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**SUBSTITUTE SENATE BILL 5219**

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**State of Washington**

**58th Legislature**

**2003 Regular Session**

**By** Senate Committee on Government Operations & Elections (originally sponsored by Senators Roach, Kastama, Fairley, Stevens, Benton, Kohl-Welles and Esser; by request of Secretary of State)

READ FIRST TIME 02/12/03.

1       AN ACT Relating to voting systems certification; amending RCW  
2 29.33.041, 29.33.081, 29.33.130, 29.33.145, 29.33.300, 29.33.310,  
3 29.33.320, 29.33.330, 29.33.350, 29.04.200, and 29.85.051; adding a new  
4 section to chapter 29.01 RCW; adding a new section to chapter 29.85  
5 RCW; and prescribing penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7       **Sec. 1.** RCW 29.33.041 and 1990 c 59 s 18 are each amended to read  
8 as follows:

9       The secretary of state shall inspect, evaluate, ~~((and))~~ publicly  
10 test, and hold a public demonstration of all voting systems or  
11 components of voting systems that are submitted for review under RCW  
12 29.33.051. The secretary of state shall determine whether the voting  
13 systems conform with all of the requirements of this title, the  
14 applicable rules adopted in accordance with this title, and with  
15 generally accepted safety requirements. The secretary of state shall  
16 post the report of certification to a publicly available electronic  
17 medium and transmit a ~~((copy of the report of any))~~ notice of the  
18 examination ~~((under this section))~~, within thirty days after completing  
19 the examination, to the county auditor of each county.

1       **Sec. 2.** RCW 29.33.081 and 1990 c 59 s 21 are each amended to read  
2 as follows:

3       (~~If~~) Only voting systems or devices or vote tallying systems  
4 (~~are to~~) that have been approved by the secretary of state may be  
5 used for conducting a primary or election(~~, only those that have the~~  
6 ~~approval of the secretary of state or had been approved under this~~  
7 ~~chapter or chapter 29.34 RCW before March 22, 1982, may be used~~). Any  
8 modification, change, or improvement to any voting system or component  
9 of a system (~~that~~) must be submitted to the secretary of state for  
10 review. After review, the modification may be accepted if it does not  
11 impair (~~its~~) system accuracy, efficiency, or capacity or extend  
12 (~~its~~) system function(~~, may be made without~~). If, after review,  
13 the secretary of state determines that the modification does impair  
14 system accuracy, efficiency, or capacity or extend system function, the  
15 modification must be submitted for reexamination or reapproval by the  
16 secretary of state under RCW 29.33.041.

17       **Sec. 3.** RCW 29.33.130 and 1990 c 59 s 22 are each amended to read  
18 as follows:

19       The county auditor of a county in which voting systems are used is  
20 responsible for the preparation, maintenance, and operation of those  
21 systems, and must provide proof that the system and its component  
22 software, in the version used, are state certified. The auditor may  
23 employ and direct persons to perform some or all of these functions.

24       **Sec. 4.** RCW 29.33.145 and 1998 c 58 s 1 are each amended to read  
25 as follows:

26       An agreement to purchase or lease a voting system or a component of  
27 a voting system is subject to that system or component passing an  
28 acceptance test, conducted by the county auditor as purchaser or  
29 lessee, sufficient to demonstrate that the equipment is the same as  
30 that certified by the secretary of state and that the equipment is  
31 operating correctly as delivered to the county.

32       **Sec. 5.** RCW 29.33.300 and 1990 c 59 s 26 are each amended to read  
33 as follows:

34       No voting device (~~shall~~) may be approved by the secretary of  
35 state unless it:

- 1 (1) Secures to the voter secrecy in the act of voting;
- 2 (2) Permits the voter to vote for any person for any office and  
3 upon any measure that he or she has the right to vote for;
- 4 (3) Permits the voter to vote for all the candidates of one party  
5 or in part for the candidates of one or more other parties;
- 6 (4) Correctly registers all votes cast for any and all persons and  
7 for or against any and all measures;
- 8 (5) Provides that a vote for more than one candidate cannot be cast  
9 by one single operation of the voting device or vote tally system  
10 except when voting for president and vice-president of the United  
11 States; and
- 12 (6) Except for functions or capabilities unique to this state, has  
13 been tested(~~(, certified, and used in at least one other state or~~  
14 ~~election jurisdiction)) and approved by the appropriate independent  
15 testing authority approved by the federal elections commission or its  
16 statutory successor.~~

