

HOUSE BILL REPORT

ESSB 5499

As Reported by House Committee On:
State Government Operations & Accountability

Title: An act relating to election reform.

Brief Description: Clarifying and standardizing various election procedures.

Sponsors: Senate Committee on Government Operations & Elections (originally sponsored by Senators Kastama, Berkey, Fairley, Pridemore, Franklin, Haugen, Shin, Kohl-Welles, Doumit, Rasmussen and Keiser).

Brief History:

Committee Activity:

State Government Operations & Accountability: 3/23/05, 4/1/05 [DPA].

Brief Summary of Engrossed Substitute Bill (As Amended by House Committee)

- Processing absentee ballots may begin upon receipt.
- Changes the vote differential required for a statewide mandatory hand recount from 150 votes to 1,000 votes.
- Requires signature verification training for election workers.
- Changes the certification of the general election from 15 to 21 days after the general election.
- Changes criminal penalties relating to destroying voter registrations and double voting.
- Requires county auditors to reconcile election numbers and make the report available to the public.
- Requires provisional ballots to be distinguishable from other ballots and not capable of being counted by poll-site counting devices.

HOUSE COMMITTEE ON STATE GOVERNMENT OPERATIONS &
ACCOUNTABILITY

Majority Report: Do pass as amended. Signed by 5 members: Representatives Haigh, Chair; Green, Vice Chair; Hunt, McDermott and Miloscia.

Minority Report: Do not pass. Signed by 4 members: Representatives Nixon, Ranking Minority Member; Clements, Assistant Ranking Minority Member; Schindler and Sump.

Staff: Marsha Reilly (786-7135).

Background:

The basic structure for conducting elections is prescribed by law. As the state's chief election officer, the Secretary of State (Secretary) is authorized to promulgate rules necessary to conduct an election, including procedures to ensure consistency among the counties in preparing ballots, operating vote tallying systems, and canvassing of primaries and elections. The recent gubernatorial election was the closest statewide election in state history. After two recounts and two court battles in front of the Washington Supreme Court, Governor Gregoire was certified the winner by the Secretary. 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 this date.

Summary of Amended Bill:

The bill creates and/or amends a number of election statutes.

Training. The signature verification process must be based on guidelines established by the Secretary in consultation with state and local law enforcement or certified document examiners. Election personnel assigned to verify signatures must receive training on these guidelines.

Absentee Ballots. The name and address of the absentee voter must be printed on the larger return envelope. The return envelope must also have a secrecy flap that the voter may seal that will cover the voter's signature and return address.

The declaration on the return envelope must inform the voter that it is illegal to vote if he or she is not a U.S. citizen, if he or she has been convicted of a felony without restoration of voting rights, and to cast a ballot or sign an absentee envelope on behalf of another voter.

Processing return envelopes of absentee ballots may begin upon receipt. These ballots must be placed in secure locations from the time of delivery until opening. Except for Sundays and legal holidays, counties with a population of 75,000 or more are required to canvass the vote on a daily basis and counties with less than 75,000 population must canvass at least every third day.

If the voter neglects to sign the absentee or provisional ballot envelope, the county auditor must notify the voter by telephone of the procedure for completing the unsigned affidavit. If the auditor is not able to personally talk with the voter by telephone, the voter must be contacted by first class mail. A voice mail message is not considered as personally contacting

the voter. In order for the ballot to be counted, the voter must appear in person and sign the envelope, or sign a copy of the envelope provided by the auditor.

If the handwriting on the absentee or provisional ballot envelope does not match the signature on file, the auditor must follow the same procedures to contact the voter. In order for the ballot to be counted the voter must appear in person and sign a new registration form, or sign and return a new registration form provided by the auditor. However, the ballot may be counted when the voter's name has changed but the handwriting is the same. In this instance, the auditor must send the voter a change of name form. If the signature is not the same because the voter used initials or a common nickname, the ballot may be counted if the surname and handwriting are the same.

A voter must correct a missing signature or a mismatched signature by the day before the certification of the primary or election. A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

A record must be kept of all ballots with mismatched signatures, including the date the voter was contacted or notice was mailed, as well as the date the voter signed the envelope, a copy of the envelope, or a new registration form. These records are public and may be disclosed on written request.

