Z-0903.5   _____

HOUSE BILL 2745

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State of Washington   **58th Legislature**   **2004 Regular Session**

By Representatives Miloscia, Nixon, Simpson, G., Talcott, Rockefeller and Upthegrove; by request of Secretary of State

Read first time 01/20/2004.   Referred to Committee on Technology, Telecommunications & Energy.

1   AN ACT Relating to voting systems; amending RCW 29A.12.020,
2 29A.12.050, 29A.12.060, 29A.12.070, 29A.12.080, 29A.12.090, 29A.12.100,
3 29A.12.110, 29A.12.130, 29A.12.150, 29A.44.320, and 29A.60.060; adding
4 a new section to chapter 29A.12 RCW; adding new sections to chapter
5 29A.44 RCW; adding new sections to chapter 29A.60 RCW; adding a new
6 section to chapter 29A.84 RCW; adding a new section to chapter 29A.04
7 RCW; creating a new section; prescribing penalties; providing effective
8 dates; and providing an expiration date.

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

10   **Sec. 1.** RCW 29A.12.020 and 2003 c 111 s 302 are each amended to
11 read as follows:
12   The secretary of state shall inspect, evaluate, ((and)) publicly
13 demonstrate, and test all voting systems or components of voting
14 systems that are submitted for review under RCW 29A.12.030.   The
15 secretary of state shall determine whether the voting systems conform
16 with all of the requirements of this title, the applicable rules
17 adopted in accordance with this title, and with generally accepted
18 safety requirements.   The secretary of state shall post the report of
19 certification to a publicly available electronic medium and transmit

1 ((a copy of the report of any examination)) notice of certification
2 under this section, within thirty days after completing the
3 examination, to the county auditor of each county.

4   **Sec. 2.** RCW 29A.12.050 and 2003 c 111 s 305 are each amended to
5 read as follows:
6   ((If)) Only voting systems or devices or vote tallying systems
7 ((are to)) that have been certified by the secretary of state may be
8 used for conducting a primary or election((, only those that have the
9 approval of the secretary of state or had been approved under this
10 chapter or the former chapter 29.34 RCW before March 22, 1982, may be
11 used. Any)). No modification, change, redesign, or improvement may be
12 made to any voting system or component of a system ((that does not
13 impair its accuracy, efficiency, or capacity or extend its function,
14 may be made)) without notification of the secretary of state for
15 reexamination or reapproval by the secretary of state under RCW
16 29A.12.020.

17   **Sec. 3.** RCW 29A.12.060 and 2003 c 111 s 306 are each amended to
18 read as follows:
19   The county auditor of a county in which voting systems are used is
20 responsible for the preparation, maintenance, and operation of those
21 systems and during the logic and accuracy test, must provide written,
22 signed verification that the system and its component software, in the
23 version used, are certified. The auditor may employ and direct persons
24 to perform some or all of these functions.

25   **Sec. 4.** RCW 29A.12.070 and 2003 c 111 s 307 are each amended to
26 read 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 county auditor as purchaser or
30 lessee, sufficient to demonstrate that the equipment is the same as
31 that certified by the secretary of state and that the equipment is
32 operating correctly as delivered to the county.

33   **Sec. 5.** RCW 29A.12.080 and 2003 c 111 s 308 are each amended to
34 read as follows:

1   No voting device ((shall)) or its component software may be
2   ((approved)) certified by the secretary of state unless 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) In the case of a precinct-based electronic voting system, at
15   the time of voting produces a machine countable paper record for each
16   vote that may be reviewed by the voter before finalizing his or her
17   vote, as a part of the voting process; and
18   (7) Except for functions or capabilities unique to this state, has
19   been tested((, certified, and used in at least one other state or
20   election jurisdiction)) and approved by the appropriate independent
21   testing authority approved by the federal election assistance
22   commission or its statutory successor.

23   **Sec. 6.** RCW 29A.12.090 and 2003 c 111 s 309 are each amended to
24   read as follows:
25   The ballot ((on a single voting device shall)) displayed to a voter
26   may not contain the names of candidates for the offices of United
27   States representative, state senator, state representative, county
28   council, or county commissioner in more than one district. ((In all
29   general elections, primaries, and special elections, in each polling
30   place the voting devices containing ballots for candidates from each
31   congressional, legislative, or county council or commissioner district
32   shall be grouped together and physically separated from those devices
33   containing ballots for other districts. Each voter shall be directed
34   by the precinct election officers to the correct group of voting
35   devices.))