17 **Sec. 6.** RCW 29.33.310 and 1990 c 59 s 27 are each amended to read  
18 as follows:

19 The ballot (~~(on a single voting device shall))~~ displayed to a voter  
20 may not contain the names of candidates for the offices of United  
21 States representative, state senator, state representative, county  
22 council, or county commissioner in more than one district. (~~In all~~  
23 ~~general elections, primaries, and special elections, in each polling~~  
24 ~~place the voting devices containing ballots for candidates from each~~  
25 ~~congressional, legislative, or county council or commissioner district~~  
26 ~~shall be grouped together and physically separated from those devices~~  
27 ~~containing ballots for other districts. Each voter shall be directed~~  
28 ~~by the precinct election officers to the correct group of voting~~  
29 ~~devices.))~~

30 **Sec. 7.** RCW 29.33.320 and 1990 c 59 s 28 are each amended to read  
31 as follows:

32 The secretary of state shall not approve a vote tallying system  
33 unless it:

- 34 (1) Correctly counts votes on ballots on which the proper number of  
35 votes have been marked for any office or issue;

1 (2) Ignores votes marked for any office or issue where more than  
2 the allowable number of votes have been marked, but correctly counts  
3 the properly voted portions of the ballot;

4 (3) Accumulates a count of the specific number of ballots tallied  
5 for each precinct, total votes by candidate for each office, and total  
6 votes for and against each issue of the ballot in that precinct;

7 (4) Accommodates rotation of candidates' names on the ballot under  
8 RCW 29.30.040;

9 (5) Produces precinct and cumulative totals in printed form; and

10 (6) Except for functions or capabilities unique to this state, has  
11 been tested(~~(, certified, and used in at least one other state or~~  
12 ~~election jurisdiction)) and approved by the appropriate independent  
13 testing authority approved by the federal elections commission or its  
14 statutory successor.~~

15 **Sec. 8.** RCW 29.33.330 and 1990 c 59 s 25 are each amended to read  
16 as follows:

17 In preparing a voting device for a primary or election, a record  
18 (~~shall~~) must be made of the ballot format installed in each device  
19 and the precincts or portion of a precinct for which that device has  
20 been prepared. Except where provided by a rule adopted under RCW  
21 29.04.210, after being prepared for a primary or election, each device  
22 (~~shall~~) must be sealed with a uniquely numbered seal and provided to  
23 the inspector of the appropriate polling place.

24 **Sec. 9.** RCW 29.33.350 and 1998 c 58 s 2 are each amended to read  
25 as follows:

26 At least three days before each state primary or general election,  
27 the office of the secretary of state shall provide for the conduct of  
28 tests of the programming for each vote tallying system to be used at  
29 that primary or general election. The test must verify that the system  
30 will correctly count the vote cast for all candidates and on all  
31 measures appearing on the ballot at that primary or general election.  
32 The office of the secretary of state shall adopt rules specifying the  
33 manner of conducting these programming tests. The test (~~shall~~) must  
34 verify the capability of the vote tallying system to perform all of the  
35 functions that can reasonably be expected to occur during conduct of

1 that particular primary or election. If any error is detected, the  
2 cause ~~((shall))~~ must be determined and corrected, and an errorless  
3 total ~~((shall))~~ must be produced before the primary or election.

