

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2406

Chapter 218, Laws of 2018

65th Legislature
2018 Regular Session

ELECTIONS--AUDITING AND EQUIPMENT

EFFECTIVE DATE: June 7, 2018

Passed by the House March 7, 2018
Yeas 98 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 6, 2018
Yeas 48 Nays 0

CYRUS HABIB

President of the Senate

Approved March 22, 2018 3:58 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2406** as passed by House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

March 26, 2018

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2406

AS AMENDED BY THE SENATE

Passed Legislature - 2018 Regular Session

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.60.125, and 29A.60.235; adding new sections to
5 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 an audit of duplicated

1 ballots in accordance with subsection (2) of this section, and an
2 audit using at minimum one of the following methods:

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

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

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

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

37 (ii) Randomly select for audit at least one statewide contest,
38 and for each county at least one ballot contest other than the
39 selected statewide contest. The county auditor shall randomly select

1 a ballot contest for audit if in any particular election there is no
2 statewide contest; and

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

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

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

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

22 (i) Approved by the secretary of state;

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

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

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

31 (2) Prior to certification of the election, the county auditor
32 must conduct an audit of ballots duplicated under RCW 29A.60.125. The
33 audit of duplicated ballots must involve a comparison of the
34 duplicated ballot to the original ballot. The county canvassing board
35 must establish procedures for the auditing of duplicated ballots.

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

1 be selected. The secretary of state shall adopt procedures to
2 investigate the cause of any discrepancy found during an audit.

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

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

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

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

28 (3) A random check of the ballot counting equipment (~~may~~) must
29 be conducted upon mutual agreement of the political party observers
30 or at the discretion of the county auditor. The random check
31 procedures must be adopted by the county canvassing board, and
32 consistent with rules adopted under RCW 29A.60.185(4), prior to the
33 processing of ballots. The random check process shall involve a
34 comparison of a manual count or electronic count if an audit under
35 RCW 29A.60.185(1)(d) is conducted to the machine count from the
36 original ballot counting equipment and may involve up to either three
37 precincts or six batches depending on the ballot counting procedures
38 in place in the county. The random check will be limited to one
39 office or issue on the ballots in the precincts or batches that are

1 selected for the check. The selection of the precincts or batches to
2 be checked must be selected according to procedures established by
3 the county canvassing board (~~and~~). The random check procedures must
4 include a process, consistent with RCW 29A.60.185(3) and rules
5 adopted under RCW 29A.60.185(4), for expanding the audit to include
6 additional ballots when a random check conducted under this section
7 results in a discrepancy. The procedure must specify under what
8 circumstances a discrepancy will lead to an audit of additional
9 ballots and the method to determine how many additional ballots will
10 be selected. Procedures adopted under RCW 29A.60.185 pertaining to
11 investigations of any discrepancy found during an audit must be
12 followed. The check must be completed no later than forty-eight hours
13 after election day.

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

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

18 (ii) Evaluate the procedures to identify the best practices and
19 any discrepancies.

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

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

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

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

1 ballots. This record must be added to any other record of the
2 canvassing process in that county.

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

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

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

10 (a) To define ballots;

11 (b) To cast and count votes;

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

13 ((and))

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

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

16 (2) The practices and associated documentation used:

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

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

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

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

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

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

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

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

35 (b) Personal information of residents in any state was, or is
36 reasonably believed to have been, acquired by an unauthorized person
37 as a result of the breach and the personal information was not

1 secured. For purposes of this subsection, "personal information" has
2 the meaning given in RCW 19.255.010.

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

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

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

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

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

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

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

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

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

27 If inspection of the ballot reveals a physically damaged ballot
28 or ballot that may be otherwise unreadable or uncountable by the
29 tabulating system, the county auditor may refer the ballot to the
30 county canvassing board or duplicate the ballot if so authorized by
31 the county canvassing board. The voter's original ballot may not be
32 altered. A ballot may be duplicated only if the intent of the voter's
33 marks on the ballot is clear and the electronic voting equipment
34 might not otherwise properly tally the ballot to reflect the intent
35 of the voter. Ballots must be duplicated by teams of two or more
36 people working together. When duplicating ballots, the county auditor
37 shall take the following steps to create and maintain an audit trail
38 of the action taken:

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

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

7 (a) The control number of each original ballot and the
8 corresponding duplicate ballot;

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

11 (c) The total number of ballots duplicated.

12 Original and duplicate ballots must be sealed in secure storage
13 at all times, except during duplication, inspection by the canvassing
14 board, ~~((~~o~~))~~ tabulation, or to conduct an audit under RCW
15 29A.60.185.

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

18 (1) The county auditor shall prepare at the time of certification
19 an election reconciliation report that discloses the following
20 information:

21 (a) The number of registered voters;

22 (b) The number of ballots issued;

23 (c) The number of ballots received;

24 (d) The number of ballots counted;

25 (e) The number of ballots rejected;

26 (f) The number of provisional ballots issued;

27 (g) The number of provisional ballots received;

28 (h) The number of provisional ballots counted;

29 (i) The number of provisional ballots rejected;

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

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

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

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

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

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

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

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

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

7 (s) The number of nonoverseas and nonservice ballots that were
8 rejected for:

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

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

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

13 (u) The number of replacement ballots requested;

14 (v) The number of replacement ballots issued;

15 (w) The number of replacement ballots received;

16 (x) The number of replacement ballots counted;

17 (y) The number of replacement ballots rejected; and

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

21 (2) The county auditor must make the report available to the
22 public at the auditor's office and must publish the report on the
23 auditor's web site at the time of certification. The county auditor
24 must submit the report to the secretary of state at the time of
25 certification in any form determined by the secretary of state.

26 (3)(a) The secretary of state must collect the reconciliation
27 reports from each county auditor and prepare a statewide
28 reconciliation report for each state primary and general election.
29 The report may be produced in a form determined by the secretary that
30 includes the information as described in this subsection (3). The
31 report must be prepared and published on the secretary of state's web
32 site within two months after the last county's election results have
33 been certified.

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

1 (c) The state report must also include an analysis of the data
2 that can be used to develop a better understanding of election
3 administration and policy. The analysis must combine data, as
4 available, over multiple years to provide broader comparisons and
5 trends regarding voter registration and turnout and ballot counting.
6 The analysis must incorporate national election statistics to the
7 extent such information is available.

Passed by the House March 7, 2018.

Passed by the Senate March 6, 2018.

Approved by the Governor March 22, 2018.

Filed in Office of Secretary of State March 26, 2018.

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