
SUBSTITUTE HOUSE BILL 2335

State of Washington

57th Legislature

2002 Regular Session

By House Committee on State Government (originally sponsored by Representatives Romero, McDermott, Schmidt and Ruderman; by request of Secretary of State)

Read first time 02/07/2002. Referred to Committee on .

1 AN ACT Relating to methods and procedures for vote recording and
2 reporting; amending RCW 29.33.041, 29.33.081, 29.33.130, 29.33.145,
3 29.33.300, 29.33.310, 29.33.320, 29.33.330, 29.33.350, 29.04.200,
4 29.04.200, and 29.85.051; adding a new section to chapter 29.85 RCW;
5 repealing RCW 29.33.340; prescribing penalties; and providing a
6 contingent effective date.

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

8 **Sec. 1.** RCW 29.33.041 and 1990 c 59 s 18 are each amended to read
9 as follows:

10 The secretary of state shall inspect, evaluate, ~~((and publicly))~~
11 test, and hold a public demonstration of all voting systems or
12 components of voting systems that are submitted for review under RCW
13 29.33.051. The secretary of state shall determine whether the voting
14 systems conform with all of the requirements of this title, the
15 applicable rules adopted in accordance with this title, and with
16 generally accepted safety requirements. The secretary of state shall
17 post the report of certification to a publicly available electronic
18 medium and transmit ~~((a copy of the report of any))~~ notification of the

1 examination (~~((under this section))~~), within thirty days after completing
2 the examination, to the county auditor of each county.

3 **Sec. 2.** RCW 29.33.081 and 1990 c 59 s 21 are each amended to read
4 as follows:

5 (~~((If))~~) Only voting systems or devices or vote tallying systems
6 (~~((are to))~~) that have been approved by the secretary of state may be
7 used for conducting a primary or election(~~(, only those that have the~~
8 ~~approval of the secretary of state or had been approved under this~~
9 ~~chapter or chapter 29.34 RCW before March 22, 1982, may be used))~~). Any
10 modification, change, or improvement to any voting system or component
11 of a system (~~((that))~~) must be submitted to the secretary of state for
12 review. After review, the modification may be accepted if it does not
13 impair (~~((its))~~) system accuracy, efficiency, or capacity or extend
14 (~~((its))~~) system function(~~(, may be made without))~~). If, after review,
15 the secretary of state determines that the modification does extend
16 system function, the modification must be submitted for reexamination
17 or reapproval by the secretary of state under RCW 29.33.041.

18 **Sec. 3.** RCW 29.33.130 and 1990 c 59 s 22 are each amended to read
19 as follows:

20 The county auditor of a county in which voting systems are used is
21 responsible for the preparation, maintenance, and operation of those
22 systems, and must provide proof that the system and its component
23 software, in the version used, are state certified. The auditor may
24 employ and direct persons to perform some or all of these functions.

25 **Sec. 4.** RCW 29.33.145 and 1998 c 58 s 1 are each amended to read
26 as follows:

27 An agreement to purchase or lease a voting system or a component of
28 a voting system is subject to that system or component passing an
29 acceptance test, conducted by the purchaser or lessee, sufficient to
30 demonstrate that the equipment is the same as that certified by the
31 secretary of state and that the equipment is operating correctly as
32 delivered to the county.

33 **Sec. 5.** RCW 29.33.300 and 1990 c 59 s 26 are each amended to read
34 as follows:

1 No voting device shall be approved by the secretary of state unless
2 it:

3 (1) Secures to the voter secrecy in the act of voting;

4 (2) Permits the voter to vote for any person for any office and
5 upon any measure that he or she has the right to vote for;

6 (3) Permits the voter to vote for all the candidates of one party
7 or in part for the candidates of one or more other parties;

8 (4) Correctly registers all votes cast for any and all persons and
9 for or against any and all measures;

10 (5) Provides that a vote for more than one candidate cannot be cast
11 by one single operation of the voting device or vote tally system
12 except when voting for president and vice-president of the United
13 States; and

14 (6) Except for functions or capabilities unique to this state, has
15 been tested(~~(, certified, and used in at least one other state or~~
16 ~~election jurisdiction)) and approved by the appropriate independent
17 testing authority approved by the federal elections commission or its
18 statutory successor.~~

