

SSB 5499 - S AMD TO S AMD (KAST HESS 016) 215
By Senator Mulliken

NOT ADOPTED 03/11/2005

1 On page 1, beginning on line 3 of the amendment, strike all of
2 section 1 and insert the following:

3 "Sec. 1. RCW 29A.04.008 and 2004 c 271 s 102 are each amended to
4 read as follows:

5 As used in this title:

6 (1) "Ballot" means, as the context implies, either:

7 (a) The issues and offices to be voted upon in a jurisdiction or
8 portion of a jurisdiction at a particular primary, general election, or
9 special election;

10 (b) A facsimile of the contents of a particular ballot whether
11 printed on a paper ballot or ballot card or as part of a voting machine
12 or voting device;

13 (c) A physical or electronic record of the choices of an individual
14 voter in a particular primary, general election, or special election;
15 or

16 (d) The physical document on which the voter's choices are to be
17 recorded;

18 (2) "Paper ballot" means a piece of paper on which the ballot for
19 a particular election or primary has been printed, on which a voter may
20 record his or her choices for any candidate or for or against any
21 measure, and that is to be tabulated manually;

22 (3) "Ballot card" means any type of card or piece of paper of any
23 size on which a voter may record his or her choices for any candidate
24 and for or against any measure and that is to be tabulated on a vote
25 tallying system;

26 (4) "Sample ballot" means a printed facsimile of all the issues and
27 offices on the ballot in a jurisdiction and is intended to give voters
28 notice of the issues, offices, and candidates that are to be voted on
29 at a particular primary, general election, or special election;

1 (5) "Provisional ballot" means a ballot issued to a voter at the
2 polling place on election day by the precinct election board, for one
3 of the following reasons:

4 (a) The voter's name does not appear in the poll book for the
5 precinct at which the voter appears and who therefore cannot be
6 verified as a registered voter;

7 (b) There is an indication in the poll book that (~~the voter has~~
8 ~~requested~~) an absentee ballot(~~, but the voter wishes to vote at the~~
9 ~~polling place~~) has been issued;

10 (c) There is a question on the part of the voter concerning the
11 issues or candidates on which the voter is qualified to vote;

12 (d) Other circumstances as determined by the precinct election
13 board;

14 (e) Any other reason allowed by law;

15 (6) "Party ballot" means a primary election ballot specific to a
16 particular major political party that lists all partisan offices to be
17 voted on at that primary, and the candidates for those offices who
18 affiliate with that same major political party;

19 (7) "Nonpartisan ballot" means a primary election ballot that lists
20 all nonpartisan races and ballot measures to be voted on at that
21 primary."

22 Renumber the sections consecutively and correct any internal
23 references accordingly.

24 On page 8, after line 19 of the amendment, insert the following:

25 "**Sec. 5.** RCW 29A.08.625 and 2003 c 111 s 240 are each amended to
26 read as follows:

27 (1) A voter whose registration has been made inactive under this
28 chapter and who offers to vote at an ensuing election before two
29 federal elections have been held must be allowed to vote a regular
30 ballot and the voter's registration restored to active status.

31 (2) A voter whose registration has been properly canceled under
32 this chapter shall vote a provisional ballot. The voter shall mark the
33 provisional ballot in secrecy, the ballot placed in a security
34 envelope, the security envelope placed in a provisional ballot
35 envelope, and the reasons for the use of the provisional ballot noted.

1 (3) Upon receipt of such a voted provisional ballot the auditor
2 shall investigate the circumstances surrounding the original
3 cancellation. If he or she determines that the cancellation was in
4 error, the voter's registration must be immediately reinstated, and the
5 voter's provisional ballot must be counted. If the original
6 cancellation was not in error, the voter must be afforded the
7 opportunity to reregister at his or her correct address, and the
8 voter's provisional ballot must not be counted.

9 (4) The names and addresses of provisional voters is not a matter
10 of public record, and no one other than an election officer may contact
11 an individual provisional voter. The election officer shall contact
12 the voter via first class mail within forty-eight hours of discovery
13 and shall inform the voter of relevant deadlines.

