

ESHB 2406 - S AMD 928

By Senator Hunt

ADOPTED 03/07/2018

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** It is the intent of the legislature to
4 ensure our elections have the utmost confidence of the citizens of
5 the state. In order to ensure the integrity of the elections in
6 Washington, the legislature wants to maximize the security benefits
7 of having locally run, decentralized counting systems in our state,
8 based in thirty-nine different counties. The legislature wants to
9 maximize this locally run benefit by adding options to the auditing
10 process for local elections administrators. Multiple jurisdictions,
11 with multiple options for ensuring election outcomes will increase
12 the transparency, integrity, and trust of our elections process.

13 **Sec. 2.** RCW 29A.60.185 and 2005 c 242 s 5 are each amended to
14 read as follows:

15 (1) Prior to certification of the election as required by RCW
16 29A.60.190, the county auditor shall conduct an audit of duplicated
17 ballots in accordance with subsection (2) of this section, and an
18 audit using at minimum one of the following methods:

19 (a) An audit of results of votes cast on the direct recording
20 electronic voting devices, or other in-person ballot marking systems,
21 used in the county if there are races or issues with more than ten
22 votes cast on all direct recording electronic voting devices or other
23 in-person ballot marking systems in the county. This audit must be
24 conducted by randomly selecting by lot up to four percent of the
25 direct recording electronic voting devices or other in-person ballot
26 marking systems, or one direct recording electronic voting device or
27 other in-person ballot marking system, whichever is greater, and, for
28 each device or system, comparing the results recorded electronically
29 with the results recorded on paper. For purposes of this audit, the
30 results recorded on paper must be tabulated as follows: On one-fourth
31 of the devices or systems selected for audit, the paper records must

1 be tabulated manually; on the remaining devices or systems, the paper
2 records may be tabulated by a mechanical device determined by the
3 secretary of state to be capable of accurately reading the votes cast
4 and printed thereon and qualified for use in the state under
5 applicable state and federal laws. Three races or issues, randomly
6 selected by lot, must be audited on each device or system. This audit
7 procedure must be subject to observation by political party
8 representatives if representatives have been appointed and are
9 present at the time of the audit. As used in this subsection, "in-
10 person ballot marking system" or "system" means an in-person ballot
11 marking system that retains or produces an electronic voting record
12 of each vote cast using the system;

13 (b) A random check of the ballot counting equipment consistent
14 with RCW 29A.60.170(3);

15 (c) A risk-limiting audit. A "risk-limiting audit" means an audit
16 protocol that makes use of statistical principles and methods and is
17 designed to limit the risk of certifying an incorrect election
18 outcome. The secretary of state shall:

19 (i) Set the risk limit. A "risk limit" means the largest
20 statistical probability that an incorrect reported tabulation outcome
21 is not detected in a risk-limiting audit;

22 (ii) Randomly select for audit at least one statewide contest,
23 and for each county at least one ballot contest other than the
24 selected statewide contest. The county auditor shall randomly select
25 a ballot contest for audit if in any particular election there is no
26 statewide contest; and

27 (iii) Establish procedures for implementation of risk-limiting
28 audits, including random selection of the audit sample, determination
29 of audit size, and procedures for a comparison risk-limiting audit
30 and ballot polling risk-limiting audit as defined in (c)(iii)(A) and
31 (B) of this subsection.

32 (A) In a comparison risk-limiting audit, the county auditor
33 compares the voter markings on randomly selected ballots to the
34 ballot-level cast vote record produced by the ballot counting
35 equipment.

36 (B) In a ballot polling risk-limiting audit, the county auditor
37 of a county using ballot counting equipment that does not produce
38 ballot-level cast vote records reports the voter markings on randomly
39 selected ballots until the prespecified risk limit is met; or

1 (d) An independent electronic audit of the original ballot
2 counting equipment used in the county. The county auditor may either
3 conduct an audit of all ballots cast, or limit the audit to three
4 precincts or six batches pursuant to procedures adopted under RCW
5 29A.60.170(3). This audit must be conducted using an independent
6 electronic audit system that is, at minimum:

7 (i) Approved by the secretary of state;

8 (ii) Completely independent from all voting systems, including
9 ballot counting equipment, that is used in the county;

10 (iii) Distributed or manufactured by a vendor different from the
11 vendor that distributed or manufactured the original ballot counting
12 equipment; and

13 (iv) Capable of demonstrating that it can verify and confirm the
14 accuracy of the original ballot counting equipment's reported
15 results.

16 (2) Prior to certification of the election, the county auditor
17 must conduct an audit of ballots duplicated under RCW 29A.60.125. The
18 audit of duplicated ballots must involve a comparison of the
19 duplicated ballot to the original ballot. The county canvassing board
20 must establish procedures for the auditing of duplicated ballots.

21 (3) For each audit method, the secretary of state must adopt
22 procedures for expanding the audit to include additional ballots when
23 an audit results in a discrepancy. The procedure must specify under
24 what circumstances a discrepancy will lead to an audit of additional
25 ballots, and the method to determine how many additional ballots will
26 be selected. The secretary of state shall adopt procedures to
27 investigate the cause of any discrepancy found during an audit.

