device shall contain  
13 instructions on the proper method of recording a vote, including  
14 write-in votes. Each position, together with the names of the  
15 candidates for that office, shall be clearly separated from other  
16 offices or positions in the same jurisdiction. The offices in each  
17 jurisdiction shall be clearly separated from each other. No paper  
18 ballot or ballot card may be marked by or at the direction of an  
19 election official in any way that would permit the identification of  
20 the person who voted that ballot.

1       (2) All ballots, including replacement ballots, provisional  
2 ballots, duplicated ballots pursuant to RCW 29A.60.125, and paper  
3 records from voting devices to be electronically or manually  
4 tabulated, must contain an official watermark approved by the  
5 secretary of state. A ballot that is not the original ballot mailed  
6 to the voter must include an official watermark that is visually  
7 distinct from the watermark contained in original ballots. The  
8 watermark must be sufficient to prove that the ballot is an official  
9 ballot and not a reproduction. The secretary of state shall take  
10 measures to secure the software or firmware used to store the  
11 electronic file of the watermark. Only ballots containing the  
12 official watermark are valid and may be counted.

13       (3) An (~~elections~~ {election}) election official may not enter  
14 into or extend any contract with a vendor if such contract may allow  
15 the vendor to acquire an ownership interest in any data pertaining to  
16 any voter, any voter's address, registration number, or history, or  
17 any ballot.

18       **Sec. 2.** RCW 29A.40.110 and 2011 c 349 s 18, 2011 c 348 s 4, and  
19 2011 c 10 s 41 are each reenacted and amended to read as follows:

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

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

31       (3) The canvassing board, or its designated representatives,  
32 shall examine the postmark on the return envelope and signature on  
33 the declaration before processing the ballot. The ballot must either  
34 be received no later than 8:00 p.m. on the day of the primary or  
35 election, or must be postmarked no later than the day of the primary  
36 or election. All personnel assigned to verify signatures must receive  
37 training on statewide standards for signature verification. Personnel  
38 shall verify that the voter's signature on the ballot declaration is  
39 the same as the signature of that voter in the registration files of

1 the county. Verification may be conducted by an automated  
2 verification system approved by the secretary of state. A variation  
3 between the signature of the voter on the ballot declaration and the  
4 signature of that voter in the registration files due to the  
5 substitution of initials or the use of common nicknames is permitted  
6 so long as the surname and handwriting are clearly the same.

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

16 (5) The canvassing board, or its designated representatives,  
17 shall examine each returned ballot and ensure that it contains the  
18 official watermark required under RCW 29A.36.111. A ballot that does  
19 not contain the official watermark is invalid and may not be counted.

20 **Sec. 3.** RCW 29A.40.070 and 2013 c 11 s 48 are each amended to  
21 read as follows:

22 (1) Except where a recount or litigation is pending, the county  
23 auditor must mail ballots to each voter at least eighteen days before  
24 each primary or election, and as soon as possible for all subsequent  
25 registration changes.

26 (2) Except where a recount or litigation is pending, the county  
27 auditor must mail ballots to each service and overseas voter at least  
28 thirty days before each special election, and at least forty-five  
29 days before each primary or general election, or any special election  
30 that involves federal office. A request for a ballot made by an  
31 overseas or service voter after that day must be processed  
32 immediately.

33 (3) A registered voter may obtain a replacement ballot if the  
34 ballot is destroyed, spoiled, lost, or not received by the voter. The  
35 voter may obtain the ballot by telephone request, but the ballot may  
36 only be provided to the voter by mail(~~, electronically,~~) or in  
37 person. The replacement ballot must contain an official watermark in  
38 accordance with RCW 29A.36.111. The county auditor shall keep a

1 record of each request for a replacement ballot and voters who  
2 returned a replacement ballot.

3 (4) Each county auditor shall certify to the office of the  
4 secretary of state the dates the ballots were mailed, or the reason  
5 and date the ballots will be mailed if the ballots were not mailed  
6 timely.