14 **Sec. 6.** RCW 29A.08.820 and 2003 c 111 s 254 are each amended to
15 read as follows:

16 When the right of a person has been challenged under RCW 29A.08.810
17 or 29A.08.830(2), the challenged person shall be permitted to vote a
18 provisional ballot, which shall be placed in a sealed envelope separate
19 from other voted ballots. In precincts where voting machines are used,
20 any person whose right to vote is challenged under RCW 29A.08.810 or
21 29A.08.830(2) shall be furnished a provisional paper ballot, which
22 shall be placed in a sealed envelope after being marked. Included with
23 the ((challenged)) provisional ballot shall be (1) an affidavit filed
24 under RCW 29A.08.830 challenging the person's right to vote or (2) an
25 affidavit signed by the precinct election officer and any third party
26 involved in the officer's challenge and stating the reasons the voter
27 is being challenged. The sealed provisional ballots ((of challenged
28 voters)) shall be transmitted at the close of the election to the
29 canvassing board or other authority charged by law with canvassing the
30 returns of the particular primary or election. The county auditor
31 shall notify the challenger and the challenged voter, by certified
32 mail, of the time and place at which the county canvassing board will
33 meet to rule on ((challenged)) provisional ballots. If the challenge
34 is made by a precinct election officer under RCW 29A.08.810, the
35 officer must appear in person before the board unless he or she has
36 received written authorization from the canvassing board to submit an
37 affidavit supporting the challenge. If the challenging officer has

1 based his or her challenge upon evidence provided by a third party,
2 that third party must appear with the challenging officer before the
3 canvassing board, unless he or she has received written authorization
4 from the canvassing board to submit an affidavit supporting the
5 challenge. If the challenge is filed under RCW 29A.08.830, the
6 challenger must either appear in person before the board or submit an
7 affidavit supporting the challenge. The challenging party must prove
8 to the canvassing board by clear and convincing evidence that the
9 challenged voter's registration is improper. If the challenging party
10 fails to meet this burden, the (~~challenged~~) provisional ballot shall
11 be accepted as valid and counted. The canvassing board shall give the
12 challenged voter the opportunity to present testimony, either in person
13 or by affidavit, and evidence to the canvassing board before making
14 their determination. All (~~challenged~~) provisional ballots must be
15 determined no later than the time of canvassing for the particular
16 primary or election. The decision of the canvassing board or other
17 authority charged by law with canvassing the returns shall be final.
18 Challenges of absentee ballots shall be determined according to RCW
19 29A.40.140.

20 **Sec. 7.** RCW 29A.08.830 and 2003 c 111 s 255 are each amended to
21 read as follows:

22 (1) Any registered voter may request that the registration of
23 another voter be canceled if he or she believes that the voter does not
24 meet the requirements of Article VI, section 1 of the state
25 Constitution or that voter no longer maintains a legal voting residence
26 at the address shown on his or her registration record. The challenger
27 shall file with the county auditor a signed affidavit subject to the
28 penalties of perjury, to the effect that to his or her personal
29 knowledge and belief another registered voter does not actually reside
30 at the address as given on his or her registration record or is
31 otherwise not a qualified voter and that the voter in question is not
32 protected by the provisions of Article VI, section 4, of the
33 Constitution of the state of Washington. The person filing the
34 challenge must furnish the address at which the challenged voter
35 actually resides.

36 (2) Any such challenge of a voter's registration and right to vote
37 made less than thirty days before a primary or election, special or

1 general, shall be administered under RCW 29A.08.820. The county
2 auditor shall notify the challenged voter and the precinct election
3 officers in the voter's precinct that a challenge has been filed,
4 provide the name of the challenger, and instruct both the precinct
5 election officers and the voter that, in the event the challenged voter
6 desires to vote at the ensuing primary or election, a (~~challenged~~)
7 provisional ballot will be provided. The voter shall also be informed
8 that the status of his or her registration and the disposition of any
9 (~~challenged~~) provisional ballot will be determined by the county
10 canvassing board in the manner provided by RCW 29A.08.820. If the
11 challenged voter does not vote at the ensuing primary or election, the
12 challenge shall be processed in the same manner as challenges made more
13 than thirty days prior to the primary or election under RCW
14 29A.08.840."