19 **Sec. 6.** RCW 29.33.310 and 1990 c 59 s 27 are each amended to read
20 as follows:

21 The ballot (~~(on a single voting device))~~ displayed to a voter shall
22 not contain the names of candidates for the offices of United States
23 representative, state senator, state representative, county council, or
24 county commissioner in more than one district. (~~(In all general~~
25 ~~elections, primaries, and special elections, in each polling place the~~
26 ~~voting devices containing ballots for candidates from each~~
27 ~~congressional, legislative, or county council or commissioner district~~
28 ~~shall be grouped together and physically separated from those devices~~
29 ~~containing ballots for other districts. Each voter shall be directed~~
30 ~~by the precinct election officers to the correct group of voting~~
31 ~~devices.))~~

32 **Sec. 7.** RCW 29.33.320 and 1990 c 59 s 28 are each amended to read
33 as follows:

34 The secretary of state shall not approve a vote tallying system
35 unless it:

36 (1) Correctly counts votes on ballots on which the proper number of
37 votes have been marked for any office or issue;

1 (2) Ignores votes marked for any office or issue where more than
2 the allowable number of votes have been marked, but correctly counts
3 the properly voted portions of the ballot;

4 (3) Accumulates a count of the specific number of ballots tallied
5 for each precinct, total votes by candidate for each office, and total
6 votes for and against each issue of the ballot in that precinct;

7 (4) Accommodates rotation of candidates' names on the ballot under
8 RCW 29.30.040;

9 (5) Produces precinct and cumulative totals in printed form; and

10 (6) Except for functions or capabilities unique to this state, has
11 been tested(~~(, certified, and used in at least one other state or~~
12 ~~election jurisdiction)) and approved by the appropriate independent
13 testing authority approved by the federal elections commission or its
14 statutory successor.~~

15 **Sec. 8.** RCW 29.33.330 and 1990 c 59 s 25 are each amended to read
16 as follows:

17 In preparing a voting device for a primary or election, a record
18 shall be made of the ballot format installed in each device and the
19 precincts or portion of a precinct for which that device has been
20 prepared. Except where provided by a rule adopted under RCW 29.04.210,
21 after being prepared for a primary or election, each device shall be
22 sealed with a uniquely numbered seal and provided to the inspector of
23 the appropriate polling place.

24 **Sec. 9.** RCW 29.33.350 and 1998 c 58 s 2 are each amended to read
25 as follows:

26 At least three days before each state primary or general election,
27 the office of the secretary of state shall provide for the conduct of
28 tests of the programming for each vote tallying system to be used at
29 that primary or general election. The test must verify that the system
30 will correctly count the vote cast for all candidates and on all
31 measures appearing on the ballot at that primary or general election.
32 The office of the secretary of state shall adopt rules specifying the
33 manner of conducting these programming tests. The test shall verify
34 the capability of the vote tallying system to perform all of the
35 functions that can reasonably be expected to occur during conduct of
36 that particular primary or election. If any error is detected, the

1 cause shall be determined and corrected, and an errorless total shall
2 be produced before the primary or election.

3 Such tests shall be observed by at least one representative from
4 each major political party, if representatives have been appointed by
5 the respective major political parties and are present at the test, and
6 shall be open to candidates, the press, and the public. The county
7 auditor and any political party observers shall certify that the test
8 has been conducted in accordance with this section. The county auditor
9 shall provide proof that the version of the voting system and software
10 used are state certified. Copies of ~~((this))~~ these certifications
11 shall be retained by the secretary of state and the county auditor.
12 All programming materials, test results, and test ballots shall be
13 securely ~~((sealed))~~ stored until the day of the primary or general
14 election.

15 **Sec. 10.** RCW 29.04.200 and 1998 c 245 s 26 are each amended to
16 read as follows:

17 (1) ~~((Beginning January 1, 1993,))~~ No voting device or machine may
18 be used ~~((in a county with a population of seventy thousand or more))~~
19 to conduct a primary or general or special election in this state
20 unless it correctly records ~~((on))~~ a separate ballot image of the votes
21 cast by each elector for any person and for or against any measure and
22 such separate ballot~~((s))~~ images are available for audit purposes after
23 such a primary or election.

