H-2121.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 1998**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 67th Legislature 2022 Regular Session**

**By** Representative Sutherland

AN ACT Relating to only permitting the return and count of ballots that contain an official watermark; amending RCW 29A.36.111, 29A.40.070, 29A.36.115, 29A.60.195, 29A.60.125, 29A.40.091, and 29A.60.235; reenacting and amending RCW 29A.40.110; and adding a new section to chapter 29A.60 RCW.

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

**Sec.**  RCW 29A.36.111 and 2009 c 414 s 1 are each amended to read as follows:

(1) Every ballot for a single combination of issues, offices, and candidates shall be uniform within a precinct and shall identify the type of primary or election, the county, and the date of the primary or election, and the ballot or voting device shall contain instructions on the proper method of recording a vote, including write-in votes. Each position, together with the names of the candidates for that office, shall be clearly separated from other offices or positions in the same jurisdiction. The offices in each jurisdiction shall be clearly separated from each other. No paper ballot or ballot card may be marked by or at the direction of an election official in any way that would permit the identification of the person who voted that ballot.

(2) All ballots, including replacement ballots, provisional ballots, duplicated ballots pursuant to RCW 29A.60.125, and paper records from voting devices to be electronically or manually tabulated, must contain an official watermark approved by the secretary of state. A ballot that is not the original ballot mailed to the voter must include an official watermark that is visually distinct from the watermark contained in original ballots. The watermark must be sufficient to prove that the ballot is an official ballot and not a reproduction. The secretary of state shall take measures to secure the software or firmware used to store the electronic file of the watermark. Only ballots containing the official watermark are valid and may be counted.

(3) An ((~~elections [election]~~)) election official may not enter into or extend any contract with a vendor if such contract may allow the vendor to acquire an ownership interest in any data pertaining to any voter, any voter's address, registration number, or history, or any ballot.

**Sec.**  RCW 29A.40.110 and 2011 c 349 s 18, 2011 c 348 s 4, and 2011 c 10 s 41 are each reenacted and amended to read as follows:

(1) The opening and subsequent processing of return envelopes for any primary or election may begin upon receipt. The tabulation of absentee ballots must not commence until after 8:00 p.m. on the day of the primary or election.

(2) All received return envelopes must be placed in secure locations from the time of delivery to the county auditor until their subsequent opening. After opening the return envelopes, the county canvassing board shall place all of the ballots in secure storage until processing. Ballots may be taken from the inner envelopes and all the normal procedural steps may be performed to prepare these ballots for tabulation.

(3) The canvassing board, or its designated representatives, shall examine the postmark on the return envelope and signature on the declaration before processing the ballot. The ballot must either be received no later than 8:00 p.m. on the day of the primary or election, or must be postmarked no later than the day of the primary or election. All personnel assigned to verify signatures must receive training on statewide standards for signature verification. Personnel shall verify that the voter's signature on the ballot declaration is the same as the signature of that voter in the registration files of the county. Verification may be conducted by an automated verification system approved by the secretary of state. A variation between the signature of the voter on the ballot declaration and the signature of that voter in the registration files due to the substitution of initials or the use of common nicknames is permitted so long as the surname and handwriting are clearly the same.

(4) If the postmark is missing or illegible, the date on the ballot declaration to which the voter has attested determines the validity, as to the time of voting, for that ballot. For overseas voters and service voters, the date on the declaration to which the voter has attested determines the validity, as to the time of voting, for that ballot. ((~~Any overseas voter or service voter may return the signed declaration and voted ballot by fax or email by 8:00 p.m. on the day of the primary or election, and the county auditor must use established procedures to maintain the secrecy of the ballot.~~))

(5) The canvassing board, or its designated representatives, shall examine each returned ballot and ensure that it contains the official watermark required under RCW 29A.36.111. A ballot that does not contain the official watermark is invalid and may not be counted.

**Sec.**  RCW 29A.40.070 and 2013 c 11 s 48 are each amended to read as follows:

(1) Except where a recount or litigation is pending, the county auditor must mail ballots to each voter at least eighteen days before each primary or election, and as soon as possible for all subsequent registration changes.

(2) Except where a recount or litigation is pending, the county auditor must mail ballots to each service and overseas voter at least thirty days before each special election, and at least forty‑five days before each primary or general election, or any special election that involves federal office. A request for a ballot made by an overseas or service voter after that day must be processed immediately.

(3) A registered voter may obtain a replacement ballot if the ballot is destroyed, spoiled, lost, or not received by the voter. The voter may obtain the ballot by telephone request, but the ballot may only be provided to the voter by mail((~~, electronically,~~)) or in person. The replacement ballot must contain an official watermark in accordance with RCW 29A.36.111. The county auditor shall keep a record of each request for a replacement ballot and voters who returned a replacement ballot.

(4) Each county auditor shall certify to the office of the secretary of state the dates the ballots were mailed, or the reason and date the ballots will be mailed if the ballots were not mailed timely.

(5) Failure to mail ballots as prescribed in this section does not by itself provide a basis for an election contest or other legal challenge to the results of a primary, general election, or special election.

**Sec.**  RCW 29A.36.115 and 2011 c 10 s 31 are each amended to read as follows:

All provisional ballots must be visually distinguishable from other ballots and incapable of being tabulated by a voting system. Provisional ballots must contain an official watermark in accordance with RCW 29A.36.111.