15 Renumber the sections following consecutively and correct internal
16 references accordingly.

17 On page 11, beginning on line 20 of the amendment, strike all of
18 section 8, and insert the following:

19 "NEW SECTION. **Sec. 8.** (1) Provisional or questionable ballots
20 must not be tallied until the validity of the ballot or the voter has
21 been confirmed and, if so, the ballots will be processed in similar
22 manner to absentee ballots. A provisional ballot is issued to a person
23 seeking to vote in a polling place under the following circumstances:

- 24 (a) The name of the voter does not appear in the poll book and:
25 (i) The voter's registration was canceled but the voter questions
26 the validity of the cancellation;
27 (ii) The status of the voter's registration cannot be determined at
28 that time; or
29 (iii) The voter is registered and assigned to another polling place
30 or jurisdiction;
31 (b) The voter's name is in the poll book but there is an indication
32 that the voter was issued an absentee ballot, and the voter wishes to
33 vote at the polls; or
34 (c) Other circumstances as determined by the precinct election
35 official.

1 (2) The precinct election official shall issue a provisional ballot
2 outer envelope and a security envelope to the voter eligible for a
3 provisional ballot. The voter shall vote the ballot in secrecy and,
4 when done, place the ballot in the security envelope, then place the
5 security envelope with the ballot in it in the provisional ballot outer
6 envelope and return it to the precinct election official. The precinct
7 election official shall ensure that the required information is
8 completed on the outside of the outer envelope and have the voter sign
9 it in the appropriate space, and place it in a secure container
10 designated for provisional ballots only.

11 (3) When the provisional ballot, including provisional ballots from
12 other counties or states, are received in the elections center, the
13 circumstances surrounding the provisional ballot must be investigated
14 before certification of the primary or election. A provisional ballot
15 cannot be tallied if the registered voter did not sign either the poll
16 book or the provisional ballot envelope.

17 (4) When it is determined that the ballot is to be counted, the
18 ballot must be processed in a manner similar to an absentee ballot
19 except the provisional ballot outer envelopes must be retained
20 separately from the absentee ballot return envelopes. The manual
21 inspection of the ballots as required in WAC 434-261-070 or its
22 successor must also be carried out.

23 NEW SECTION. **Sec. 9.** At a minimum, the following information will
24 be required to be printed on the outer provisional ballot envelope:

25 (1) An oath for the voter to sign, as required by the Help America
26 Vote Act, which must be included in substantially the following form:

27 "I affirm that I am a registered voter in the jurisdiction in which
28 I am appearing and in which I wish to vote; and that I am eligible to
29 vote in this election.";

30 (2) Name and signature of voter (must be the same as on the oath);

31 (3) Voter's registered address both present and former, if
32 applicable;

33 (4) Voter's date of birth;

34 (5) Reason for the provisional ballot;

35 (6) Precinct and polling place at which voter has voted;

36 (7) Sufficient space to list disposition of the ballot after review
37 by the county auditor.

1 No provisional ballot may be rejected for lack of the information
2 described in this section as long as the voter provides a valid
3 signature and sufficient information to determine eligibility.

4 NEW SECTION. **Sec. 10.** (1) Upon receipt of the provisional ballot,
5 including provisional ballots from other counties or states, the
6 auditor must investigate the circumstances surrounding the provisional
7 ballot before certification of the primary or election. A provisional
8 ballot cannot be counted if the registered voter did not sign both the
9 poll book and the provisional ballot envelope.

10 (a) If there is no record of the voter ever having been registered,
11 the voter must be offered the opportunity to register, but the
12 provisional ballot for the current election will not be counted.

13 (b) If the voter was previously registered and later canceled and
14 the auditor determines that the cancellation was in error, the voter's
15 registration will be immediately restored and the provisional ballot
16 counted.

17 (c) If the auditor determines that the cancellation was not in
18 error, the voter must be given the opportunity to reregister at the
19 voter's correct address, but the provisional ballot for the current
20 election will not be counted.

21 (2) If the voter is a registered voter but has voted a ballot other
22 than the one that the voter would have received at his or her
23 designated polling place, the auditor must ensure that only those votes
24 for the positions or measures for which the voter was eligible to vote
25 are counted, which may require coordination with other county auditors.

26 (3) If the voter is a registered voter in another county or state,
27 the auditor shall forward the ballot and a corresponding voter guide,
28 or other means by which the ballot can be interpreted including
29 rotation if applicable, within five business days after election day to
30 the supervisor of elections for the county for which the voter resides.
31 If the provisional ballot envelope is not signed by the voter, a copy
32 of the poll book page must be included. If the county is not known, it
33 must be forwarded to the secretary of state, or counterpart, for the
34 state in which the voter resides.

35 (4) If the auditor finds that an absentee voter who voted a
36 provisional ballot at the polls has also voted an absentee ballot in
37 that primary or election, the provisional ballot will not be counted.