7 (5) Failure to mail ballots as prescribed in this section does  
8 not by itself provide a basis for an election contest or other legal  
9 challenge to the results of a primary, general election, or special  
10 election.

11 **Sec. 4.** RCW 29A.36.115 and 2011 c 10 s 31 are each amended to  
12 read as follows:

13 All provisional ballots must be visually distinguishable from  
14 other ballots and incapable of being tabulated by a voting system.  
15 Provisional ballots must contain an official watermark in accordance  
16 with RCW 29A.36.111.

17 **Sec. 5.** RCW 29A.60.195 and 2011 c 10 s 59 are each amended to  
18 read as follows:

19 Before certification of the primary or election, the county  
20 auditor must examine and investigate all received provisional ballots  
21 to determine whether the ballot can be counted. In accordance with  
22 RCW 29A.36.111, a provisional ballot that does not contain an  
23 official watermark is invalid and may not be counted. The auditor  
24 shall provide the disposition of the provisional ballot and, if the  
25 ballot was not counted, the reason why it was not counted, on a free  
26 access system such as a toll-free telephone number, website, mail, or  
27 other means. The auditor must notify the voter in accordance with RCW  
28 29A.60.165 when the declaration is unsigned or when the signatures do  
29 not match.

30 **Sec. 6.** RCW 29A.60.125 and 2018 c 218 s 8 are each amended to  
31 read as follows:

32 If inspection of the ballot reveals a physically damaged ballot  
33 or ballot that may be otherwise unreadable or uncountable by the  
34 tabulating system, the county auditor may refer the ballot to the  
35 county canvassing board or duplicate the ballot if so authorized by  
36 the county canvassing board. The voter's original ballot may not be  
37 altered. A ballot may be duplicated only if the intent of the voter's

1 marks on the ballot is clear and the electronic voting equipment  
2 might not otherwise properly tally the ballot to reflect the intent  
3 of the voter. Ballots must be duplicated by teams of two or more  
4 people working together. A duplicated ballot must contain an official  
5 watermark in accordance with RCW 29A.36.111. When duplicating  
6 ballots, the county auditor shall take the following steps to create  
7 and maintain an audit trail of the action taken:

8 (1) Each original ballot and duplicate ballot must be assigned  
9 the same unique control number, with the number being marked upon the  
10 face of each ballot, to ensure that each duplicate ballot may be tied  
11 back to the original ballot;

12 (2) A log must be kept of the ballots duplicated, which must at  
13 least include:

14 (a) The control number of each original ballot and the  
15 corresponding duplicate ballot;

16 (b) The initials of at least two people who participated in the  
17 duplication of each ballot; and

18 (c) The total number of ballots duplicated.

19 Original and duplicate ballots must be sealed in secure storage  
20 at all times, except during duplication, inspection by the canvassing  
21 board, tabulation, or to conduct an audit under RCW 29A.60.185.

22 NEW SECTION. **Sec. 7.** A new section is added to chapter 29A.60  
23 RCW to read as follows:

24 A ballot is invalid and must be rejected, and no votes on that  
25 ballot may be counted, if it is returned by fax or email.

26 **Sec. 8.** RCW 29A.40.091 and 2021 c 10 s 3 are each amended to  
27 read as follows:

28 (1) The county auditor shall send each voter a ballot, a security  
29 envelope in which to conceal the ballot after voting, a larger  
30 envelope in which to return the security envelope, a declaration that  
31 the voter must sign, and instructions on how to obtain information  
32 about the election, how to mark the ballot, and how to return the  
33 ballot to the county auditor. The calendar date of the election must  
34 be prominently displayed in bold type, twenty-point font or larger,  
35 on the envelope sent to the voter containing the ballot and other  
36 materials listed in this subsection:

37 (a) For all general elections in 2020 and after;

38 (b) For all primary elections in 2021 and after; and

1 (c) For all elections in 2022 and after.

