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**SUBSTITUTE SENATE BILL 5709**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senate Local Government, Land Use & Tribal Affairs (originally sponsored by Senators Torres, Hunt, Schoesler, and Dozier)

READ FIRST TIME 02/17/23.

1 AN ACT Relating to irrigation district elections; amending RCW  
2 87.03.031, 87.03.032, 87.03.033, 87.03.045, 87.03.051, 87.03.071,  
3 87.03.075, 87.03.085, and 87.03.105; adding new sections to chapter  
4 87.03 RCW; and prescribing penalties.

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

6 **Sec. 1.** RCW 87.03.031 and 2013 c 23 s 481 are each amended to  
7 read as follows:

8 Any qualified district elector (~~who certifies as provided in RCW~~  
9 ~~87.03.032 through 87.03.034 that he or she cannot conveniently be~~  
10 ~~present to cast his or her ballot at his or her proper election~~  
11 ~~precinct on the day of any irrigation district election~~) shall be  
12 entitled to vote by absentee ballot (~~in such election~~) in the  
13 manner herein provided.

14 **Sec. 2.** RCW 87.03.032 and 2013 c 23 s 482 are each amended to  
15 read as follows:

16 (1) The notice of election shall conform to the requirements for  
17 election notices provided by (~~Title 87 RCW~~) this chapter for the  
18 election being held, and shall specify (~~in addition~~) that any  
19 qualified district elector (~~who certifies that he or she cannot~~  
20 ~~conveniently be present at his or her proper election precinct on the~~

1 ~~day of election~~) may vote by absentee ballot, and that a ballot and  
2 form of certificate of qualifications will be furnished to him or her  
3 on written request being made of the district's secretary. The  
4 requisite ballot and a form of certificate of qualifications shall be  
5 furnished by the district's secretary to any person who prior to the  
6 date of election makes written request therefor, stating that he or  
7 she is a qualified district elector. Such ballot and form may be  
8 furnished also to qualified district electors in any way deemed to be  
9 convenient without regard to requests having been made therefor.

10 (2) The board of directors may by adoption of a resolution choose  
11 to conduct an election using only mail-in ballots in lieu of polling  
12 places and absentee ballots. The district shall provide ballots to  
13 qualified electors derived from its assessment roll, toll and charge  
14 roll, or other district records and may also use the county  
15 assessor's or other public records to assist in determining qualified  
16 electors. Ballots will be in the same format as provided in RCW  
17 87.03.033. Persons or entities who have not received a ballot and  
18 believe they are qualified electors may provide documents  
19 demonstrating they are qualified electors at the district main office  
20 by the close of business on the day before the election and receive a  
21 ballot if qualified to vote in the election.

22 **Sec. 3.** RCW 87.03.033 and 2013 c 23 s 483 are each amended to  
23 read as follows:

24 (1) To be counted in a given election, an absentee ballot or  
25 ballots in a mail-in election must conform to these requirements:

26 (a) It must be sealed in (~~an unmarked~~) a security envelope,  
27 which may provide instructions for completing the ballot and which  
28 position is being contested, but have no other marks that would  
29 identify the elector, and then be placed in an additional outer  
30 envelope and delivered to the district's principal office prior to  
31 the close of the polls on the day of that election; or be (~~sealed in~~  
32 ~~an unmarked envelope and~~) mailed to the district's secretary,  
33 postmarked not later than midnight of that election day and received  
34 by the secretary within (~~five~~) seven days of that date.

35 (b) To ensure secrecy of the vote, the security envelope must be  
36 sealed within an additional outer envelope, requiring the ballot to  
37 be provided with two envelopes for ballot return.

38 (c) The sealed envelope containing the ballot shall be  
39 accompanied by a certificate of qualifications stating, with respect

1 to the voter, his or her name, age, citizenship, residence, that he  
2 or she holds title or evidence of title to lands within the district  
3 which, under ((RCW 87.03.045)) this chapter entitles him or her to  
4 vote in the election(~~(, and that he or she cannot conveniently be~~  
5 ~~present to cast his or her ballot at his or her proper election~~  
6 ~~precinct on election day))~~).