1 (5) The auditor shall prepare a tally displaying the number of
2 provisional ballots received, the number found valid and counted, the
3 number rejected and not counted, and the reason for not counting the
4 ballots, as part of the canvassing process and presented to the
5 canvassing board before the certification of the primary or election.

6 NEW SECTION. **Sec. 11.** When the disposition of the provisional
7 ballot determines that the provisional ballot is to be counted, the
8 provisional ballot must be processed in a manner similar to an absentee
9 ballot as provided in chapters 29A.40 and 29A.60 RCW except the outer
10 provisional ballot envelopes must be retained separately from the
11 absentee ballot return envelopes. The manual inspection of the ballots
12 as required in WAC 434-261-070 or its successor must also be carried
13 out.

14 NEW SECTION. **Sec. 12.** The secretary of state shall establish a
15 free access system, such as a toll-free telephone number or an internet
16 web site, that any individual who casts a provisional ballot may access
17 to discover whether the vote of that individual was counted, and, if
18 the vote was not counted, the reason why the vote was not counted. The
19 secretary of state shall establish and maintain reasonable procedures
20 necessary to protect the security, confidentiality, and integrity of
21 personal information collected, stored, or otherwise used by the free
22 access system established under this section. Access to information
23 about an individual provisional ballot must be restricted to the
24 individual who cast the ballot.

25 **Sec. 13.** RCW 29A.40.050 and 2003 c 111 s 1005 are each amended to
26 read as follows:

27 (1) As provided in this section, county auditors shall provide
28 special ((~~absentee~~)) provisional ballots to be used for state primary
29 or state general elections. An auditor shall provide a special
30 ((~~absentee~~)) provisional ballot only to a registered voter who
31 completes an application stating that she or he will be unable to vote
32 and return ((~~a regular~~)) an absentee ballot by normal mail delivery
33 within the period provided for ((~~regular~~)) absentee ballots.

34 The application for a special ((~~absentee~~)) provisional ballot may
35 not be filed earlier than ninety days before the applicable state

1 primary or general election. The special ((~~absentee~~)) provisional
2 ballot will list the offices and measures, if known, scheduled to
3 appear on the state primary or general election ballot. The voter may
4 use the special ((~~absentee~~)) provisional ballot to write in the name of
5 any eligible candidate for each office and vote on any measure.

6 (2) With any special ((~~absentee~~)) provisional ballot issued under
7 this section, the county auditor shall include a listing of any
8 candidates who have filed before the time of the application for
9 offices that will appear on the ballot at that primary or election and
10 a list of any issues that have been referred to the ballot before the
11 time of the application.

12 (3) Write-in votes on special ((~~absentee~~)) provisional ballots must
13 be counted in the same manner provided by law for the counting of other
14 write-in votes. The county auditor shall process and canvass the
15 special ((~~absentee~~)) provisional ballots provided under this section in
16 the same manner as ((~~other~~)) absentee ballots under this chapter and
17 chapter 29A.60 RCW.

18 (4) A voter who requests a special ((~~absentee~~)) provisional ballot
19 under this section may also request an absentee ballot under RCW
20 29A.40.020(4). If the ((~~regular~~)) absentee ballot is properly voted
21 and returned, the special ((~~absentee~~)) provisional ballot is void, and
22 the county auditor shall reject it in whole when special ((~~absentee~~))
23 provisional ballots are canvassed.

24 NEW SECTION. Sec. 14. In addition to the material required by RCW
25 29A.40.091, each county auditor shall include with any special
26 provisional ballot mailed the following information:

- 27 (1) Instructions for voting the ballot;
- 28 (2) Instructions for correcting a spoiled ballot;
- 29 (3) The fact that political party designation should be included
30 with all write-ins for partisan office;
- 31 (4) A listing of all offices and measures that will appear upon the
32 ballot, together with a listing of all persons who have filed for
33 office or who have indicated their intention to file for office;
- 34 (5) A copy of any applicable voters' guide available at that time;
- 35 (6) The fact that the voter may vote for as many or as few offices
36 or measures as he or she desires;

1 (7) The fact that the voter is entitled to request, and
2 subsequently vote a regular absentee ballot, and that if the regular
3 absentee is received during the time period provided by law for the
4 canvassing of absentee ballots it will be tabulated and the special
5 provisional ballot will be voided.

