

HOUSE BILL REPORT

HB 2420

As Passed House:

February 11, 2004

Title: An act relating to counting votes on ballots for write-in candidates.

Brief Description: Revising provisions for counting votes on ballots for write-in candidates.

Sponsors: By Representatives Hunter, Armstrong, Nixon, Tom, Hunt, Jarrett, Haigh, Ruderman, Clibborn, Upthegrove and Moeller.

Brief History:

Committee Activity:

State Government: 1/23/04, 1/27/04 [DP].

Floor Activity:

Passed House: 2/11/04, 96-0.

Brief Summary of Bill

- Write-in votes on optical scan ballots are counted.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: Do pass. Signed by 9 members: Representatives Haigh, Chair; Miloscia, Vice Chair; Armstrong, Ranking Minority Member; Shabro, Assistant Ranking Minority Member; Hunt, McDermott, Nixon, Tom and Wallace.

Staff: Marsha Reilly (786-7135).

Background:

Washington state law allows for write-in voting. An eligible person must file a declaration of candidacy as a declared write-in candidate no later than the day before the primary or general election. Voters may cast a write-in vote for a declared write-in candidate by specifying the name of the candidate on the appropriate location on the ballot. Voters may also cast a write-in vote for a candidate who has not filed a declaration of candidacy. In that instance, the voter must identify the office sought and position number or political party if the manner in which the write-in is identified is not

clear. In jurisdictions that use optical-scan voting systems, the voter must identify the write-in candidate and complete the proper mark next to the write-in line for that office in order for the vote to be counted.

The number of write-in votes cast for each office must be recorded and reported with the canvas of the election. In the case of offices where the district encompasses more than a single county, write-in votes for an individual candidate must be tallied if the Secretary of State, or another auditor in multi-county districts, notifies the county auditor that it appears the write-in votes could alter the outcome of the primary or general election.

In the case of offices where the district encompasses more than a single county, the auditor must tally the write-in votes cast for an office if the total number of write-in votes cast for that office is greater than the number of votes cast for a candidate apparently nominated or elected, and the auditor must notify the Secretary of State and other county auditors that the write-in votes should be tallied.

The November 2003 election of a Medina City Council position resulted in a lawsuit brought about by the American Civil Liberties Union of Washington. The race was close enough to require a recount. A manual recount is done when one of the candidates is by write-in.

The recount revealed 29 ballots that were not credited to the write-in candidate because the oval was not filled in, even though the candidate's name was written on the ballot. King County did not count the disputed votes identified in the manual recount.

The lawsuit challenged the disqualified 29 disputed ballots based on interpretation of statute. In short, the plaintiffs argued that because a manual recount was done, the provision for counting optical scan votes did not apply. Therefore the votes should count because voter intent was clear.

The Superior Court of King County ruled in favor of the plaintiff and ordered the canvassing board and county auditor to count the disputed ballots and that the certificate of election be based on the recount including the 29 disputed ballots.

Summary of Bill:

The provision is removed that requires the corresponding oval to be filled in next to the write-in candidate's line on an optical scan ballot in order for the vote to be counted.

Write-in votes for an individual candidate do not need to be tallied if the total number of write-in votes and under votes recorded by the vote tabulation system is not greater than the number of votes cast for the apparent winner.

Write-in votes for a candidate for statewide office or a jurisdiction that encompasses more than one county must be counted if the total number of write-in votes and under-votes recorded by the vote tabulation system is greater than the number of votes cast for the apparent winner.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect on July 1, 2004.

Testimony For: It is an important revision that clears up an interpretation of statute. The bill will effectuate voter intent without getting caught up in technicalities.

Testimony Against: None.

Persons Testifying: Dean Logan, King County Records, Elections and Licensing Services Division; David Elliott, Office of the Secretary of State; and Doug Klunder, American Civil Liberties Union of Washington.

Persons Signed In To Testify But Not Testifying: None.