4 Such tests ~~((shall))~~ must be observed by at least one  
5 representative from each major political party, if representatives have  
6 been appointed by the respective major political parties and are  
7 present at the test, and ~~((shall))~~ must be open to candidates, the  
8 press, and the public. The county auditor and any political party  
9 observers shall certify that the test has been conducted in accordance  
10 with this section. The county auditor shall provide proof that the  
11 version of the voting system and software used are state certified.  
12 Copies of ~~((this))~~ these certifications ~~((shall))~~ must be retained by  
13 the secretary of state and the county auditor. All programming  
14 materials, test results, and test ballots ~~((shall))~~ must be securely  
15 ~~((sealed))~~ stored until the day of the primary or general election.

16 **Sec. 10.** RCW 29.04.200 and 1998 c 245 s 26 are each amended to  
17 read as follows:

18 (1) ~~((Beginning January 1, 1993,))~~ No voting device or machine may  
19 be used ~~((in a county with a population of seventy thousand or more))~~  
20 to conduct a primary or general or special election in this state  
21 unless it correctly records ~~((on))~~ a separate ~~((ballot))~~ record the  
22 votes cast by each elector for any person and for or against any  
23 measure and ~~((such separate ballots))~~ the cast vote records are  
24 available for audit purposes after ~~((such a))~~ the primary or election.

25 (2) ~~((Beginning January 1, 1993,))~~ The secretary of state shall not  
26 certify under this title any voting device or machine ~~((for use in~~  
27 ~~conducting))~~ to conduct a primary or general or special election in  
28 this state ~~((unless the device or machine correctly records on a~~  
29 ~~separate ballot the votes cast by each elector for any person and for~~  
30 ~~or against any measure and such separate ballots are available for~~  
31 ~~audit purposes after such a primary or election))~~ that uses punched  
32 holes to record the voter's choices.

33 (3) Beginning January 1, ~~((1993, a county with a population of less~~  
34 ~~than seventy thousand may use a voting machine or device for conducting~~  
35 ~~a primary or general or special election which does not record on a~~  
36 ~~separate ballot, available for audit purposes after the primary or~~

1 election, the votes cast by each elector for any person and for or  
2 against any measure if:

3 (a) The device was certified under this title before January 1,  
4 1993, for use in this state;

5 (b) The device otherwise satisfies the requirements of this title;  
6 and

7 (c) Not more than twenty percent of the votes cast during any  
8 primary or general or special election conducted after January 1, 1998,  
9 in the county are cast using such a machine or device.

10 (4) The purpose of subsection (3) of this section is to permit less  
11 populous counties to replace voting equipment in stages over several  
12 years. These less populous counties are, nonetheless, encouraged to  
13 secure as expeditiously as possible voting equipment which would  
14 satisfy the requirements of subsection (1) of this section established  
15 for more populous counties)) 2006, no voting device or machine that  
16 uses punched holes to record the voter's choices may be used to conduct  
17 a primary or general or special election in this state.

18 **Sec. 11.** RCW 29.85.051 and 1991 c 81 s 4 are each amended to read  
19 as follows:

20 A person is guilty of a gross misdemeanor who knowingly:

21 (1) Deceives any voter in recording his or her vote by providing  
22 incorrect or misleading recording information or by providing faulty  
23 election equipment or records; ((or))

24 (2) Records the vote of any voter in a manner other than as  
25 designated by the voter; or

26 (3) Commits either of the acts under subsection (1) or (2) of this  
27 section by electronic means.

28 Such a gross misdemeanor is punishable to the same extent as a  
29 gross misdemeanor that is punishable under RCW 9A.20.021.

30 NEW SECTION. **Sec. 12.** A new section is added to chapter 29.01 RCW  
31 to read as follows:

32 "Cast vote record" means a record or data element representing a  
33 voter's unique set of choices. This may be a physical ballot or an  
34 electronic record.

1        NEW SECTION.   **Sec. 13.**   A new section is added to chapter 29.85 RCW  
2   to read as follows:

3        A person is guilty of a gross misdemeanor punishable under chapter  
4   9A.20 RCW who knowingly:

5        (1) Tampers with or impedes the use of any form of electronic  
6   voting or vote recording system; or

7        (2) Tampers with or impedes access to a vote reporting or election  
8   results reporting system.

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