2 (2) The voter must swear under penalty of perjury that he or she  
3 meets the qualifications to vote, and has not voted in any other  
4 jurisdiction at this election. The declaration must clearly inform  
5 the voter that it is illegal to vote if he or she is not a United  
6 States citizen; it is illegal to vote if he or she is serving a  
7 sentence of total confinement under the jurisdiction of the  
8 department of corrections for a felony conviction or is currently  
9 incarcerated for a federal or out-of-state felony conviction; and it  
10 is illegal to cast a ballot or sign a ballot declaration on behalf of  
11 another voter. The ballot materials must provide space for the voter  
12 to sign the declaration, indicate the date on which the ballot was  
13 voted, and include a telephone number.

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

20 (4) The voter must be instructed to either return the ballot to  
21 the county auditor no later than 8:00 p.m. the day of the election or  
22 primary, or mail the ballot to the county auditor with a postmark no  
23 later than the day of the election or primary. Ballots may not be  
24 returned by email or fax. Return envelopes for all election ballots  
25 must include prepaid postage. (~~Service and overseas voters must be~~  
26 ~~provided with instructions and a privacy sheet for returning the~~  
27 ~~ballot and signed declaration by fax or email. A voted ballot and~~  
28 ~~signed declaration returned by fax or email must be received by 8:00~~  
29 ~~p.m. on the day of the election or primary.))~~

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

34 (6) For purposes of this section, "prepaid postage" means any  
35 method of return postage paid by the county or state.

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

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

4 (a) The number of registered voters;  
5 (b) The number of ballots issued;  
6 (c) The number of ballots received;  
7 (d) The number of ballots counted;  
8 (e) The number of ballots rejected;  
9 (f) The number of provisional ballots issued;  
10 (g) The number of provisional ballots received;  
11 (h) The number of provisional ballots counted;  
12 (i) The number of provisional ballots rejected;  
13 (j) The number of federal write-in ballots received;  
14 (k) The number of federal write-in ballots counted;  
15 (l) The number of federal write-in ballots rejected;  
16 (m) The number of overseas and service ballots issued by mail(~~(~~  
17 ~~email, website link, or facsimile)~~);  
18 (n) The number of overseas and service ballots received by  
19 mail(~~(~~~~email, or facsimile)~~);  
20 (o) The number of overseas and service ballots counted by mail(~~(~~  
21 ~~email, or facsimile)~~);  
22 (p) The number of overseas and service ballots rejected (~~by~~  
23 ~~mail, email, or facsimile)~~);  
24 (q) The number of nonoverseas and nonservice ballots (~~sent by~~  
25 ~~email, website link, or facsimile)~~) issued;  
26 (r) (~~The number of nonoverseas and nonservice ballots received~~  
27 ~~by email or facsimile;~~  
28 ~~(s)~~) The number of nonoverseas and nonservice ballots and the  
29 number of overseas and service ballots that were rejected for(~~(~~  
30 ~~(i) Failing to send an original or hard copy of the ballot by the~~  
31 ~~certification deadline; or~~  
32 ~~(ii) Any other)~~) any reason, including the reason for rejection;  
33 (~~(t)~~) (s) The number of voters credited with voting;  
34 (~~(u)~~) (t) The number of replacement ballots requested;  
35 (~~(v)~~) (u) The number of replacement ballots issued;  
36 (~~(w)~~) (v) The number of replacement ballots received;  
37 (~~(x)~~) (w) The number of replacement ballots counted;  
38 (~~(y)~~) (x) The number of replacement ballots rejected; and  
39 (~~(z)~~) (y) Any other information the auditor or secretary of  
40 state deems necessary to reconcile the number of ballots counted with

1 the number of voters credited with voting, and to maintain an audit  
2 trail.

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

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

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

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

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