

HOUSE BILL REPORT

HB 2335

As Reported by House Committee On:
State Government

Title: An act relating to methods and procedures for vote recording and reporting.

Brief Description: Updating vote recording and reporting.

Sponsors: Representatives Romero, McDermott, Schmidt and Ruderman; by request of Secretary of State.

Brief History:

Committee Activity:

State Government: 1/25/02, 2/7/02 [DPS].

Brief Summary of Substitute Bill

- Changes the process for certifying voting devices and vote tallying systems.
- Prohibits punch card voting after January 1, 2007.
- Makes tampering with electronic voting, electronic vote recording, vote tabulation, and elections results reporting systems a gross misdemeanor.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Romero, Chair; Miloscia, Vice Chair; McDermott, Schindler, Schmidt and Upthegrove.

Staff: Catherine Blinn (786-7114).

Background:

Voting systems and vote tallying systems must be approved by the Secretary of State in order to be used by county auditors to conduct elections. The Secretary of State must inspect, evaluate, and publicly test all voting systems and components of voting systems. The Secretary of State determines whether the voting system conforms with statutory and administrative requirements. The Secretary of State makes a report following each examination, and provides a copy of the report to each county auditor. Any

modification, change, or improvement to a voting system or component of a system that does not impair the system's accuracy, efficiency or capacity, or extend its function, may be made without another examination or approval.

Voting devices must:

- Maintain secrecy;
- Permit the voter to vote for any person, office, and measure for which he or she has the right to vote;
- Correctly register votes cast;
- Provide that a vote for more than one candidate cannot be cast by one single operation of the device, except when voting for president and vice-president of the United States; and
- Have been tested, certified, and used in at least one other state or election jurisdiction, with the exception of functions that are unique to Washington.

County auditors are responsible for the preparation, maintenance, and operation of systems used in their counties. An agreement to purchase or lease a voting system is subject to the Secretary of State's approval that the equipment is the same as that certified, and that the equipment is operating correctly after it is delivered to the county. At the polling place, voting devices containing ballots for one congressional, legislative or county council district must be grouped together and physically separated from devices containing ballots for other districts.

Vote tallying systems must:

- Correctly count the votes on properly marked ballots;
- Ignore improperly marked portions of the ballot, but correctly count the properly marked portions of the ballot;
- Count the number of ballots tallied for each precinct, the number of votes for each candidate, and the number of votes for and against each issue;
- Accommodate name rotation;
- Produce precinct and cumulative totals in printed form; and
- Have been tested, certified, and used in at least one other state or election jurisdiction, with the exception of functions that are unique to Washington.

In preparing a voting device for an election, the ballot format installed in each device and the precinct for which the device has been prepared must be recorded. At least three days prior to each state primary and general election, the Secretary of State must test each vote tallying system. The test must verify that the system correctly counts the votes cast for all candidates and measures on the ballot. If an error is detected, the cause of the error must be determined and corrected before the election. The county auditor and party observers must certify that the test was conducted in accordance with law.

Knowingly deceiving any voter in the recording of his or her vote by providing incorrect or misleading information, or by providing faulty election equipment or records

constitutes a gross misdemeanor. Knowingly recording a vote in a manner other than as designated by the voter constitutes a gross misdemeanor.

Summary of Substitute Bill:

The Secretary of State is no longer required to test voting systems publicly, but must publicly demonstrate the systems. Once the Secretary of State completes a certification report, it must be posted on the website. Any modification, change, or improvement to a voting system or component of a system must be submitted for review. After review, the modification may be accepted if it does not impair system accuracy, efficiency, or capacity, or extend system function. If the Secretary of State determines that the modification does extend system function, the modification must be submitted for re-examination or re-approval.

County auditors must provide proof that voting systems and their component software, in the version used, are state certified. The test following a purchase or lease of a voting system must be conducted by the purchaser or lessee. Approval of a voting device or vote tallying system no longer requires that the device or system be tested, certified and used in at least one other state, but instead requires that it be tested and approved by an appropriate independent testing authority approved by the Federal Elections Commission.

Polling places are no longer required to physically separate voting devices containing ballots for one district from voting devices containing ballots for another district. During the test conducted at least three days prior to the election, the county auditor must again provide proof that the version of the voting system and software in use are state certified. Beginning January 1, 2007, punch card voting devices may not be used to conduct elections, but the effective date of this prohibition is contingent on Congress passing and funding legislation to replace voting systems and vote tallying equipment by January 1, 2005.

A person is guilty of a gross misdemeanor if he or she knowingly tampers with or impedes the use of electronic voting or vote recording system, or tampers with or impedes access to a vote tabulation system or election results system.

The statute requiring county auditors to instruct precinct election officers, counting center personnel, and political party observers is repealed.

Substitute Bill Compared to Original Bill:

The substitute bill makes the 2007 prohibition on punch card voting systems contingent on federal legislation and funding by 2005 that provides for the purchase of new voting and vote tallying systems.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed, except for section 11, which takes effect if Congress passes legislation that provides funding to replace voting systems and vote tallying equipment.

Testimony For: Since the 2000 Presidential election in Florida, more money has been invested in the development of new election systems. There has been tremendous pressure since Florida to revise the certification process for voting systems, and to improve those systems. The companies that create and maintain punch card voting systems are going out of business. Legislation is pending in Congress that requires compliance by the states with specific criteria in order to qualify for new federal elections funding. The bills in Congress provide federal grants for a variety of election needs, but the states must meet federal standards, including taking action to phase out punch card voting. The Secretary of State wants Washington to be in the best position possible to be eligible for those funds as soon as they become available. Washington is progressive in ensuring that vote tallying processes are accurate. Counties using the optical-scan method are meeting national standards, and all counties should meet those standards. Although it is difficult for the counties currently using punch card voting to convert to new systems, optical-scan voting is easier for voters to understand and is more suitable for overseas voting, absentee voting, and vote-by-mail.

A concern that the county auditors have is, who will pay for the new voting systems if the federal funding doesn't pass? Will the local county auditors be stuck with the cost? Because of new budgetary constraints, county governments will have great difficulty finding the resources to convert to new systems if the federal funding doesn't come through. The county auditors support the change but ask that the Legislature suggest alternative funding if federal funding doesn't materialize.

Testimony Against: None.

Testified: Sam Reed, Secretary of State; Dave Elliott and Dean Logan, Office of the Secretary of State; Suzanne Sinclair, Washington State Association of County Auditors; and Karen Flynn, Kitsap County Auditor.