

During the 2020 session the Office of the Secretary of State proposed a bill to enhance election security. The bill was intended to introduce a variety of related election security ideas to the legislature and formally request funding for the state match. The bill did not pass, but the issues are still alive. Major components of the bill require further legislative discussions, auditor input, and policy review. The goal of procuring state matching funds for federal HAVA security grants was accomplished.

OSOS and WSACA plan to use the interim to discuss ideas and advance some of the concepts as the election community next session. The bill 2647/6412 was an omnibus bill containing a variety of topics.

These are:

1. Improve signature witness information (Sec 2, 26)
2. Reorganize/improve post-election audit process (Sec 11, 12, 13, 14, 16, 17, 18)
3. Update the recount process (Sec 19, 20, 21, 22, 23, 24, 25)
4. Protecting ballot collection processes (Sec 5, 6, 7, 8, 9, 10)
5. Remove electronic ballot return (Sec 2, 3, 4)

1) Improving Signature Witness Information:

Here is the bill language:

"(3) Space must be provided for the signatures of two witnesses to a voter using a mark when the voter is physically present but unable to write a signature. Each witness line must be accompanied by a line for the witness to record their current phone number or email address". This would be on the ballot return envelope and on cure forms.

Intent:

- Respond to questions and concerns received about the witnessing process.
- Contact information valuable if a county needs to follow up on the ballot.
- Highlight the importance of the attestation to the person signing as a witness.
- The bill does not require research into the witnesses, nor would it allow, or require, rejection for lack of contact information.

The signature witnessing process is currently defined in WAC. Putting the requirement in statute promotes standardization to make certain that all counties conduct this business in the same manner.

2) Reorganizing and improving the post-election audit process.

Intent: Primarily cleanup. The 2018 bill on audits left the statute difficult to interpret and confusing to follow. The first goal here is to improve the layout while maintaining the same policy. Existing policy in a better format for the public and election administrators, untangling the many ideas and topics. Once that is complete, the election community can begin the process of improving and perfecting the audits in the future.

How this is accomplished:

- 1) Section 12 (29A.60.125) is the best place for language about auditing duplicated ballots. The current location is 29A.60.185 (2). The bill moves the language to .125.
- 2) In Section 13, the existing language about random batch audits is moved to a stand-alone section of statute (Section 16 of the bill).
- 3) Section 14 (29A.60.185) was the section that previously contained the various types of post-election audit activity. It needs clarification. So, the specifics of each type of audit are moved to new standalone sections of statute, leaving a list of options in this section.
 - a) The DRE audit found in 29A.60.185 (1) (a) is moved to Section 15.
 - b) The RLA information in 29A.60.185 (1) (c) is moved to Section 17.
 - c) The electronic audit language in 29A.60.185 (1) (d) is moved to Section 18.
 - d) The Rules authorization is moved to 29A.04.611 (10) where all elections WAC writing requirements are found. (Section 11 of the bill).

These changes clarify **existing policy**:

- If DRE's are used, they must be audited (Now Section 15).
- Duplicated ballots must be audited (Now Section 12).
- Prior to certification the auditor must choose one of these post-election audits:
 - The random check of ballot counting equipment now in Section 16.
 - An RLA as now found in Section 17
 - An RLA as now found in Section 18

By moving these sections, logic and flow is improved, the location of various audits is placed with other parts of the same activity, and standalone sections can be modified in the future without creating unintended consequences on other processes.

Choice points: There will come a time when RLA is standard procedure.

- Under current law (and the bill), we have flexibility within this framework to use WAC and studies etc. to improve and perfect the RLA process.
- The LWV made several suggestions about changes in terminology and definitions that we will use. For example, using the term “Risk Limit” instead of “statistical audit”, updating the definitions of “ballot polling risk limiting audit” and providing a definition of “risk” that is used in other states.
- If this section of the bill becomes a standalone bill, we also have the option to make substantive policy and procedural changes in statute, if we feel we are ready.