28 (4) The secretary of state must establish rules by January 1,
29 2019, to implement and administer the auditing methods in this
30 section, including facilitating public observation and reporting
31 requirements.

32 **Sec. 3.** RCW 29A.60.170 and 2011 c 10 s 55 are each amended to
33 read as follows:

34 (1) At least twenty-eight days prior to any special election,
35 general election, or primary, the county auditor shall request from
36 the chair of the county central committee of each major political
37 party a list of individuals who are willing to serve as observers.
38 The county auditor has discretion to also request observers from any
39 campaign or organization. The county auditor may delete from the

1 lists names of those persons who indicate to the county auditor that
2 they cannot or do not wish to serve as observers, and names of those
3 persons who, in the judgment of the county auditor, lack the ability
4 to properly serve as observers after training has been made available
5 to them by the auditor.

6 (2) The counting center is under the direction of the county
7 auditor and must be open to observation by one representative from
8 each major political party, if representatives have been appointed by
9 the respective major political parties and these representatives are
10 present while the counting center is operating. The proceedings must
11 be open to the public, but no persons except those employed and
12 authorized by the county auditor may touch any ballot or ballot
13 container or operate a vote tallying system.

14 (3) A random check of the ballot counting equipment (~~may~~) must
15 be conducted upon mutual agreement of the political party observers
16 or at the discretion of the county auditor. The random check
17 procedures must be adopted by the county canvassing board, and
18 consistent with rules adopted under RCW 29A.60.185(4), prior to the
19 processing of ballots. The random check process shall involve a
20 comparison of a manual count or electronic count if an audit under
21 RCW 29A.60.185(1)(d) is conducted to the machine count from the
22 original ballot counting equipment and may involve up to either three
23 precincts or six batches depending on the ballot counting procedures
24 in place in the county. The random check will be limited to one
25 office or issue on the ballots in the precincts or batches that are
26 selected for the check. The selection of the precincts or batches to
27 be checked must be selected according to procedures established by
28 the county canvassing board (~~and~~). The random check procedures must
29 include a process, consistent with RCW 29A.60.185(3) and rules
30 adopted under RCW 29A.60.185(4), for expanding the audit to include
31 additional ballots when a random check conducted under this section
32 results in a discrepancy. The procedure must specify under what
33 circumstances a discrepancy will lead to an audit of additional
34 ballots and the method to determine how many additional ballots will
35 be selected. Procedures adopted under RCW 29A.60.185 pertaining to
36 investigations of any discrepancy found during an audit must be
37 followed. The check must be completed no later than forty-eight hours
38 after election day.

39 (4)(a) By November 1, 2018, the secretary of state shall:

1 (i) For each county, survey all random check procedures adopted
2 by the county canvassing board under subsection (3) of this section;
3 and

4 (ii) Evaluate the procedures to identify the best practices and
5 any discrepancies.

6 (b) By December 15, 2018, the secretary of state shall submit a
7 report, in compliance with RCW 43.01.036, to the appropriate
8 committees of the legislature that provides recommendations, based on
9 the evaluation performed under (a) of this subsection, for adopting
10 best practices and uniform procedures.

11 **Sec. 4.** RCW 29A.60.110 and 2013 c 11 s 61 are each amended to
12 read as follows:

13 (1) Immediately after their tabulation, all ballots counted at a
14 ballot counting center must be sealed in containers that identify the
15 primary or election and be retained for at least sixty days or
16 according to federal law, whichever is longer.

17 (2) In the presence of major party observers who are available,
18 ballots may be removed from the sealed containers at the elections
19 department and consolidated into one sealed container for storage
20 purposes. The containers may only be opened by the canvassing board
21 as part of the canvass, to conduct recounts, to conduct a random
22 check under RCW 29A.60.170, to conduct an audit under RCW 29A.60.185,
23 or by order of the superior court in a contest or election dispute.
24 If the canvassing board opens a ballot container, it shall make a
25 full record of the additional tabulation or examination made of the
26 ballots. This record must be added to any other record of the
27 canvassing process in that county.

28 **Sec. 5.** RCW 29A.12.005 and 2013 c 11 s 21 are each amended to
29 read as follows:

30 As used in this chapter, "voting system" means:

31 (1) The total combination of mechanical, electromechanical, or
32 electronic equipment including, but not limited to, the software,
33 firmware, and documentation required to program, control, and support
34 the equipment, that is used:

35 (a) To define ballots;

36 (b) To cast and count votes;

37 (c) To report or display election results from the voting system;

38 ((and))

- 1 (d) To maintain and produce any audit trail information; and
2 (e) To perform an audit under RCW 29A.60.185; and
3 (2) The practices and associated documentation used:
4 (a) To identify system components and versions of such
5 components;
6 (b) To test the system during its development and maintenance;
7 (c) To maintain records of system errors and defects;
8 (d) To determine specific system changes to be made to a system
9 after the initial qualification of the system; and
10 (e) To make available any materials to the voter such as notices,
11 instructions, forms, or paper ballots.

