

**ESHB 2406** - S COMM AMD

By Committee on State Government, Tribal Relations & Elections

**ADOPTED 02/28/2018**

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 using at  
17 minimum one of the following methods:

18 (a) An audit of results of votes cast on the direct recording  
19 electronic voting devices, or other in-person ballot marking systems,  
20 used in the county if there are races or issues with more than ten  
21 votes cast on all direct recording electronic voting devices or other  
22 in-person ballot marking systems in the county. This audit must be  
23 conducted by randomly selecting by lot up to four percent of the  
24 direct recording electronic voting devices or other in-person ballot  
25 marking systems, or one direct recording electronic voting device or  
26 other in-person ballot marking system, whichever is greater, and, for  
27 each device or system, comparing the results recorded electronically  
28 with the results recorded on paper. For purposes of this audit, the  
29 results recorded on paper must be tabulated as follows: On one-fourth  
30 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. If a duplicated ballot under RCW 29.60.125 is  
32 selected as part of the audit, it must be compared with the original  
33 ballot.

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

38 (B) In a ballot polling risk-limiting audit, the county auditor  
39 of a county using ballot counting equipment that does not produce

1 ballot-level cast vote records reports the voter markings on randomly  
2 selected ballots until the prespecified risk limit is met; or

3 (d) An independent electronic audit of the original ballot  
4 counting equipment used in the county. The county auditor may either  
5 conduct an audit of all ballots cast, or limit the audit to three  
6 precincts or six batches pursuant to procedures adopted under RCW  
7 29A.60.170(3). This audit must be conducted using an independent  
8 electronic audit system that is, at minimum:

9 (i) Approved by the secretary of state;

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

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

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

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

25 (3) The secretary of state must establish rules by January 1,  
26 2019, to implement and administer the auditing methods in this  
27 section, including facilitating public observation and reporting  
28 requirements.

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

31 (1) At least twenty-eight days prior to any special election,  
32 general election, or primary, the county auditor shall request from  
33 the chair of the county central committee of each major political  
34 party a list of individuals who are willing to serve as observers.  
35 The county auditor has discretion to also request observers from any  
36 campaign or organization. The county auditor may delete from the  
37 lists names of those persons who indicate to the county auditor that  
38 they cannot or do not wish to serve as observers, and names of those  
39 persons who, in the judgment of the county auditor, lack the ability

1 to properly serve as observers after training has been made available  
2 to them by the auditor.

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

11 (3) A random check of the ballot counting equipment (~~may~~) must  
12 be conducted upon mutual agreement of the political party observers  
13 or at the discretion of the county auditor. The random check  
14 procedures must be adopted by the county canvassing board, and  
15 consistent with rules adopted under RCW 29A.60.185(3), prior to the  
16 processing of ballots. The random check process shall involve a  
17 comparison of a manual count or electronic count if an audit under  
18 RCW 29A.60.185(1)(d) is conducted to the machine count from the  
19 original ballot counting equipment and may involve up to either three  
20 precincts or six batches depending on the ballot counting procedures  
21 in place in the county. The random check will be limited to one  
22 office or issue on the ballots in the precincts or batches that are  
23 selected for the check. The selection of the precincts or batches to  
24 be checked must be selected according to procedures established by  
25 the county canvassing board (~~and~~). The random check procedures must  
26 include a process, consistent with RCW 29A.60.185(2) and rules  
27 adopted under RCW 29A.60.185(3), for expanding the audit to include  
28 additional ballots when a random check conducted under this section  
29 results in a discrepancy. The procedure must specify under what  
30 circumstances a discrepancy will lead to an audit of additional  
31 ballots and the method to determine how many additional ballots will  
32 be selected. Procedures adopted under RCW 29A.60.185 pertaining to  
33 investigations of any discrepancy found during an audit must be  
34 followed. The check must be completed no later than forty-eight hours  
35 after election day.

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

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

1 (ii) Evaluate the procedures to identify the best practices and  
2 any discrepancies.

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

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

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

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

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

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

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

32 (a) To define ballots;

33 (b) To cast and count votes;

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

35 ((and))

36 (d) To maintain and produce any audit trail information; and

37 (e) To perform an audit under RCW 29A.60.185; and

38 (2) The practices and associated documentation used:

- 1 (a) To identify system components and versions of such  
2 components;
- 3 (b) To test the system during its development and maintenance;
- 4 (c) To maintain records of system errors and defects;
- 5 (d) To determine specific system changes to be made to a system  
6 after the initial qualification of the system; and
- 7 (e) To make available any materials to the voter such as notices,  
8 instructions, forms, or paper ballots.

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

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

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

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

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

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

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

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

35 (b) The system or component was materially misrepresented in the  
36 certification application;

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

1 (d) Any other reason authorized by rule adopted by the secretary  
2 of state.

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

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

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

22 (1) Each original ballot and duplicate ballot must be assigned  
23 the same unique control number, with the number being marked upon the  
24 face of each ballot, to ensure that each duplicate ballot may be tied  
25 back to the original ballot;

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

28 (a) The control number of each original ballot and the  
29 corresponding duplicate ballot;

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

32 (c) The total number of ballots duplicated.

33 Original and duplicate ballots must be sealed in secure storage  
34 at all times, except during duplication, inspection by the canvassing  
35 board, ~~((~~o~~))~~ tabulation, or to conduct an audit under RCW  
36 29A.60.185.

37 **Sec. 9.** RCW 29A.60.235 and 2017 c 300 s 1 are each amended to  
38 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, web site link, or facsimile;
- 18 (n) The number of overseas and service ballots received by mail,  
19 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 mail,  
23 email, or facsimile;
- 24 (q) The number of nonoverseas and nonservice ballots sent by  
25 email, web site link, or facsimile;
- 26 (r) The number of nonoverseas and nonservice ballots received by  
27 email or facsimile;
- 28 (s) The number of nonoverseas and nonservice ballots that were  
29 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 reason, including the reason for rejection;
- 33 (t) The number of voters credited with voting; (~~and~~)
- 34 (u) The number of replacement ballots requested;
- 35 (v) The number of replacement ballots issued;
- 36 (w) The number of replacement ballots received;
- 37 (x) The number of replacement ballots counted;
- 38 (y) The number of replacement ballots rejected; and



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

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

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

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

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

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30       On page 1, line 3 of the title, after "equipment;" strike the  
31 remainder of the title and insert "amending RCW 29A.60.185,  
32 29A.60.170, 29A.60.110, 29A.12.005, 29A.60.125, and 29A.60.235;  
33 adding new sections to chapter 29A.12 RCW; and creating a new  
34 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 or more ballots have been returned electronically by nonoverseas or veteran voters.

(4) Requires that duplicated ballots be compared with the original ballot if selected under a risk-limiting audit.

(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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