
ENGROSSED SUBSTITUTE HOUSE BILL 2406

State of Washington

65th Legislature

2018 Regular Session

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

READ FIRST TIME 01/25/18.

1 AN ACT Relating to ensuring the integrity of elections through
2 strengthening election security practices around auditing and
3 equipment; amending RCW 29A.60.185, 29A.60.170, 29A.60.110,
4 29A.12.005, 29A.40.100, 29A.60.125, and 29A.60.235; adding new
5 sections to chapter 29A.12 RCW; and creating a new section.

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

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

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

19 (1) Prior to certification of the election as required by RCW
20 29A.60.190, the county auditor shall conduct a random check of the

1 ballot counting equipment in accordance with RCW 29A.60.170, and an
2 audit of duplicated ballots. The audit of duplicated ballots must
3 involve a comparison of ballots duplicated under RCW 29A.60.125 to
4 the original ballot. The county canvassing board must establish
5 procedures for the auditing of duplicated ballots.

6 (2) In addition to the random check performed in subsection (1)
7 of this section, the county auditor may conduct an audit using one of
8 the following methods:

9 (a) An audit of results of votes cast on the direct recording
10 electronic voting devices, or other in-person ballot marking systems,
11 used in the county if there are races or issues with more than ten
12 votes cast on all direct recording electronic voting devices or other
13 in-person ballot marking systems in the county. This audit must be
14 conducted by randomly selecting by lot up to four percent of the
15 direct recording electronic voting devices or other in-person ballot
16 marking systems, or one direct recording electronic voting device or
17 other in-person ballot marking system, whichever is greater, and, for
18 each device or system, comparing the results recorded electronically
19 with the results recorded on paper. For purposes of this audit, the
20 results recorded on paper must be tabulated as follows: On one-fourth
21 of the devices or systems selected for audit, the paper records must
22 be tabulated manually; on the remaining devices or systems, the paper
23 records may be tabulated by a mechanical device determined by the
24 secretary of state to be capable of accurately reading the votes cast
25 and printed thereon and qualified for use in the state under
26 applicable state and federal laws. Three races or issues, randomly
27 selected by lot, must be audited on each device or system. This audit
28 procedure must be subject to observation by political party
29 representatives if representatives have been appointed and are
30 present at the time of the audit. As used in this subsection, "in-
31 person ballot marking system" or "system" means an in-person ballot
32 marking system that retains or produces a voting record of each vote
33 cast using the system;

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

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

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

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

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

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

19 (c) An independent electronic audit of the original ballot
20 counting equipment used in the county. The county auditor may either
21 conduct an audit of all ballots cast, or limit the audit to three
22 precincts or six batches pursuant to procedures adopted under RCW
23 29A.60.170(3). This audit must be conducted using an independent
24 electronic audit system that is, at minimum:

25 (i) Approved by the secretary of state;

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

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

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

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

1 (4) The secretary of state must establish rules by January 1,
2 2019, to implement and administer the auditing methods in this
3 section, including facilitating public observation and reporting
4 requirements.

5 (5) The county auditor must develop methods to regularly audit
6 electronic ballot return systems to ensure accuracy when one hundred
7 or more ballots in any election have been returned electronically by
8 voters who are not overseas voters or service voters.

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

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

22 (2) The counting center is under the direction of the county
23 auditor and must be open to observation by one representative from
24 each major political party consistent with RCW 29A.40.100, if
25 representatives have been appointed by the respective major political
26 parties and these representatives are present while the counting
27 center is operating. The proceedings must be open to the public, but
28 no persons except those employed and authorized by the county auditor
29 may touch any ballot or ballot container or operate a vote tallying
30 system.

31 (3) A random check of the ballot counting equipment (~~(may)~~) must
32 be conducted (~~(upon mutual agreement of the political party observers~~
33 ~~or at the discretion of the county auditor)) at least once per day
34 that incoming ballots are processed until the results are certified.
35 The first random check for each day must occur when the first set of
36 ballots are processed through the ballot counting equipment. The
37 random check procedures must be adopted by the county canvassing
38 board, and consistent with rules adopted under RCW 29A.60.185(4),
39 prior to the processing of ballots. The random check process shall~~