1   **Sec. 7.** RCW 29A.12.100 and 2003 c 111 s 310 are each amended to
2 read as follows:
3   The secretary of state ((shall)) may not approve a vote tallying
4 system or system software unless it:
5   (1) Correctly counts votes on ballots on which the proper number of
6 votes have been marked for any office or issue;
7   (2) Ignores votes marked for any office or issue where more than
8 the allowable number of votes have been marked, but correctly counts
9 the properly voted portions of the ballot;
10   (3) Accumulates a count of the specific number of ballots tallied
11 for each precinct, total votes by candidate for each office, and total
12 votes for and against each issue of the ballot in that precinct;
13   (4) Accommodates rotation of candidates' names on the ballot under
14 RCW 29A.36.140;
15   (5) Produces precinct and cumulative totals in printed form; and
16   (6) Except for functions or capabilities unique to this state, has
17 been tested((, certified, and used in at least one other state or
18 election jurisdiction)) and approved by the appropriate independent
19 testing authority approved by the federal election assistance
20 commission or its statutory successor.

21   **Sec. 8.** RCW 29A.12.110 and 2003 c 111 s 311 are each amended to
22 read as follows:
23   In preparing a voting device for a primary or election, a record
24 ((shall)) must be made of the ballot format installed in each device
25 and the precincts or portion of a precinct for which that device has
26 been prepared. Except where provided by a rule adopted under RCW
27 29A.04.610, after being prepared for a primary or election, each device
28 ((shall)) must be sealed with a uniquely numbered seal and provided to
29 the inspector of the appropriate polling place.

30   **Sec. 9.** RCW 29A.12.130 and 2003 c 111 s 313 are each amended to
31 read as follows:
32   At least three days before each state primary or general election,
33 the office of the secretary of state shall provide for the conduct of
34 tests of the programming for each vote tallying system to be used at
35 that primary or general election. The test must verify that the system
36 will correctly count the vote cast for all candidates and on all

measures appearing on the ballot at that primary or general election.
The test ((shall)) must verify the capability of the vote tallying
system to perform all of the functions that can reasonably be expected
to occur during conduct of that particular primary or election. If any
error is detected, the cause ((shall)) must be determined and
corrected, and an errorless total ((shall)) must be produced before the
primary or election.

Such tests ((shall)) must be observed by at least one
representative from each major political party, if representatives have
been appointed by the respective major political parties and are
present at the test, and ((shall)) must be open to candidates, the
press, and the public. The county auditor and any political party
observers shall certify that the test has been conducted in accordance
with this section. The county auditor must provide signed, written
verification that the version of the voting system and software used
are state certified. Copies of this verification and the test
certification ((shall)) must be retained by the secretary of state and
the county auditor. All programming materials, test results, and test
ballots ((shall)) must be securely ((sealed)) stored until the day of
the primary or general election. All ballot counting equipment must be
sealed, kept in a secure location, and protected against unauthorized
access until election day.

Sec. 10. RCW 29A.12.150 and 2003 c 111 s 315 are each amended to
read as follows:
(1) No voting device or machine may be used ((in a county with a
population of seventy thousand or more)) to conduct a primary or
general or special election in this state unless it correctly records
on a separate ballot the votes cast by each elector for any person and
for or against any measure and such separate ballots are available for
audit purposes after such a primary or election. After January 1,
2006, no voting device or machine may be used to conduct a primary or
general or special election that uses punched holes to record the
voter's choices.
(2) The secretary of state shall not certify under this title any
voting device or machine for use in conducting a primary or general or
special election in this state unless the device or machine correctly
records on a separate ballot the votes cast by each elector for any

1 person and for or against any measure and such separate ballots are
2 available for audit purposes after such a primary or election. The
3 secretary of state may not certify under this title any voting device
4 or machine for use in conducting a primary or general or special
5 election that uses punched holes to record the voter's choices.

6   NEW SECTION. **Sec. 11.** A new section is added to chapter 29A.12
7 RCW to read as follows:
8   The secretary of state may withdraw the certification of any voting
9 system hardware, software, or system component for cause. Before
10 withdrawing a certification the secretary of state shall conduct a
11 public hearing intended to document and allow input from affected
12 system users and vendors before rendering a decision. The secretary of
13 state shall post the report of withdrawal of certification to a
14 publicly available electronic medium and transmit notice of withdrawal
15 of certification under this section to each county auditor within ten
16 days after completing the examination.