Provisional Ballots. Provisional ballots must be printed on colored paper or imprinted with a bar code that would identify the ballot as provisional.

Provisional ballots may be issued to any voter who would otherwise be denied an opportunity to vote a regular ballot, for any reason authorized by the Help America Vote Act. Provisional ballots, like absentee ballots, must be issued with an inner security envelope and an outer envelope. The outer envelope must include a place for the voter's name, registered address, date of birth, reason for voting a provisional ballot, precinct number and location where the voter has voted, and a space for the county auditor to list the disposition of the provisional ballot. The outer envelope must also have the same declaration required for absentee ballot outer envelopes, a space for the voter to sign the oath, and a summary of the applicable violations and associated penalty provisions.

The county auditor is required to examine and investigate all provisional ballots received to determine whether it can be counted. County auditors are required to provide information regarding final disposition of provisional ballots through a free access system, such as a toll-free telephone number or a web site.

Write-in provisions. A write-in vote for a candidate whose name appears on the ballot is a valid vote, even if the voter also marked a vote for that candidate corresponding to the printed name, such as for an overvote. 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.

Re-canvass and rejection of ballots. The canvassing board may recanvass 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. The canvassing board determines the date at which a 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 for statewide elections is changed from 150 votes to 1,000 votes. Existing law also requires that the difference be less than one quarter of 1 percent of all votes cast, and this remains unchanged. A recount under these conditions must be conducted manually unless a mutually acceptable method is agreed upon by the apparent winner and closest apparently defeated opponent.

Certification. The deadline for canvassing boards to complete the canvass and certify the results of a general election is changed from 15 days to 21 days. 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.

Reconciliation provisions. No later than 30 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.

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.

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 gross misdemeanor. It is not a criminal act if the voter who completed the form destroys it, or the county auditor or registration assistant destroys it as authorized by law.

The penalty for intentionally or knowingly double voting is a gross misdemeanor. However, if that act is through recklessness or negligence, a class 1 civil infraction may be imposed with a maximum fine of \$250 per infraction. The county prosecuting attorney is authorized to enforce such civil infractions.

Amended Bill Compared to Engrossed Substitute Bill:

The amendment removed the following provisions:

- election reviews;
- random investigations of county registration lists with the statewide list;
- the date for filing declarations of candidacy;
- allowing absentee ballots of service members to be counted if the ballots were received by service voters after the date of the election;
- showing identification at the polls;
- duplication of ballots (thereby prohibiting ballot enhancement);
- motor voter registration changes; and
- crediting voters with voting only if their absentee ballot was counted.

One of the two provisions regarding provisional ballot designs is also removed.

The Secretary may consult with certified document examiners, as well as with state and local law enforcement, for establishing guidelines for signature verification processes.

The county auditor is required to telephone the voter to advise of the procedures to correct an unsigned absentee or provisional ballot envelope or mismatched signatures. If the voter cannot be reached by phone, he or she must be contacted by first class mail. A voice mail message is not considered as "personally contacting the voter."

Records kept for tracking missing and mismatched signatures are public records and disclosable upon written request.

Except for Sundays and legal holidays, counties with a population of 75,000 or more are required to canvass the vote on a daily basis and counties with less than 75,000 population must canvass at least every third day.

The provision changing certification of the general election to 20 days after the election is changed to 21 days.

The crime of knowingly destroying, altering, defacing, concealing, or discarding a completed voter registration form or signed absentee or provisional ballot signature affidavit is changed from a class C felony to a gross misdemeanor. The crime of intentionally or knowingly double-voting is changed from a class C felony to a gross misdemeanor.

The effective date of the entire act is January 1, 2006.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect on January 1, 2006.

Testimony For: (In support of original bill) Some of the provisions in this election reform bill are also in the Secretary's request bills. The Secretary's office just went through a lengthy process to standardize procedures. Many of these measures are important to address in response to the last election. There is a provision to add a secrecy flap on the return envelope of an absentee ballot so that a person's signature and address are protected. There is also a provision that the Secretary supports to require photo identification at the poll. The Secretary supports amendments that make technical changes and would remove the burden from the counties to conduct a random investigation of the database with county records. With the new database, the Secretary will be responsible for updating and checking the database with other agency lists to check for felons or deaths. The date changing the declaration of candidacy is more appropriate in the bill changing the date of the primary.