12 NEW SECTION. **Sec. 6.** A new section is added to chapter 29A.12
13 RCW to read as follows:

14 (1) A manufacturer or distributor of a voting system or component
15 of a voting system that is certified by the secretary of state under
16 RCW 29A.12.020 shall disclose to the secretary of state and attorney
17 general any breach of the security of its system immediately
18 following discovery of the breach if:

19 (a) The breach has, or is reasonably likely to have, compromised
20 the security, confidentiality, or integrity of an election in any
21 state; or

22 (b) Personal information of residents in any state was, or is
23 reasonably believed to have been, acquired by an unauthorized person
24 as a result of the breach and the personal information was not
25 secured. For purposes of this subsection, "personal information" has
26 the meaning given in RCW 19.255.010.

27 (2) Notification under subsection (1) of this section must be
28 made in the most expedient time possible and without unreasonable
29 delay.

30 NEW SECTION. **Sec. 7.** A new section is added to chapter 29A.12
31 RCW to read as follows:

32 (1) The secretary of state may decertify a voting system or any
33 component of a voting system and withdraw authority for its future
34 use or sale in the state if, at any time after certification, the
35 secretary of state determines that:

36 (a) The system or component fails to meet the standards set forth
37 in applicable federal guidelines;

1 (b) The system or component was materially misrepresented in the
2 certification application;

3 (c) The applicant has installed unauthorized modifications to the
4 certified software or hardware; or

5 (d) Any other reason authorized by rule adopted by the secretary
6 of state.

7 (2) The secretary of state may decertify a voting system or any
8 component of a voting system and withdraw authority for its future
9 use or sale in the state if the manufacturer or distributor of the
10 voting system or component thereof fails to comply with the
11 notification requirements of section 6 of this act.

12 **Sec. 8.** RCW 29A.60.125 and 2005 c 243 s 10 are each amended to
13 read as follows:

14 If inspection of the ballot reveals a physically damaged ballot
15 or ballot that may be otherwise unreadable or uncountable by the
16 tabulating system, the county auditor may refer the ballot to the
17 county canvassing board or duplicate the ballot if so authorized by
18 the county canvassing board. The voter's original ballot may not be
19 altered. A ballot may be duplicated only if the intent of the voter's
20 marks on the ballot is clear and the electronic voting equipment
21 might not otherwise properly tally the ballot to reflect the intent
22 of the voter. Ballots must be duplicated by teams of two or more
23 people working together. When duplicating ballots, the county auditor
24 shall take the following steps to create and maintain an audit trail
25 of the action taken:

26 (1) Each original ballot and duplicate ballot must be assigned
27 the same unique control number, with the number being marked upon the
28 face of each ballot, to ensure that each duplicate ballot may be tied
29 back to the original ballot;

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

32 (a) The control number of each original ballot and the
33 corresponding duplicate ballot;

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

36 (c) The total number of ballots duplicated.

37 Original and duplicate ballots must be sealed in secure storage
38 at all times, except during duplication, inspection by the canvassing

1 board, ~~((or))~~ tabulation, or to conduct an audit under RCW
2 29A.60.185.

3 **Sec. 9.** RCW 29A.60.235 and 2017 c 300 s 1 are each amended to
4 read as follows:

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

8 (a) The number of registered voters;

9 (b) The number of ballots issued;

10 (c) The number of ballots received;

11 (d) The number of ballots counted;

12 (e) The number of ballots rejected;

13 (f) The number of provisional ballots issued;

14 (g) The number of provisional ballots received;

15 (h) The number of provisional ballots counted;

16 (i) The number of provisional ballots rejected;

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

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

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

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

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

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

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

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

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

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

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

36 (ii) Any other reason, including the reason for rejection;

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

38 (u) The number of replacement ballots requested;

39 (v) The number of replacement ballots issued;

1 (w) The number of replacement ballots received;
2 (x) The number of replacement ballots counted;
3 (y) The number of replacement ballots rejected; and
4 (z) Any other information the auditor or secretary of state deems
5 necessary to reconcile the number of ballots counted with the number
6 of voters credited with voting, and to maintain an audit trail.

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

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

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

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

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33 On page 1, line 3 of the title, after "equipment;" strike the
34 remainder of the title and insert "amending RCW 29A.60.185,

1 29A.60.170, 29A.60.110, 29A.12.005, 29A.60.125, and 29A.60.235;
2 adding new sections to chapter 29A.12 RCW; and creating a new
3 section."

EFFECT: (1) Clarifies scope of the mandated random check.

(2) Requires the Secretary of State to survey and report on county canvassing board procedures for random checks of ballot counting equipment.

(3) Removes requirement that auditor regularly audit electronic ballot return systems when 100 more ballots have been returned electronically by nonoverseas or veteran voters.

(4) Requires that duplicated ballots be compared with the original ballot under all audit types.

(5) Removes requirement that random checks be conducted every day ballots are processed, and be of at least 100 ballots, or all ballots if fewer than 100 are processed.

(6) Moves deadline for Secretary of State report on random check procedures to December 15, 2018.

(7) Restores requirement that random check be completed within 48 hours of election day.

(8) Removes requirement that political observers be invited to other locations where incoming ballots are handled and allowed access to view each stage of processing incoming ballots.

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