The League also proposed a lengthy set of new “audit reports” to be conducted by each county for every election. Here is their proposed language:

(3) Each county auditor shall create an audit report for each special election, primary, and general election. The secretary of state shall develop, and all county auditors shall use, a standard reporting format for the audit report. At the time of certification of the election, the county auditor shall post the report on the county elections web site, or its equivalent. The report must include the following information:

(a) Each type of postelection audit performed;

(b) The total number of ballots audited;

(c) The ballot races or issues included in the audit;

(d) For each audit sample:

(i) The count of the specific ballot races or issues as originally tabulated for that audit sample;

(ii) The count as determined by the audit; and

(iii) An explanation of discrepancies found between the counts reported under (d) (i) and (ii) of this subsection, if any;

(f) The number of ballots duplicated and any discrepancies found during the audit of the duplicated ballots;

(g) Any other discrepancies found during each audit, and the findings of any investigation conducted;

(h) The signature, election administration certification number if applicable, and date of last election administration training of the county canvassing board members and designated election official who observed or conducted the audit; and

(i) Any other information that the secretary of state deems necessary.

(4)(a) Each county auditor shall submit the audit report required under subsection (3) of this section to the secretary of state no later than one day prior to the certification of the primary, special election, or general election. Once submitted, the report must be made available for public inspection and copying.

(b) The secretary of state shall review the report and, after review, may consult with the county auditor to correct operational discrepancies

(5)(a) The secretary of state shall compile the audit reports from each county and prepare a statewide audit report for each primary, special election, and general election. The secretary of state shall publish the statewide report on the secretary of state's web site no later than one month after the last county's election results have been certified.

b) The report must include:

(i) Data from each county's audit report and other quantifiable data that can be compared to measure performance and trends;

(ii) Any recommendations for improving election administration and policy; and

(iii) Any other information the secretary of state deems useful to develop a better understanding of election administration and policy.

3) Updating the recount process:

Intent: These are the major elements that need to be addressed.

- 1) Modernizing the recount process.
 - a. Systems are much more accurate
 - b. Reconciliation reports reduce the need for some recounts
- 2) Acknowledging that machine recounts are not an effective process when using modern ballot counters.
- 3) Defining the crossover from Risk Limiting Audits to recounts?

Recounts are a review process for several elements of ballot counting and error checks. The statutes were written decades ago when ballot counters were less reliable (chads fell out).

The intent of existing statute includes:

- A detailed search for every ballot to make sure that all ballots received are counted. (This is no longer an element because the reconciliation process is now standard.)
- Making certain that any out-stacked ballots had been carefully reviewed. (Not a function when using digital scan, as this is done during ballot review).
- Providing an easily understood process/event for observers.
 - (Digital Scan machine recounts take seconds leaving observers wondering what is the value?)

Modern ballot counter (Digital Scan) machine recounts do not involve re-running ballots and questions arise. The bill addresses those questions by providing value, either conducting a Risk Limiting Audit confirming results, or by moving directly to a hand recount. The choice of which method is left to the auditor, or, in multi-county recounts, the Secretary.

The statutes would be amended to remove machine recounts. Other language specifying which type of recount a person might request is modified accordingly. This means that a person paying for a recount would have only a hand recount as an option.

For required recounts under 29A.64.021 the risk limiting audit can replace the machine recount, using the same statistical limits (fewer than 2,000 votes and 1/2 of 1%) as used now. The county has the option of going straight to a hand recount. The current 1/4 or 1% hand recount threshold remains requiring a hand recount.

DATA:

There were 134 recounts between from 2007 to 2019 inclusive.

- Out of the 134 there were two with a changed outcome
 - 2009 OpScan one vote margin of 1,900. Hand count, losing person gained 3.
 - 2015 three votes out of 12,350 Hand count, losing person gained 3/won flip.
- There were 59 where vote totals changed but not the outcome.
 - Almost all had a change of one vote, and with the following exceptions less than four
 - 2008 OpScan Hand 84 votes gained, margin increase from 118 to 134 out of 68,756
 - 2011 OpScan Hand 22 votes gained margin increase from 12 to 20 out of 7,200
 - 2015 OpScan Hand 6 votes gained margin increased from 19 to 21 out to 5,500
 - 2016 OpScan Hand 6 votes gained margin increased from 11 to 13 out of 4,450
- The system has been retired.

