SENATE BILL REPORT
SB 6412

As of February 6, 2020

Title: An act relating to election security.

Brief Description: Concerning election security.

Sponsors: Senators Zeiger, Mullet, Wilson, L., King, O'Ban, Fortunato and Schoesler; by request of Secretary of State.

Brief History:
  Committee Activity: State Government, Tribal Relations & Elections: 2/05/20.

Brief Summary of Bill

- Prohibits service and overseas voters from returning ballots by fax or email.

- Provides prorated reimbursement for the state and federal share of election costs for the 2020 election.

- Requires that persons returning voted ballots on behalf of others do so within specified time frames.

- Creates offenses for certain activities related to the return of another person's voted ballot.

- Modifies procedures for postelection audits, including risk-limiting audits.

- Ends the use of machine recounts, requiring a comparison risk-limiting audit for preliminary recounts, then full manual recounts if the audit does not meet a risk limit.

- Appropriates $1.8 million for election administration and security to draw down federal matching funds.

SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS

Staff: Samuel Brown (786-7470)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: Returning Voted Ballots. All counties in the state conduct elections entirely by mail. For a ballot to be counted, the voter must either return the ballot to the county auditor no later than 8:00 p.m. election day or mail the ballot to the county auditor with a postmark on the larger envelope, dated no later than election day. Counties must also provide ballot drop boxes at sites, in addition to the county auditor's office, where voters may return completed ballots.

Post-Election Audits. Prior to election certification, the county auditor must conduct a comparison of duplicated ballots to original ballots. A random check comparing the electronic count of ballots to the machine count from the original ballot counting equipment must be conducted if requested by observers from both major political parties. The county auditor must conduct an additional audit using at least one of the following methods:
- an audit of votes cast on direct recording electronic (DRE) voting devices if more than ten votes were cast on DRE devices on any race in the county, or an audit of other in-person ballot marking systems;
- a risk-limiting audit, which uses statistical principles and methods to determine whether, based on a random sampling of paper ballots, ballot counting equipment interpreted and tallied the results correctly within an acceptable probability; or
- any independent electronic audit using an accurate and independent system approved by the Secretary of State (SOS).

There are two types of risk-limiting audits:
- a comparison risk-limiting audit, in which the county auditor compares the voter markings on the ballot to the ballot-level cast vote record produced by the ballot counting equipment; and
- a ballot polling risk-limiting audit, used in counties where the ballot counting equipment does not produce a ballot-level cast vote record, where the county auditor reports the markings on randomly selected ballots until the pre-specified risk limit is met.

Recounts. Election officials must conduct a machine recount of election results, re-tabulating the machine count of the results, when the difference between apparently prevailing and losing candidates or approval and rejection of a measure is less than 2000 votes, and also less than 0.5 percent of the total number of votes cast on the measure. A manual recount, comparing the ballot counting machine results with each individual ballot, is required when the difference between apparently prevailing and losing candidates or approval and rejection of a measure is less than 0.25 percent and:
- in statewide elections, less than 1000 votes; and
- in legislative and local elections, less than 150 votes.

Any candidate or the candidate's political party may request a recount for an election outside those margins, and any group of five or more voters may apply for a recount of all or part of the votes on any ballot measure outside those margins.

Crimes and Penalties. Using menace, force, threat, or unlawful means to hinder or deter a voter, or bribing a voter constitutes a class C felony, punishable by imprisonment up to five years and a fine up to $10,000. Attempting to influence a person, directly or indirectly, by unlawful means to refuse to vote in an election is a gross misdemeanor punishable by

imprisonment in a county jail for up to 364 days and a fine up to $5,000. Washington does not otherwise regulate the transport and return of voted ballots by persons other than the voter.

Federal Election Security Funding. Congress allocated $425 million to states as part of its fiscal year 2020 budget to improve election administration, enhance election technology, and make election security improvements. Each state's allocation is distributed according to a formula which takes into account the voting-age population of each state. Washington's share of this allocation is estimated at $8.6 million. The legislation enacting the fiscal year 2020 budget requires a state matching contribution of 20 percent to release federal funds.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Returning Voted Ballots. Overseas and service voters may not return voted ballots and signed declarations by fax or e-mail. If a person other than the voter is returning the voter's voted ballot, the ballot must be returned within 36 hours or by 8:00 p.m. on election night, whichever is shorter.

A person who collects and transports voted ballots to election offices must:
- wear easily visible identification;
- show government-issued identification upon the voter's request;
- provide a signed receipt to each voter for the voted ballot containing the person's name, address, and phone number and the date and time of ballot collection; and
- maintain a log of ballots collected signed by each voter from whom a ballot was collected.