1 involve a comparison of a manual count or electronic count if an
2 audit under RCW 29A.60.185(2)(c) is conducted to the machine count
3 from the original ballot counting equipment and may involve, for each
4 machine, up to either three precincts or six batches depending on the
5 ballot counting procedures in place in the county, but not less than
6 one hundred ballots per random check. If there is not at least one
7 hundred ballots to randomly check for any given day, then a random
8 check must be conducted for all ballots processed for that day. The
9 random check will be limited to one office or issue on the ballots in
10 the precincts or batches that are selected for the check. The
11 selection of the precincts or batches to be checked must be selected
12 according to procedures established by the county canvassing board
13 ~~((and the check must be completed no later than forty-eight hours~~
14 ~~after election day)).~~ The random check procedures must include a
15 process, consistent with RCW 29A.60.185(3) and rules adopted under
16 RCW 29A.60.185(4), for expanding the audit to include additional
17 ballots when a random check conducted under this section results in a
18 discrepancy. The procedure must specify under what circumstances a
19 discrepancy will lead to an audit of additional ballots and the
20 method to determine how many additional ballots will be selected.
21 Procedures adopted under RCW 29A.60.185 pertaining to investigations
22 of any discrepancy found during an audit must be followed.

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

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

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

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

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

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

8 (a) To define ballots;

9 (b) To cast and count votes;

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

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

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

14 (2) The practices and associated documentation used:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **Sec. 8.** RCW 29A.40.100 and 2011 c 10 s 40 are each amended to
24 read as follows:

25 County auditors must request that observers be appointed by the
26 major political parties to be present during the processing of
27 ballots at the counting center and other locations where incoming
28 ballots are handled or processed by election officials. County
29 auditors have discretion to also request that observers be appointed
30 by any campaigns or organizations. Appointed observers must be
31 allowed access to view each stage of processing of incoming ballots
32 including, but not limited to: Postelection audits conducted under
33 RCW 29A.60.185 and 29A.60.170, removal of ballots from drop boxes,
34 opening and sorting of ballots, signature verification, envelope
35 review, ballot review, scanning, tabulation, and adjudication
36 including duplication of ballots pursuant to RCW 29A.60.125. The
37 absence of the observers will not prevent the processing of ballots
38 if the county auditor has requested their presence.

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

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

15 (1) Each original ballot and duplicate ballot must be assigned
16 the same unique control number, with the number being marked upon the
17 face of each ballot, to ensure that each duplicate ballot may be tied
18 back to the original ballot;

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

21 (a) The control number of each original ballot and the
22 corresponding duplicate ballot;

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

25 (c) The total number of ballots duplicated.

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

30 **Sec. 10.** RCW 29A.60.235 and 2017 c 300 s 1 are each amended to
31 read as follows:

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

35 (a) The number of registered voters;

36 (b) The number of ballots issued;

37 (c) The number of ballots received;

38 (d) The number of ballots counted;

39 (e) The number of ballots rejected;

- 1 (f) The number of provisional ballots issued;
- 2 (g) The number of provisional ballots received;
- 3 (h) The number of provisional ballots counted;
- 4 (i) The number of provisional ballots rejected;
- 5 (j) The number of federal write-in ballots received;
- 6 (k) The number of federal write-in ballots counted;
- 7 (l) The number of federal write-in ballots rejected;
- 8 (m) The number of overseas and service ballots issued by mail,
9 email, web site link, or facsimile;
- 10 (n) The number of overseas and service ballots received by mail,
11 email, or facsimile;
- 12 (o) The number of overseas and service ballots counted by mail,
13 email, or facsimile;
- 14 (p) The number of overseas and service ballots rejected by mail,
15 email, or facsimile;
- 16 (q) The number of nonoverseas and nonservice ballots sent by
17 email, web site link, or facsimile;
- 18 (r) The number of nonoverseas and nonservice ballots received by
19 email or facsimile;
- 20 (s) The number of nonoverseas and nonservice ballots that were
21 rejected for:
- 22 (i) Failing to send an original or hard copy of the ballot by the
23 certification deadline; or
- 24 (ii) Any other reason, including the reason for rejection;
- 25 (t) The number of voters credited with voting; (~~and~~)
- 26 (u) The number of replacement ballots requested;
- 27 (v) The number of replacement ballots issued;
- 28 (w) The number of replacement ballots received;
- 29 (x) The number of replacement ballots counted;
- 30 (y) The number of replacement ballots rejected; and
- 31 (z) Any other information the auditor or secretary of state deems
32 necessary to reconcile the number of ballots counted with the number
33 of voters credited with voting, and to maintain an audit trail.
- 34 (2) The county auditor must make the report available to the
35 public at the auditor's office and must publish the report on the
36 auditor's web site at the time of certification. The county auditor
37 must submit the report to the secretary of state at the time of
38 certification in any form determined by the secretary of state.
- 39 (3)(a) The secretary of state must collect the reconciliation
40 reports from each county auditor and prepare a statewide

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

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

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

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