17   **Sec. 12.** RCW 29A.44.320 and 2003 c 111 s 1130 are each amended to
18 read as follows:
19   Whenever poll-site ballot counting devices or poll-site based
20 electronic voting devices are used, the devices may either be included
21 with the supplies required in RCW 29A.44.110 or they may be delivered
22 to the polling place separately. All poll-site ballot counting devices
23 and poll-site based electronic voting devices must be sealed with a
24 unique numbered seal at the time of final preparation and logic and
25 accuracy testing. The seal must secure against unauthorized access.
26 A log must be made of all seal numbers and device numbers used.

27   NEW SECTION. **Sec. 13.** A new section is added to chapter 29A.44
28 RCW to read as follows:
29   Before each state primary or general election logic and accuracy
30 testing of precinct-based systems or electronic voting devices must be
31 performed by the county under the observation of the office of the
32 secretary of state during the process of final preparation before
33 system distribution to each pollsite. For all other elections the
34 logic and accuracy test must be performed by the county auditor before
35 system distribution. As each ballot counter or electronic voting

system is programmed and set up for distribution a logic and accuracy
test must be performed. These tests must establish that each system is
functioning within system standards. All ballot styles programmed for
each machine must be processed by each machine in order to ensure that
the machine is correctly counting and accumulating votes for every
office. After all tests are performed and the machine is ready for
distribution, the machine must be sealed and the seal number recorded.
The procedure described in this section will serve as the official
logic and accuracy test of these devices.

NEW SECTION. **Sec. 14.** A new section is added to chapter 29A.44
RCW to read as follows:
    A log must be created during the testing of poll-site based ballot
counters and electronic voting devices. The log must record the time
and place of each test, the precinct number, seal number, and machine
number of each ballot counter or voting device, and the initials of
each person testing and observing the test for each machine. This log
must be included in the official logic and accuracy test materials.
The processes described in section 13 of this act must be open to
observation and subject to all notices and observers under rules
adopted by the secretary of state.

NEW SECTION. **Sec. 15.** A new section is added to chapter 29A.44
RCW to read as follows:
    (1) The secretary of state shall empanel a task force of elections
and computer security experts to be known as the "Washington Voting
Systems Board" to study and determine the potential for election fraud
as follows:
    (a) At least six county auditors, or their designees, with five
years or more of elections experience;
    (b) At least four computer experts with five years or more
experience in maintaining the security of enterprise level computing
systems;
    (c) The director of the department of information services or a
designee;
    (d) The state director of elections or a designee;
    (e) A representative of the Washington disability access group;

1   (f) The secretary of state, or a designee, who shall chair the task
2 force.
3   (2) The secretary of state shall provide reports to the legislature
4 before the beginning of the 2005 and 2006 legislative sessions
5 detailing:
6   (a) The progress of the federal election assistance commission in
7 developing standards for the testing, certification, decertification,
8 and recertification of voting system hardware and software, including
9 electronic voting systems;
10   (b) The progress of the federal election assistance commission in
11 conducting a thorough study of the issues and challenges, specifically
12 to include the potential for election fraud;
13   (c) The findings of the secretary of state and the Washington
14 voting systems board on the comparative security of various voting
15 systems technologies;
16   (d) The findings of the secretary of state as to any potential or
17 known risks of voting fraud, or actual instance of voting fraud during
18 the previous year;
19   (e) A list of the voting system technologies certified for use in
20 this state.
21   (3) Subsection (2) of this section expires July 1, 2006.

22   NEW SECTION. **Sec. 16.** A new section is added to chapter 29A.44
23 RCW to read as follows:
24   All poll-site based electronic voting devices shall produce an
25 individual paper record, at the time of voting, that may be reviewed by
26 the voter before finalizing his or her vote. This record may not be
27 removed from the polling place and must be machine readable for
28 counting purposes. If the device is programmed to display the ballot
29 in multiple languages, the paper record produced must be printed in the
30 language used by each voter.

31   NEW SECTION. **Sec. 17.** A new section is added to chapter 29A.44
32 RCW to read as follows:
33   Paper records produced by poll-site based electronic voting devices
34 are subject to all of the requirements of this chapter and chapter
35 29A.60 RCW for ballot handling, preservation, reconciliation, transit

1 to the counting center, and storage. The paper records must be
2 preserved in the same manner and for the same period of time as
3 ballots.

