

# HOUSE BILL REPORT

## SB 5359

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**As Reported by House Committee On:**  
State Government & Tribal Affairs

**Title:** An act relating to identifying marks on ballots.

**Brief Description:** Preventing rejection of ballots that have voter identifying marks.

**Sponsors:** Senators Oemig, Pridemore, Kline and McDermott.

**Brief History:**

**Committee Activity:**

State Government & Tribal Affairs: 3/19/09, 3/24/09 [DPA].

**Brief Summary of Bill  
(As Amended by House)**

- Permits ballots signed by voters to be counted.
- Allows elections officials to place a unique identifying mark on a ballot after it has been returned by a voter for purposes of auditing, vote reconciliation, or for certain counting purposes.
- Prohibits elections officials from extending or entering into a contract with a vendor that allows the vendor to acquire an ownership interest in or knowledge of any data contained on a ballot.
- Establishes a separate violation for each voter in the event ballots are marked in a way that identifies a voter.

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### HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

**Majority Report:** Do pass as amended. Signed by 6 members: Representatives Hunt, Chair; Armstrong, Ranking Minority Member; Alexander, Flannigan, Hurst and Miloscia.

**Staff:** Marsha Reilly (786-7135)

**Background:**

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*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.*

The Help America Vote Act mandated that states adopt uniform standards that define what constitutes a vote and what will be counted as a vote for each voting system in the state. These standards were deemed necessary to ensure consistency across the state and prevent equal protection violations.

Washington, being a voter intent state, does not disenfranchise voters merely because they marked a ballot differently than directed. State law provides that when voter intent can be discerned, the votes will be counted. Therefore, if a voter signs his or her name illegibly, and the name is not discernible, or merely initials the ballot, the ballot is counted. However, if the voter signs his or her name on the ballot, thereby revealing his or her identity, by law, the ballot is rejected.

Ballots must be uniform within a precinct and must identify the type of primary or election, the county, and the date of the primary or election. The ballot or voting device must also contain instructions on recording a vote. No ballot may be marked in any way that would permit the identity of the person who votes that ballot. Provisional and absentee ballots must be distinguishable from each other by color or by placement of a bar code on the ballot. The bar code must not identify the voter.

Any elections officer who willfully neglects or refuses to perform the duties relating to elections law or knowingly or fraudulently violates any of the provisions of law relating to such duty is guilty of a class C felony.

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### **Summary of Amended Bill:**

A ballot may no longer be rejected if a voter signs his or her ballot.

Identifying marks placed on ballots prior to being issued may not vary within an individual precinct. An election official may place a nonsequential, anonymously assigned, unique identifying mark on a ballot after the ballot has been returned by a voter solely for auditing and vote reconciliation purposes or to determine if a particular ballot has been previously counted. These marks must not allow for association with an individual voter, a voter's address, or a voter's registration number. The determination by an elections official using a unique identifying mark that the ballots of any specific voter or group of voters have been counted constitutes a separate violation for each voter and each individual in the group of voters.

An elections official may not enter into or extend any contract with a vendor that would allow the vendor to acquire an ownership interest in or knowledge of any data pertaining to any voter, any voter's address, registration number, history, or any ballot.

### **Amended Bill Compared to Original Bill:**

The amendment specifies that identifying marks placed on the ballot prior to issuance of the ballot may not vary within an individual precinct and that unique identifying marks for purposes of auditing and reconciliation may not be placed on the ballot until the ballot has

been returned by the voter. It also prohibits election officials from entering into a contract with a vendor that includes the use of identifying marks on the ballot if the contract allows the vendor to acquire an ownership interest in or knowledge of any data pertaining to a voter, the voter's address, registration number, history, or any ballot.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The bill has two primary provisions. It allows for a person to sign his or her ballot and still have that ballot counted. This prohibition affected hundreds of ballots in King County at the last general election. The other provision deals with bar codes on ballots. Ideally, there would be no bar codes on ballots. However, they are needed for tracking purposes. The Secretary of State supports the intent of the bill, but there are concerns about the language. The bill requires that a bar code cannot be married with a voter. King County rejected thousands of ballots because the ballots were signed. In Clark County, canvassing board members were presented with a stack of ballots that had been signed by voters, and the boards had no choice but to invalidate each of these ballots. The intent was to validate a correction, not to link an identity with a voting selection. There is no harm to the voter if the voter decides to waive secrecy. The bill preserves a voters' right to privacy while narrowly drawn to fix a quirk in state law. There are so many instructions on the ballot that voters tend to ignore them, even though the instructions tell voters that if the ballot is signed, it will not be counted.

(Opposed) None.

**Persons Testifying:** Senator Oemig, prime sponsor; Joanie Deutsch, Office of the Secretary of State; Michael Cummins; and Evelyn Arnold, Washington Association of County Auditors.

**Persons Signed In To Testify But Not Testifying:** None.