6 NEW SECTION. **Sec. 15.** No special provisional ballot may be
7 provided earlier than ninety days before a primary or election. An
8 application received by a county auditor more than ninety days before
9 a primary or general election may be either returned to the applicant
10 with the explanation that the request is premature or may be held by
11 the auditor until the appropriate time and then processed.

12 **Sec. 16.** RCW 29A.40.140 and 2003 c 111 s 1014 are each amended to
13 read as follows:

14 The qualifications of any absentee voter may be challenged at the
15 time the signature on the return envelope is verified and the ballot is
16 processed by the canvassing board. The board has the authority to
17 determine the legality of any absentee ballot challenged under this
18 section. Challenged ballots must be handled in accordance with
19 (~~chapter 29A.08 RCW~~) RCW 29A.08.820, 29A.08.830, sections 8 through
20 12 of this act, and 29A.40.050.

21 **Sec. 17.** RCW 29A.44.330 and 2003 c 111 s 1131 are each amended to
22 read as follows:

23 The programmed memory pack for each poll-site ballot counting
24 device must be sealed into the device during final preparation and
25 logic and accuracy testing. Except in the case of a device breakdown,
26 the memory pack must remain sealed in the device until after the polls
27 have closed and all reports and telephonic or electronic transfer of
28 results are completed. After all reporting is complete the precinct
29 election officers responsible for transferring the sealed voted ballots
30 under RCW 29A.60.110 shall ensure that the memory pack is returned to
31 the elections department. If the entire poll-site ballot counting
32 device is returned, the memory pack must remain sealed in the device.
33 If the poll-site ballot counting device is to remain at the polling
34 place, the precinct election officer shall break the seal on the device

1 and remove the memory pack and seal and return it along with the
2 irregularly voted ballots and (~~special~~) provisional ballots to the
3 elections department on election day.

4 **Sec. 18.** RCW 29A.44.340 and 2003 c 111 s 1132 are each amended to
5 read as follows:

6 Each poll-site ballot counting device must be programmed to return
7 all blank ballots and overvoted ballots to the voter for private
8 reexamination. The election officer shall take whatever steps are
9 necessary to ensure that the secrecy of the ballot is maintained. The
10 precinct election officer shall provide information and instruction on
11 how to properly mark the ballot. The voter may remark the original
12 ballot, may request a new ballot under RCW 29A.44.040, or may choose to
13 complete a (~~special~~) provisional ballot envelope and return the
14 ballot as a (~~special~~) provisional ballot."

15 Renumber the sections following consecutively and correct internal
16 references accordingly.

17 On page 22, after line 4 of the amendment, insert the following:

18 "NEW SECTION. **Sec. 26.** (1) Sections 8 through 12, 14, and 15 of
19 this act constitute a new chapter in Title 29A RCW, to be captioned
20 "Provisional ballots."

21 (2) RCW 29A.40.050, as amended by section 13 of this act, is
22 recodified as a section in the new chapter created in subsection (1) of
23 this section."

SSB 5499 - S AMD TO S AMD (KAST HESS 016) **215**
By Senator Mulliken

NOT ADOPTED 03/11/2005

24 On page 22, line 10 of the title amendment, after "29A.04.611,"

1 insert "29A.08.625, 29A.08.820, 29A.08.830," and after "29A.40.110,"
2 insert "29A.40.050, 29A.40.140, 29A.44.330, 29A.44.340,"

3 On page 22, line 13 of the title amendment, strike "new sections to
4 chapter 29A.44" and insert "a new section to chapter 29A.44"

5 On page 22, line 15 of the title amendment, after "RCW;" insert
6 "adding a new chapter to Title 29A RCW; recodifying RCW 29A.40.050;"

EFFECT: (1) Makes the names and addresses of voters who voted on a provisional ballot not a matter of public record;

(2) Requires that no person other than an elections officer may contact an individual provisional voter;

(3) Requires that elections officers contact the voter within 48 hours of discovery of rejected ballot;

(4) Harmonizes the term "provisional ballot" by replacing "challenged ballot" and "special ballot";

(5) Requires that provisional ballots be processed similar to absentee ballots;

(6) Provides for minimum information to be printed on outer provisional ballot envelopes;

(7) Requires that individuals who vote with a provisional ballot sign both the poll book and the provisional ballot envelope;

(8) Requires that secretary of state provide free access system to allow provisional voters to check status of their vote.

--- END ---