(With concerns on original bill) There are some costs associated with absentee envelope requirements. The county auditors are supportive of changing the certification date of the general election to 20 days after the election. Extra days help when adding extra provisions. The requirements that licensing agents ask applicants the questions regarding citizenship and age are needed to help make the requirements clear. It has happened many times that a person who is applying for citizenship has misunderstood the statements and has inadvertently registered to vote. Asking the question if he or she is a citizen will help with this problem. The bill provides consistency for how provisional and absentee ballots are treated. Requiring counties to duplicate a ballot will have a fiscal impact. It takes more time to duplicate.

Your Vote Counts has submitted a position paper on election reform and best practices. One is a document that sets forth our position on the Secretary of State bills and what we think should be considered. There is a supplement to that paper that raises other concerns. Another paper covers voter identification at the polls and suggested legislative language regarding poll worker leave from employment in order to obtain a larger pool of poll workers, especially for dual language skills. We oppose mandatory checks with Citizenship and Immigration Services (CIS) for a variety of reasons. Voting is a right, not a privilege; it should be as easy as possible, encouraged rather than discouraged. Some of the provisions will have the effect of disenfranchising voters. Washington has a history of being voter friendly. Many of the provisions are fixing things that are not broken. For instance, voter identification at the polls was not a problem at the last election. The complaints were about felons and deceased persons voting. The CIS keeps records on naturalized citizens only they do not have a list of "aliens." Plus CIS will take a very long time to respond. Random purges are also a concern. Having a stale address does not make you an ineligible voter. We do not want to have someone's right to vote taken away because they forgot to submit a change of address. Will there be a notice to the voter that their registration is being purged? Being registered to vote in two different states is not a crime. It should only be a problem to vote in more than one state. The Help America Vote Act only requires identification for people who register by

mail and who are first time voters. It will create problems at the polls because it adds additional work to an already busy environment. Many of the provisions can be done through rulemaking. Restoring felons rights should be automatic when they have finished their time. Proprietary software should not be allowed. Election day registration should be allowed.

Provisional ballots, as well as absentee ballots, should be distinguishable. Discretion to poll workers is too broad to determine if someone can vote a provisional ballot. Members of the armed forces should not be allowed to vote after election day. Records of mismatched or missing signatures should be public. Third parties can assist in getting these problems resolved. There is a problem in the wording of the criminal penalties section of the bill. The way it reads, it is a felony to be registered to vote in more than one state. The Secretary should consult with adult literacy specialists in the design of forms. We oppose identification requirements a signature match should be sufficient.

The Governor has two concerns. There is a requirement that some form of identification be shown at the polls but it doesn't specify what forms. The Governor supports the direction taken by New Mexico. New Mexico, just three days ago, passed a voter identification requirement that allows oral identification at the polls by stating "this is my name, this is my date of birth, this is the last four digits of my social security number." The lists of missing signatures or mismatched signatures should be public. Third parties are very helpful in resolving these issues.

The American Civil Liberties Union would like to include in the bill a notice to people who have lost their voting rights. There is currently no notice and there should be something that says "you have lost the right to vote and this is how you get it back."

Testimony Against: None.

Persons Testifying: (In support of original bill) Senator Kastama, prime sponsor; Sam Reed, Secretary of State; and Katie Blinn and Shane Hamlin, Office of the Secretary of State.

(With concerns on original bill) Antonio Ginatta, Executive Policy Office; Lonnie Johns-Brown, League of Women Voters; Michael Slater, Project Vote; Bob Terwilliger, Snohomish County Auditor; Evelyn Arnold, Chelan County Auditor; Corky Mattingly, Yakima County Auditor; Pat McCarthy and Kim Wyman, Washington State Auditor's Association; David Anderson and Christine Mrak, Your Vote Counts; and Jennifer Shaw, American Civil Liberties Union.

Persons Signed In To Testify But Not Testifying: None.