In the last two years, accuracy of the systems is 1/1000th of a percent (.001%) to 2.38/100ths of a percent (.0238%) range.

Compare .001% or even .0238% to .5% (or .25%) shows that a narrower recount trigger of .25% is still more than 10 times the greatest error rate.

Including a less than 10 votes margin makes it so a needed recount would never be missed because the likelihood of an error of greater than 10 votes is extremely low. The data shows that 10 votes is more than any change in recounts since 2012 and all recounts using Digital Scan systems.

Because of improved reconciliation reporting, there is little reason to recount .5% margins (except if the margin is less than 10 votes). Changing the threshold to .25% would remove all machine recounts. Doing this would have removed 28 recounts over the last 10 years, 10 of those involved over 25,000 ballots.

We can also implement RLA from .5% to .25%, if we were to do that we might remove the current requirement to use an RLA in every election.

Choice points: The focus here is to make recounting a meaningful process. There are options, if the improved process addresses the shortcomings of the current statutory process in a digital-scan environment.

- Thresholds could be adjusted to reflect the fact that modern voting systems are much more precise. If 1/2% is too large, it could be reduced. If 2,000 is too large, that could be reduced as well.
- Same with the 1/4% for a manual recount.
- Confidence intervals for the RLA can be adjusted as well.
- One issue with this approach is counties with optical-scan equipment may have to change ballot handling in order to successfully conduct an RLA and therefore may find themselves in an all hand recount environment until changing equipment.

- There could be an option for a person requesting a recount, to make the recount deposit, and then examine the adjudicated ballots prior to the start of the recount. The costs of this initial review would be deducted from the deposit prior to a recount, and, if the requestor was satisfied after the examination, the recount cancelled and remaining deposit refunded. (need to check with AG about showing to requestor).
- There is a need to address the situation where a small election is decided by a single vote, but the number of ballots counted is so small that the margin of victory is more than 1/2%. (Example if 197 votes are cast and one candidate receives 98 votes and the other receives 99 votes, they are separated by one vote, and this is .5076% and not subject to recount). Setting a minimum margin regardless of percentage would accomplish this change. For example, if "any race decided by less than 10 votes would be hand recounted"

Lastly, there has been some confusion about the inclusion of the word "batches" in several sections of the bill. That was added to address a request from some of the counties, but subsequently enough concern has been raised that removing those amendments seems like a good idea. (Sec 21, 22, 24)

At this point there are two options for a recount update bill:

- 1) RLA from .5% to .25% with an option of hand recount instead, and then maintaining the .25% hand recount threshold
- 2) Eliminating machine recounts, by removing the requirement to recount between .5% and .25% and adding a requirement to hand count any race closer than 10 votes.

Finally, we could include removing PCO races from the recount statutes.

4) Protecting the ballot collection process:

In WA we have a time-honored vote-by-mail tradition and the system works well, stories of ballot tampering are rare. We do not want to remove freedoms to self organize, but we need to protect the democratic process from wrongdoing. People often rely on organizers to get out the vote and ensure ballots are returned. The organizers are not always expert and make mistakes, there is a voter protection element and a need for community education. A bad actor can collect and destroy ballots with little chance of being stopped. The policy device here is documentation of the chain of custody from the voter to the election official.

-- In 2018, in Oregon, a well-intentioned person collected 96 ballots but turned them in the day after the election, disenfranchising 95 other voters. The Oregon Secretary of State fined the person's group \$95,000. This was reduced to \$25,000, and agreement to not do it again.

--In North Carolina, an election was set aside and rerun because political operatives went into largely minority neighborhoods to collect ballots. Hundreds of ballots were involved, allegations of fraud, tampering with the votes and not turning ballots in to election offices lead to criminal charges against five people. Those hundreds of voters were disenfranchised.

