
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, and
4 29A.12.005; adding new sections to chapter 29A.12 RCW; and creating a
5 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:

1 (1) Prior to certification of the election as required by RCW
2 29A.60.190, the county auditor shall conduct an audit using at
3 minimum one of the following methods:

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

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

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

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

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

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

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

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

14 (d) An independent electronic audit of the original ballot
15 counting equipment used in the county. The county auditor may either
16 conduct an audit of all ballots cast, or limit the audit to three
17 precincts or six batches pursuant to procedures adopted under RCW
18 29A.60.170(3). This audit must be conducted using an independent
19 electronic audit system that is, at minimum:

20 (i) Approved by the secretary of state;

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

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

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

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

36 (3) The secretary of state must establish rules by January 1,
37 2019, to implement and administer the auditing methods in this
38 section, including facilitating public observation and reporting
39 requirements.

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

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

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

22 (3) A random check of the ballot counting equipment may be
23 conducted upon mutual agreement of the political party observers or
24 at the discretion of the county auditor. The random check procedures
25 must be adopted by the county canvassing board, and consistent with
26 rules adopted under RCW 29A.60.185(3), prior to the processing of
27 ballots. The random check process shall involve a comparison of a
28 manual count or electronic count if an audit under RCW
29 29A.60.185(1)(d) is conducted to the machine count from the original
30 ballot counting equipment and may involve up to either three
31 precincts or six batches depending on the ballot counting procedures
32 in place in the county. The random check will be limited to one
33 office or issue on the ballots in the precincts or batches that are
34 selected for the check. The selection of the precincts or batches to
35 be checked must be selected according to procedures established by
36 the county canvassing board ~~((and))~~. The random check procedures must
37 include a process, consistent with RCW 29A.60.185(2) and rules
38 adopted under RCW 29A.60.185(3), for expanding the audit to include
39 additional ballots when a random check conducted under this section
40 results in a discrepancy. The procedure must specify under what

1 circumstances a discrepancy will lead to an audit of additional
2 ballots and the method to determine how many additional ballots will
3 be selected. Procedures adopted under RCW 29A.60.185 pertaining to
4 investigations of any discrepancy found during an audit must be
5 followed. The check must be completed no later than forty-eight hours
6 after election day.

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

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

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

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

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

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

31 (a) To define ballots;

32 (b) To cast and count votes;

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

34 ((and))

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

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

37 (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.

--- END ---