4   NEW SECTION. **Sec. 18.** A new section is added to chapter 29A.44
5 RCW to read as follows:
6   The electronic record produced and counted by poll-site electronic
7 voting devices is the official record of each vote for election
8 purposes. The paper record produced under section 16 of this act must
9 be stored and maintained for use only in the following specified
10 circumstances:
11   (1) In the event of a mandatory hand recount of votes under RCW
12 29A.64.020;
13   (2) In the event of a requested recount under RCW 29A.64.010;
14   (3) By order of the county canvassing board; and
15   (4) By order of the superior court of a county.

16   NEW SECTION. **Sec. 19.** A new section is added to chapter 29A.44
17 RCW to read as follows:
18   A voter voting on a poll-site based electronic voting system may
19 not leave the device during the voting process except to verify his or
20 her ballot, or to request assistance from the precinct election
21 officers, until the voting process is completed. Except for disabled
22 or visually impaired persons, each voter using a poll-site based
23 electronic voting system is limited to ten minutes voting time
24 including verification of a paper record produced by the system.

25   NEW SECTION. **Sec. 20.** A new section is added to chapter 29A.60
26 RCW to read as follows:
27   Ballot counting systems must be secured physically and
28 electronically against unauthorized access. Ballot counting systems
29 must not be connected to, or operated on, any electronic network
30 including internal office networks, the Internet, or the World Wide
31 Web. Wireless communications may not be used in any way in a voting
32 system. A network may be used as an internal, integral part of the
33 ballot counting system, but that network must not be connected to any
34 other network, the Internet, or the World Wide Web. All elements of
35 the ballot counting system must be observable and secured. Transfer of

1   information from the ballot counting system to another system for
2   network connection or broadcast must be made via disk, tape, or other
3   physical means of communication other than direct electronic
4   connection.

5   NEW SECTION. **Sec. 21.** A new section is added to chapter 29A.60
6   RCW to read as follows:
7   Before the first ballot counting session in each election, a report
8   must be produced demonstrating that the system contains no vote data
9   before commencement of counting ballots. At the completion of each
10 ballot counting session, the ballot counting system must produce a
11 report of the results compiled that includes date and time information.
12 Before commencing any additional ballot counting session, a report of
13 the results contained in the system must be produced that includes date
14 and time information. This report must be compared with the report
15 produced at the end of the previous ballot counting session to ensure
16 that no changes have been made to the vote data in the interim period.
17 This comparison must be performed in the presence of political party
18 observers if representatives have been appointed by their respective
19 political parties and are present at the time of comparison. This
20 procedure must be employed for subsequent counting sessions. Nothing
21 in this section precludes the county auditor from zeroing individual
22 devices in subsequent counting sessions if a report is created after
23 each session and before the next, with the results being merged into
24 the total.

25   **Sec. 22.** RCW 29A.60.060 and 2003 c 111 s 1506 are each amended to
26 read as follows:
27   After the close of the polls, counties employing poll-site ballot
28 counting devices or a remote counting location may telephonically ((or
29 electronically)) transmit the accumulated tally for each device to a
30 central reporting location. Before making a telephonic ((or
31 electronic)) transmission the precinct election officer must create a
32 printed record of the results of the election for that poll site.
33 During the canvassing period the results transmitted telephonically
34 ((or electronically)) must be considered unofficial until a complete
35 reconciliation of the results has been performed. This reconciliation
36 may be accomplished by a direct loading of the results from the memory

pack into the central accumulator, or a comparison of the report produced at the poll site on election night with the results received by the central accumulating device. The device or devices used to receive the telephonic transmission may not be directly connected to the voting system. Transfer of the information received must be made via disk, tape, or other physical means of communication other than direct electronic connection.

NEW SECTION. **Sec. 23.** A new section is added to chapter 29A.84 RCW to read as follows:

Anyone who removes a paper record produced by a poll-site based electronic voting system from a polling place without authorization is guilty of a class C felony punishable under RCW 9A.20.021.

NEW SECTION. **Sec. 24.** A new section is added to chapter 29A.04 RCW to read as follows:

The secretary of state may adopt administrative rules concerning the operation, conduct of voting, and usage of poll-site based electronic voting devices and paper records.

NEW SECTION. **Sec. 25.** Nothing in this act prevents the state of Washington, its counties, or its voters from participating in the Secure Electronic Registration and Voting Experiment (SERVE) as authorized by PL 107-107, Title 16, section 1604 and chapter 17, Laws of 2003 1st sp. sess. including system certification, voter registration, and voting.

NEW SECTION. **Sec. 26.** Sections 16 through 19 and 23 of this act take effect January 1, 2006, the remainder of this act takes effect July 1, 2004.

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