

SENATE BILL REPORT

SB 5499

As Reported By Senate Committee On:
Government Operations & Elections, February 17, 2005

Title: An act relating to election reform.

Brief Description: Clarifying and standardizing various election procedures.

Sponsors: Senators Kastama, Berkey, Fairley, Pridemore, Franklin, Haugen, Shin, Khol-Welles, Doumit, Rasmussen and Keiser.

Brief History:

Committee Activity: Government Operations & Elections: 1/27/05, 2/17/05 [DPS, DNP].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 5499 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kastama, Chair; Berkey, Vice Chair; Fairley, Haugen, Kline and Pridemore.

Minority Report: Do not pass.

Signed by Senators Roach, Ranking Minority Member; and Mulliken.

Staff: Mac Nicholson (786-7445)

Background: Generally, county auditors are responsible for conducting elections. The county auditors, as the supervisors of elections, are charged with providing places for holding elections, and providing supplies and materials necessary for the conduct of elections. The Secretary of State is the chief election officer for all federal, state, and local elections. The Secretary is responsible for certifying voting equipment, administering state primaries and general elections, training and certification of state and local elections personnel, filing initiative and referendum petitions, and keeping records of elections as required by law. State law provides a framework in which the county auditors and the Secretary of State must conduct elections. The Secretary also has been given the authority to implement the laws of the state through the rule making process.

The 2004 gubernatorial election was the closest statewide election in Washington State history. After two recounts and two court battles in front of the state supreme court, Governor Gregoire was certified the winner by the Secretary of State. The margin of victory was 129 votes out of over 2.8 million votes cast. An election contest was filed in superior court and is pending as of February 17. Due to the closeness of the race and the related litigation, much attention has been focused on state election laws.

Summary of Substitute Bill: The bill creates and/or amends a number of election statutes as follows:

Training. The secretary of state is to establish guidelines, in consultation with state and local law enforcement, for signature verification processes. All election personnel assigned to verify signatures on absentee or provisional ballots must receive training on the guidelines.

Provisional and absentee ballots. Opening and processing of absentee return envelopes may begin upon receipt. All received absentee return envelopes must be placed in secure locations from delivery until their subsequent opening.

Provisional ballots must be issued to appropriate voters as required by existing law. The ballot envelope must include information the county auditor can investigate to determine the validity of the ballot.

The Secretary must make standards, through the rule making process, that require provisional ballots to be distinguishable from other ballots and incapable of tabulation at the poll site.

If the signature on the absentee or provisional ballot doesn't match the signature on the original registration record, the county auditor must notify the voter within three days by telephone or in writing that the ballot cannot be processed. The county auditor must also advise the voter that in order for the ballot to be processed, the voter must update his or her signature by filling out a new voter registration and mailing it back to the county auditor so that it arrives no later than the day before certification, or appear in person at the auditor's office no later than the day before certification and update his or her signature. A record of mismatched signatures will be kept and is not exempt from public disclosure. If the voter neglected to sign the affidavit on the outer envelope, the auditor must also notify the voter within three days and mail a copy of the unsigned affidavit to the voter or require the voter to appear in person and sign the affidavit. The unsigned affidavit must be signed and returned to the auditor's office no later than the day prior to certification. A voter may not cure a missing or mismatched signature in a recount.

The county auditor must examine and investigate all provisional ballots before certification. The auditor must provide the disposition of the provisional ballot on a free access system.

Voter identification at the polling location. Any person wanting to vote in person must provide identification. If the person cannot provide identification, they must vote a provisional ballot. The identification requirement is satisfied by a current and valid driver's license, state I.D. card, a copy of a current utility bill, bank statement, or other government document. The name on the identification must match the name in the poll book and must also provide a photo, signature, or matching address.

Reconciliation provisions. No later than thirty days after the final certification, the county auditor must prepare and make publicly available an election reconciliation report that discloses, at a minimum, the number of ballots counted; the number of voters credited with voting; the number of provisional and absentee ballots issued, counted, or rejected; the number of federal write-in ballots counted; and the number of ballots sent to overseas voters and the number of such ballots counted. The report may include any other information the county auditor determines to be necessary to the process of reconciling the number of votes counted with the number of voters credited with voting.

A voter casting an absentee ballot is credited with voting only if the ballot was counted. (Existing law gives voters credit for casting an absentee ballot regardless of whether that ballot was counted.)

Ballot duplication. If a ballot is damaged or otherwise unreadable, the county auditor may refer the ballot to the canvassing board or duplicate the ballot if so authorized by the canvassing board. A ballot may only be duplicated if voter intent is clear. Duplication must be done by two or more people working together and an audit trail must be created for each duplicated ballot.

Re-canvass and rejection of ballots. The canvassing board can re-canvass ballots during the initial counting process or during any subsequent recount if the board finds that election staff has made an error regarding the treatment or disposition of a ballot.

A ballot is not considered rejected until the canvassing board has rejected the ballot individually, or the ballot was included in a batch or on a report of ballots that was rejected in its entirety by the canvassing board.

Recount provisions. With regards to recounts, the canvassing board determines the date at which the recount will be conducted and the secretary may require that the amended abstracts be certified by each canvassing board on a uniform date.

