

# SENATE BILL REPORT

## HB 2420

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As Reported By Senate Committee On:  
Government Operations & Elections, February 24, 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:** Representatives Hunter, Armstrong, Nixon, Tom, Hunt, Jarrett, Haigh, Ruderman, Clibborn, Upthegrove and Moeller.

**Brief History:**

**Committee Activity:** Government Operations & Elections: 2/24/04 [DPA].

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Majority Report:** Do pass as amended.

Signed by Senators Roach, Chair; Stevens, Vice Chair; Berkey, Fairley, Horn, Kastama and McCaslin.

**Staff:** Mac Nicholson (786-7445)

**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, and 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, provided the voter identifies the office sought and position number or political party. 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 canvass of the election.

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 Amended 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.

**Amended Bill Compared to Original Bill:** The striking amendment makes a technical correction to reflect the Title 29A rewrite.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** This bill makes sure that write-in votes are counted when the name of the candidate is written in, even though the oval next to the name is not filled in. This prevents disenfranchisement and effectuates voter intent.

**Testimony Against:** None.

**Testified:** Rep. Hunter, prime sponsor; Katie Phelps, Medina City Council.