**Sec.**  RCW 29A.60.195 and 2011 c 10 s 59 are each amended to read as follows:

Before certification of the primary or election, the county auditor must examine and investigate all received provisional ballots to determine whether the ballot can be counted. In accordance with RCW 29A.36.111, a provisional ballot that does not contain an official watermark is invalid and may not be counted. The auditor shall provide the disposition of the provisional ballot and, if the ballot was not counted, the reason why it was not counted, on a free access system such as a toll-free telephone number, website, mail, or other means. The auditor must notify the voter in accordance with RCW 29A.60.165 when the declaration is unsigned or when the signatures do not match.

**Sec.**  RCW 29A.60.125 and 2018 c 218 s 8 are each amended to read as follows:

If inspection of the ballot reveals a physically damaged ballot or ballot that may be otherwise unreadable or uncountable by the tabulating system, the county auditor may refer the ballot to the county canvassing board or duplicate the ballot if so authorized by the county canvassing board. The voter's original ballot may not be altered. A ballot may be duplicated only if the intent of the voter's marks on the ballot is clear and the electronic voting equipment might not otherwise properly tally the ballot to reflect the intent of the voter. Ballots must be duplicated by teams of two or more people working together. A duplicated ballot must contain an official watermark in accordance with RCW 29A.36.111. When duplicating ballots, the county auditor shall take the following steps to create and maintain an audit trail of the action taken:

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

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

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

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

(c) The total number of ballots duplicated.

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

NEW SECTION. **Sec.**  A new section is added to chapter 29A.60 RCW to read as follows:

A ballot is invalid and must be rejected, and no votes on that ballot may be counted, if it is returned by fax or email.

**Sec.**  RCW 29A.40.091 and 2021 c 10 s 3 are each amended to read as follows:

(1) The county auditor shall send each voter a ballot, a security envelope in which to conceal the ballot after voting, a larger envelope in which to return the security envelope, a declaration that the voter must sign, and instructions on how to obtain information about the election, how to mark the ballot, and how to return the ballot to the county auditor. The calendar date of the election must be prominently displayed in bold type, twenty-point font or larger, on the envelope sent to the voter containing the ballot and other materials listed in this subsection:

(a) For all general elections in 2020 and after;

(b) For all primary elections in 2021 and after; and

(c) For all elections in 2022 and after.

(2) The voter must swear under penalty of perjury that he or she meets the qualifications to vote, and has not voted in any other jurisdiction at this election. The declaration must clearly inform the voter that it is illegal to vote if he or she is not a United States citizen; it is illegal to vote if he or she is serving a sentence of total confinement under the jurisdiction of the department of corrections for a felony conviction or is currently incarcerated for a federal or out-of-state felony conviction; and it is illegal to cast a ballot or sign a ballot declaration on behalf of another voter. The ballot materials must provide space for the voter to sign the declaration, indicate the date on which the ballot was voted, and include a telephone number.

(3) For overseas and service voters, the signed declaration constitutes the equivalent of a voter registration. Return envelopes for overseas and service voters must enable the ballot to be returned postage free if mailed through the United States postal service, United States armed forces postal service, or the postal service of a United States foreign embassy under 39 U.S.C. 3406.

(4) The voter must be instructed to either return the ballot to the county auditor no later than 8:00 p.m. the day of the election or primary, or mail the ballot to the county auditor with a postmark no later than the day of the election or primary. Ballots may not be returned by email or fax. Return envelopes for all election ballots must include prepaid postage. ((~~Service and overseas voters must be provided with instructions and a privacy sheet for returning the ballot and signed declaration by fax or email. A voted ballot and signed declaration returned by fax or email must be received by 8:00 p.m. on the day of the election or primary.~~))

(5) The county auditor's name may not appear on the security envelope, the return envelope, or on any voting instructions or materials included with the ballot if he or she is a candidate for office during the same year.

(6) For purposes of this section, "prepaid postage" means any method of return postage paid by the county or state.

**Sec.**  RCW 29A.60.235 and 2018 c 218 s 9 are each amended to read as follows:

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

(a) The number of registered voters;

(b) The number of ballots issued;

(c) The number of ballots received;

(d) The number of ballots counted;

(e) The number of ballots rejected;

(f) The number of provisional ballots issued;

(g) The number of provisional ballots received;

(h) The number of provisional ballots counted;

(i) The number of provisional ballots rejected;

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

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

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

(m) The number of overseas and service ballots issued by mail((~~, email, website link, or facsimile~~));

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

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

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

(q) The number of nonoverseas and nonservice ballots ((~~sent by email, website link, or facsimile~~)) issued;

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

~~(s)~~)) The number of nonoverseas and nonservice ballots and the number of overseas and service ballots that were rejected for((~~:~~

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

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

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

((~~(u)~~)) (t) The number of replacement ballots requested;

((~~(v)~~)) (u) The number of replacement ballots issued;

((~~(w)~~)) (v) The number of replacement ballots received;

((~~(x)~~)) (w) The number of replacement ballots counted;

((~~(y)~~)) (x) The number of replacement ballots rejected; and

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

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

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

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

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

**--- END ---**