
HOUSE BILL 2406

State of Washington

65th Legislature

2018 Regular Session

By Representatives Hudgins, Stanford, and Ormsby

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

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) Select for audit at least one statewide contest, and for
38 each county at least one ballot contest other than the selected
39 statewide contest. The secretary of state shall select other ballot

1 contests 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) For each audit method, the secretary of state must adopt
32 procedures for expanding the audit to include additional ballots when
33 an audit results in a discrepancy. The procedure must specify under
34 what circumstances a discrepancy will lead to an audit of additional
35 ballots, and the method to determine how many additional ballots will
36 be selected.

37 (3) At the discretion of the county auditor or upon a written
38 request of a candidate, an officer of a political party, or any group
39 of five or more registered voters, an additional number of ballots
40 may be audited to supplement the audits conducted under this section.

1 An application for a supplemental audit must be filed with the
2 officer with whom filings are made for the jurisdiction. The person
3 filing an application for a supplemental audit is subject to the same
4 cost structure as for recounts under RCW 29A.64.030 and 29A.64.081.
5 The secretary of state shall determine the initial number of
6 additional ballots that may be audited. If a discrepancy is found
7 after a supplemental audit is performed, procedures adopted under
8 subsection (2) of this section must be followed.

9 (4) The secretary of state must establish rules by January 1,
10 2019, to implement and administer the auditing methods in this
11 section, including facilitating public observation and reporting
12 requirements.

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

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

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

34 (3) A random check of the ballot counting equipment may be
35 conducted upon mutual agreement of the political party observers or
36 at the discretion of the county auditor. The random check procedures
37 must be adopted by the county canvassing board, and consistent with
38 rules adopted under RCW 29A.60.185(4), prior to the processing of
39 ballots. The random check process shall involve a comparison of a

1 manual count or electronic count if an audit under RCW
2 29A.60.185(1)(d) is conducted to the machine count from the original
3 ballot counting equipment and may involve up to either three
4 precincts or six batches depending on the ballot counting procedures
5 in place in the county. The random check will be limited to one
6 office or issue on the ballots in the precincts or batches that are
7 selected for the check. The selection of the precincts or batches to
8 be checked must be selected according to procedures established by
9 the county canvassing board (~~and~~). The random check procedures must
10 include a process, consistent with RCW 29A.60.185(2) and rules
11 adopted under RCW 29A.60.185(4), for expanding the audit to include
12 additional ballots when a random check conducted under this section
13 results in a discrepancy. The procedure must specify under what
14 circumstances a discrepancy will lead to an audit of additional
15 ballots and the method to determine how many additional ballots will
16 be selected. The check must be completed no later than forty-eight
17 hours after election day.

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

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

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

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

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

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

5 (a) To define ballots;

6 (b) To cast and count votes;

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

8 ((and))

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

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

11 (2) The practices and associated documentation used:

12 (a) To identify system components and versions of such
13 components;

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

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

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

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

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

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

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

30 (b) Personal information of residents in any state was, or is
31 reasonably believed to have been, acquired by an unauthorized person
32 as a result of the breach and the personal information was not
33 secured. For purposes of this subsection, "personal information" has
34 the meaning given in RCW 19.255.010.

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

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

3 (1) 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, at any time after certification, the
6 secretary of state determines it no longer conforms with the
7 requirements of this title, applicable rules adopted in accordance
8 with this title, or generally accepted safety requirements.

9 (2) The secretary of state must decertify a voting system or any
10 component of a voting system and withdraw authority for its future
11 use or sale in the state if the manufacturer or distributor of the
12 voting system or component thereof fails to comply with the
13 notification requirements of section 6 of this act.

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