24 (2) ~~((Beginning January 1, 1993,))~~ The secretary of state shall not
25 certify under this title any voting device or machine ~~((for use in~~
26 ~~conducting))~~ that uses punched holes to record the voter's choices to
27 conduct a primary or general or special election in this state ~~((unless~~
28 ~~the device or machine correctly records on a separate ballot the votes~~
29 ~~cast by each elector for any person and for or against any measure and~~
30 ~~such separate ballots are available for audit purposes after such a~~
31 ~~primary or election))~~.

32 ~~((3) Beginning January 1, 1993, a county with a population of less~~
33 ~~than seventy thousand may use a voting machine or device for conducting~~
34 ~~a primary or general or special election which does not record on a~~
35 ~~separate ballot, available for audit purposes after the primary or~~
36 ~~election, the votes cast by each elector for any person and for or~~
37 ~~against any measure if:~~

1 ~~(a) The device was certified under this title before January 1,~~
2 ~~1993, for use in this state;~~

3 ~~(b) The device otherwise satisfies the requirements of this title;~~
4 ~~and~~

5 ~~(c) Not more than twenty percent of the votes cast during any~~
6 ~~primary or general or special election conducted after January 1, 1998,~~
7 ~~in the county are cast using such a machine or device.~~

8 ~~(4) The purpose of subsection (3) of this section is to permit less~~
9 ~~populous counties to replace voting equipment in stages over several~~
10 ~~years. These less populous counties are, nonetheless, encouraged to~~
11 ~~secure as expeditiously as possible voting equipment which would~~
12 ~~satisfy the requirements of subsection (1) of this section established~~
13 ~~for more populous counties.)~~

14 **Sec. 11.** RCW 29.04.200 and 2002 c . . . s 10 (section 10 of this
15 act) are each amended to read as follows:

16 (1) No voting device or machine may be used to conduct a primary or
17 general or special election in this state unless it correctly records
18 a separate ballot image of the votes cast by each elector for any
19 person and for or against any measure and such separate ballot images
20 are available for audit purposes after such a primary or election.

21 (2) The secretary of state shall not certify under this title any
22 voting device or machine that uses punched holes to record the voter's
23 choices to conduct a primary or general or special election in this
24 state.

25 (3) Beginning January 1, 2007, no voting device or machine that
26 uses punched holes to record the voter's choices may be used to conduct
27 a primary or general or special election in this state.

28 **Sec. 12.** RCW 29.85.051 and 1991 c 81 s 4 are each amended to read
29 as follows:

30 A person is guilty of a gross misdemeanor who knowingly:

31 (1) Deceives any voter in recording his or her vote by providing
32 incorrect or misleading recording information or by providing faulty
33 election equipment or records; ((or))

34 (2) Records the vote of any voter in a manner other than as
35 designated by the voter; or

36 (3) Commits either of the acts under subsection (1) or (2) of this
37 section by electronic means.

1 Such a gross misdemeanor is punishable to the same extent as a
2 gross misdemeanor that is punishable under RCW 9A.20.021.

3 NEW SECTION. **Sec. 13.** A new section is added to chapter 29.85 RCW
4 to read as follows:

5 A person is guilty of a gross misdemeanor punishable under chapter
6 9A.20 RCW who knowingly:

7 (1) Tamper with or impedes the use of any form of electronic
8 voting or vote recording system; or

9 (2) Tamper with or impedes access to any vote reporting or
10 election results reporting system.

11 NEW SECTION. **Sec. 14.** RCW 29.33.340 (Election officials--
12 Instruction, compensation, requirements) and 1990 c 59 s 29 & 1977
13 ex.s. c 361 s 69 are each repealed.

14 NEW SECTION. **Sec. 15.** Section 11 of this act takes effect once
15 Congress passes legislation that provides specific funding to replace
16 voting systems and vote tallying equipment. If federal legislation is
17 not approved and funding is not provided by January 1, 2005, section 11
18 of this act is void in its entirety.

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