--There have been reports in Whatcom county and Yakima county of mishandling of ballots collected by third parties. We have an opportunity to educate the voters about not giving their ballot to a stranger that knocks on their door. Providing structure and guidance is an opportunity to help people avoid making mistakes.

The process must allow people to help a known contact (neighbor, friend, family, caregiver, roommate) with ballot return, without any restriction. But there is a need to protect voters. We propose documenting the activity between strangers. Documentation prevents tampering, or disenfranchisement. Now that there are so many ballot boxes and free return postage, there is no reason to give a voted ballot to a stranger. A broader intent is to remind voters of the importance of handling another person's vote. One comparison is whether you would hand a stranger, who just knocked on your door, a \$50 bill and ask them to deposit it in the bank for you. If you know them, they might do it, if you have no idea who they are (and might never see them again) the chances are low.

Our office hears concerns about ballot tampering often. Under the proposal:

- Caregivers, family, and a roommate can return the ballot for the voter.
- A written designee (stranger) can return the ballot via a fully receipted transaction.
- The voter receives a signed receipt identifying the collector with contact information.
- The collector must produce ID upon request of the voter.
- The collector must maintain a log of ballots collected and return that log to the auditor at the end of the voting period.
- If a ballot is not returned, the receipt connects the collector for follow through.
- At the same time, if a voter claims they gave a ballot to a collector, but the voter has no receipt, the accusation will lack support.

Choice points: During the session, concerns were raised about friends or family members becoming criminally liable for failure to return a ballot. The intent here is to criminalize

strangers collecting ballots and then "losing" them on the way to the courthouse. We can improve this section by being more specific.

Also, concerns were raised about class C felony level charges. Most crimes associated with disenfranchising voters are felonies, and if a person uses duplicity to steal a person's vote, that is disenfranchisement.

5) Removing electronic ballot return:

Security experts are agreed that electronic ballot return is the highest security risk to election operations which are a cyber-target. Also, electronic return does not provide voter privacy, and certainty that the ballot is unchanged. The bill removes all references to electronic ballot return from statute. This includes fax, email, and internet based.

Intent:

"(2) The threat to election security posed by cybercriminals wishing to impair the election process is continually growing. In order to maintain secure elections, election administrators work with multiple national and state security partners. The secretary of state and local election officials have been alerted to evidence of ongoing illegal attempts to gain access to, and interfere with, electronic systems used during an election. While none of these attempts were successful, security experts have recently advised bad actors to attempt to interfere with Washington elections through electronic means".

The Office of the Secretary of State has heard concerns from the public, legislators, the LWV, and cybersecurity experts. The current statute was authorized during a period when the Pentagon, NSA, and FVAP were potentially supporting the process. Those organizations are now all agreed that it is a serious risk to the voter and to election infrastructure. Cyber-criminals and international government supported hackers are much more sophisticated than when the statute was written. The statute is out of synch with the current cyber warfare.

I think we all agree that email is a security risk. This type of process should be limited and based on need.

Can we agree that email is vulnerable?

Can we agree that electronic distribution is acceptable and maximizes the time available for hard copy return of the ballot?

Can we agree that most UOCAVA voters have access to enough time and transit opportunity that they do not need electronic return?

Can we agree that the request for use of electronic return should be only approved for voters with a proven need? And on an election by election basis?

Can we agree that we should eliminate the idea of signing up once and this is how you will receive your ballot from now on?

Can we agree that the request for non-paper return should be each time, based on the voter's current circumstances, with an attestation of need?

Perhaps choosing amongst several options for the statement of need.

What are those reasons?

What alternatives are available?

What about the disability community?

Conclusions and next steps:

We have the option to disassemble the bill into component parts. One challenge is that several of the ideas contained touch on the same section of statute and there is a need to avoid double amendment of sections. Also, some of the proposed improvements are smaller and may not attract enough support from the legislature.

We need to reach conclusions by October 15, circulate bill drafts by November 15, and then legislative meetings can commence in late November and into December.