The vote difference necessary to trigger an automatic recount is changed for statewide elections from 150 votes to 1,000 votes. (Existing law also requires that the difference be less than one quarter of one percent of all votes cast, and this remains unchanged).

Certification. The deadline for canvassing boards to complete the canvass and certify the results of a general election is changed from 15 days to 20 days. The Secretary is authorized to adopt rules to exclude Thanksgiving and the day after from the 20 day period. After the Secretary receives election returns from all counties, the Secretary must canvass and certify the returns of the election as to candidates for state offices, federal offices, and all other candidates whose districts extend into multiple counties. The Secretary must transmit a copy of the certification to the governor and legislature.

Election contests. An affidavit alleging that an error or omission has occurred or is about to occur in the issuance of a certificate of election must be filed in court no later than 10 days following official certification, or in the case of a recount, no later than 10 days after official certification of the amended abstract. (Existing law requires such an affidavit to be filed no later than 10 days following the issuance of a certificate of election).

Write-in provisions. A write-in vote for a candidate who also appears on the ballot is a valid vote as long as the candidate's name is clearly discernible, even if the voter also marked the ballot next to the candidate's name such that an over vote was registered. The write-in votes need not be tabulated unless the difference between the number of votes cast for the apparent winner and non-winner is less than the sum of the total number of write-in votes cast plus over and under votes; or a manual recount is conducted for that office.

Transmittal of cumulative returns: Cumulative returns produced by the county auditors for state, judicial, and federal offices must be immediately transmitted by electronic means to the Secretary.

Criminal and civil infraction provisions: The bill creates the crime of destroying, altering, defacing, or discarding a completed voter registration form or signature affidavit. The crime is a class C felony. It is not a criminal act if the voter who completed the form or the county auditor or authorized registration assistant destroys the voter registration form.

The statute criminalizing double voting is clarified, and the penalty is increased, such that any person who intentionally or knowingly votes or attempts to vote more than once at the same election is guilty of a class C felony. A person registered in another state and who intentionally or knowingly votes or attempts to vote in this state is also guilty of a class C felony.

Any person who recklessly or negligently votes or attempts to vote more than once, or who is registered in another state and who recklessly or negligently votes or attempts to vote in Washington has committed a class 1 civil infraction. (Existing law provides a maximum fine of \$250 per infraction). The county prosecuting attorney is authorized to enforce such civil infractions.

Substitute Bill Compared to Original Bill: The substitute bill adds, removes, and amends a number of provisions in the original bill as follows:

The substitute adds the following (which are addressed in the summary):

- a voter may not cure a signature problem in a recount;
- a ballot is not rejected until the canvassing board has rejected it individually or as part of a batch that is rejected;
- cumulative returns must be immediately transmitted to the Secretary by the county auditor;
- the general election certification period for county canvassing boards is extended from 15 days to 20 days and allows the Secretary to adopt rules exempting Thanksgiving and the day after;
- the civil infraction of voting or attempting to vote more than once is created;
- the automatic manual recount threshold for statewide elections is changed from 150 votes to 1,000 votes;
- the Secretary is required to certify returns of the general election for state, federal, and multi-county candidates and transmit the certification to the governor and legislature;
- an election contest must be filed no later than 10 days following official certification as described in the summary;
- an absentee voter gets credit for voting only if the ballot was actually counted; and
- write-in votes for candidates also listed on the ballot are valid votes.

The section in the original bill requiring the Secretary to conduct formal election reviews of all counties before 2006 and once every three years thereafter has been removed.

The section in the original bill reimbursing counties for recounts of statewide elections has been removed.

The section in the original bill requiring the Secretary to establish and operate a training and certification program for election personnel assigned to verify signatures is removed. Rather, the substitute provides that the Secretary establish guidelines for signature verification in consultation with local law enforcement.

The section in the original bill requiring auditors to make and preserve a copy of the county list of registered voters ten days before the election is removed. Rather, the substitute provides that the auditor must issue a reconciliation report as described in the summary.

The section in the original bill requiring the Secretary to adopt a uniform ballot card for use in all counties is removed.

The section in the original bill requiring the Secretary to conduct an educational campaign informing voters of the new provision requiring identification at the polls is removed.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Testimony For: The bill makes a number of good election law changes, but some sections do cause concern. Formal election reviews will help identify and resolve election problems, but funding needs to be provided so the Secretary of State can conduct them. Withholding state and federal funding is not the appropriate way to ensure corrective action regarding review findings, as many election problems are funding related in the first place. A uniform ballot and voting system would provide consistency throughout the state, however, a uniform ballot and voting system is not realistic and would likely have to come from the same vendor, which would eliminate competition and may increase costs. Reimbursing counties for costs associated with recounts of statewide races is good for the counties. It might be difficult to contact every voter whose ballot has signature problems within three days, especially towards the end of the counting process. Taking a snapshot 10 days before the election would not help in the reconciliation process, as voting databases are updated up until the day of the election, and some voters, like those in the address confidentiality program, are not listed in the voter database. The bill provides no standards to determine voter intent in the duplication process.

Testimony Against: None.

Who Testified: PRO: Katie Blinn, Shane Hamlin, Office of Secretary of State; Pat McCarthy, Pierce County Auditor; Bob Terwilliger, Snohomish County Auditor; Ruth Bennet, Libertarian.