The ballot collection log must be submitted to the county election office by the day after the election.

Ballots must provide space for two witnesses to sign and provide a phone number and e-mail address for when a voter uses a mark instead of a signature. A statement must be published in each state and local voters' pamphlet encouraging voters to return ballots by mail or in ballot drop boxes, and discouraging the use of unknown third parties.

Post-Election Audits. Political party observers may not request a random check. The county auditor must audit the results of votes cast on DRE devices or in-person ballot marking systems if there is a race with at least ten votes cast on such systems. If more than five devices were used, at least one out of every four devices must be audited. This audit must compare the results recorded electronically by the devices with the results on the paper trail produced by the devices in three randomly selected races or issues.

If any discrepancies in a comparison risk-limiting audit are within the risk limit specified by SOS, the audit is complete; if not, further sampling is required. SOS must establish procedures for resolving audit discrepancies and next steps in the case of a failed audit.

Procedures for conducting independent electronic audits are transferred within statute. Each county auditor must create and post online an audit report after each election detailing the types of audits performed, ballots audited, races or issues included in the audit, and an

explanation of any discrepancies and subsequent steps taken. Audit reports must be submitted one day before certification to SOS, who must compile the results and prepare a statewide audit report.

Recounts. All recounts must be conducted manually. For elections where the difference between apparently prevailing and losing candidates or approval and rejection of a measure is less than 2000 votes and also less than 0.5 percent of the total number of votes cast on the measure, a comparison risk-limiting audit must be conducted. If the results of the comparison risk-limiting audit do not fall within a 5 percent risk limit, a full manual recount must be conducted. A full manual recount may be conducted without first conducting a statistical audit.

Crimes and Penalties. A person who knowingly destroys, alters, defaces, conceals, or discards another person's voted ballot, or who has been designated by a voter to return a voted ballot and fails to do so, is guilty of a class C felony. A person other than a voter's spouse, parent, child, immediate member of the household, caregiver, who has not received written permission and provided a receipt to a voter who possesses another's voted ballot is guilty of a class C felony. Any person who prevents timely delivery of a voted ballot to election officials, or collects voted ballots without maintaining or returning a ballot collection log, is guilty of a class C felony.

Appropriation. An appropriation of $1.8 million is made from the general fund to SOS to secure federal matching funds for election administration. The appropriation may be used for local election security needs as determined by SOS reviews and other partner third-party security assessments.

Appropriation: The bill contains an appropriation totaling $1.8 million from the General Fund-State.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute: PRO: Threats to our election process are not going away, and we must be vigilant and continuously improve our systems. This bill requires a clear chain of custody for ballots, limits entry points to our election systems by removing higher-risk electronic methods, and provides post-election security by removing low-value-added machine recounts to promote voter confidence. Washington is one of only five states that allow electronic return of ballots. Incidents in North Carolina and Oregon highlight the need for laws with specifics on third-party ballot collection. This protects voters and ballot collectors by providing transparency.

This bill strikes a balance between security and the freedom of communities to self-organize. Electronic voting without safeguards is not secure—an e-mail or fax ballot could be changed in transmission and there is no way to know it happened. Risk-limiting audits are secure, dynamic forms of auditing which help voter confidence. Systems are open to malware;

Cowlitz County received malware in the form of a normal invoice and was shut down for a week. Electronic voting may violate a provision in the state Constitution that voting must provide absolute security to each voter. This bill aligns with steps detailed cybersecurity reports outline to improve election security. States with e-mail or fax ballot returns have lower participation rates.

OTHER: Transmission of ballots electronically does not ensure that attachments are secure. All a bad actor has to do to inflict harm is to send malware that looks like an overseas ballot. Military voters like returning ballots via app. This bill will make it more difficult to deploy technologies that would make it easier for voters with disabilities to vote. We do not have to choose between security and access. Three-quarters of my county's military and overseas voters use electronic ballot return. It is our job to find a better solution than remove an option that will impact our most vulnerable voters and immigrant communities. There is a small segment of a small segment of voters that need electronic ballot return—military personnel at remote forward operating bases and certain exchange students.

Persons Testifying: PRO: Senator Hans Zeiger, Prime Sponsor; Diana Bradrick, Washington State Association of County Auditors; Kim Wyman, Secretary of State; Josh Benaloh, Microsoft; Joesph MacLean, Grays Harbor County Auditor; Kirstin Mueller, League of Women Voters of Washington.

OTHER: Nancy Bickford, Washington Military Department; Sheila Nix, Tusk Philanthropies; Julie Wise, King County Director of Elections; Paddy McGuire, Mason County Auditor.

Persons Signed In To Testify But Not Testifying: No one.