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**SUBSTITUTE HOUSE BILL 2406**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** House State Government, Elections & Information Technology (originally sponsored by Representatives Hudgins, Stanford, and Ormsby)

AN ACT Relating to ensuring the integrity of elections through strengthening election security practices around auditing and equipment; amending RCW 29A.60.185, 29A.60.170, 29A.60.110, and 29A.12.005; adding new sections to chapter 29A.12 RCW; and creating a new section.

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

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

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

(1) Prior to certification of the election as required by RCW 29A.60.190, the county auditor shall conduct an audit using at minimum one of the following methods:

(a) An audit of results of votes cast on the direct recording electronic voting devices, or other in-person ballot marking systems, used in the county if there are races or issues with more than ten votes cast on all direct recording electronic voting devices or other in-person ballot marking systems in the county. This audit must be conducted by randomly selecting by lot up to four percent of the direct recording electronic voting devices or other in-person ballot marking systems, or one direct recording electronic voting device or other in-person ballot marking system, whichever is greater, and, for each device or system, comparing the results recorded electronically with the results recorded on paper. For purposes of this audit, the results recorded on paper must be tabulated as follows: On one-fourth of the devices or systems selected for audit, the paper records must be tabulated manually; on the remaining devices or systems, the paper records may be tabulated by a mechanical device determined by the secretary of state to be capable of accurately reading the votes cast and printed thereon and qualified for use in the state under applicable state and federal laws. Three races or issues, randomly selected by lot, must be audited on each device or system. This audit procedure must be subject to observation by political party representatives if representatives have been appointed and are present at the time of the audit;

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

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

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

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

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

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

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

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

(i) Approved by the secretary of state;

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

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

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

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

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

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

(1) At least twenty-eight days prior to any special election, general election, or primary, the county auditor shall request from the chair of the county central committee of each major political party a list of individuals who are willing to serve as observers. The county auditor has discretion to also request observers from any campaign or organization. The county auditor may delete from the lists names of those persons who indicate to the county auditor that they cannot or do not wish to serve as observers, and names of those persons who, in the judgment of the county auditor, lack the ability to properly serve as observers after training has been made available to them by the auditor.

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

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

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

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

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

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

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

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

(a) To define ballots;

(b) To cast and count votes;

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

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

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

(2) The practices and associated documentation used:

(a) To identify system components and versions of such components;

(b) To test the system during its development and maintenance;

(c) To maintain records of system errors and defects;

(d) To determine specific system changes to be made to a system after the initial qualification of the system; and

(e) To make available any materials to the voter such as notices, instructions, forms, or paper ballots.

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

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

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

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

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

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

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

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

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

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

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

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

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