7 ((~~(e)~~)) (d) The statements in the certificate of qualifications  
8 shall be certified as correct by the voter by the affixing of his or  
9 her signature thereto ((~~in the presence of a witness who is~~  
10 ~~acquainted with the voter, and the voter shall enclose and seal his~~  
11 ~~or her ballot in the unmarked envelope in the presence of this~~  
12 ~~witness but without disclosing his or her vote. The witness, by~~  
13 ~~affixing his or her signature to the certificate of qualifications,~~  
14 ~~shall certify that he or she is acquainted with the voter, that in~~  
15 ~~his or her presence the voter's signature was affixed and the ballot~~  
16 ~~enclosed as required in this paragraph)), certifying under penalty of  
17 perjury that he or she meets the qualifications to vote.~~

18 (2) The form of statement of qualifications and its certification  
19 shall be substantially as prescribed by the district's board of  
20 directors. The district may print the statement of qualifications on  
21 the outer envelope in lieu of including a separate statement of  
22 qualifications form. This form may also provide that the voter shall  
23 describe all or some part of his or her lands within the district  
24 which, under ((RCW 87.03.045)) this chapter entitles him or her to  
25 vote in the election, but a voter otherwise qualified shall not be  
26 disqualified because of the absence or inaccuracy of the description  
27 so given. The regular form of irrigation district ballot shall be  
28 used by absentee voters.

29 **Sec. 4.** RCW 87.03.045 and 2013 c 23 s 484 are each amended to  
30 read as follows:

31 In districts with ((~~two hundred thousand~~)) 200,000 acres or more,  
32 a person ((~~eighteen~~)) 18 years old, being a citizen of the United  
33 States and a resident of the state and who holds title or evidence of  
34 title to land that is assessed or is assessable by the district  
35 pursuant to federal and state law, in the district or proposed  
36 district shall be entitled to vote therein. He or she shall be  
37 entitled to one vote for the first ((~~ten~~)) 10 acres of said land or  
38 fraction thereof and one additional vote for all of said land over  
39 ten acres. A majority of the directors shall be residents of the

1 county or counties in which the district is situated and all shall be  
2 electors of the district. If more than one elector residing outside  
3 the county or counties is voted for as director, only that one who  
4 receives the highest number of votes shall be considered in  
5 ascertaining the result of the election. Where land is community  
6 property both the (~~husband and wife~~) spouses may vote if otherwise  
7 qualified. An agent of a corporation, general partnership, limited  
8 partnership, limited liability company, or other legal entity formed  
9 pursuant to the laws of the state of Washington or qualified to do  
10 business in the state of Washington owning land in the district, duly  
11 authorized in writing, may vote on behalf of the (~~corporation~~) land  
12 owning entity by filing with the election officers his or her  
13 instrument of authority. The agent of such entity is considered an  
14 elector of the district, and shall vote in the precinct where the  
15 entity's principal office is located or in the precinct nearest the  
16 location of the principal office. An elector resident in the district  
17 shall vote in the precinct in which he or she resides, all others  
18 shall vote in the precinct nearest their residence.

19 **Sec. 5.** RCW 87.03.051 and 1997 c 354 s 1 are each amended to  
20 read as follows:

21 In districts with less than (~~two hundred thousand~~) 200,000  
22 acres, a person (~~eighteen~~) 18 years old, being a citizen of the  
23 United States and a resident of the state and who holds title or  
24 evidence of title to (~~assessable~~) land in the district or proposed  
25 district that is assessed or is assessable by the district pursuant  
26 to federal and state law, shall be entitled to vote therein, and to  
27 be recognized as an elector. A corporation, general partnership,  
28 limited partnership, limited liability company, or other legal entity  
29 formed pursuant to the laws of the state of Washington or qualified  
30 to do business in the state of Washington owning land in the district  
31 shall be recognized as an elector. As used in this section, "entity"  
32 means a corporation, general partnership, limited partnership,  
33 limited liability company, or other legal entity formed pursuant to  
34 the laws of the state of Washington or qualified to do business in  
35 the state of Washington. "Ownership" shall mean the aggregate of all  
36 assessable acres owned by an elector, individually or jointly, within  
37 one district. Voting rights shall be allocated as follows: Two votes  
38 for each five acres of assessable land or fraction thereof. No one  
39 ownership may accumulate more than (~~forty-nine~~) 49 percent of the

1 votes in one district. If assessments are on the basis of shares  
2 instead of acres, an elector shall be entitled to two votes for each  
3 five shares or fraction thereof. The ballots cast for each ownership  
4 of land or shares shall be exercised by common agreement between  
5 electors or when land is held as community property, the accumulated  
6 votes may be divided equally between ~~((husband and wife))~~ the  
7 spouses. Except for community property ownership, in the absence of  
8 the submission of the common agreement to the secretary of the  
9 district at least ~~((twenty-four))~~ 24 hours before the opening of the  
10 polls, the election board shall recognize the first elector to appear  
11 on election day as the elector having the authority to cast the  
12 ballots for that parcel of land for which there is more than one  
13 ownership interest. A majority of the directors shall be residents of  
14 the county or counties in which the district is situated and all  
15 shall be electors of the district. If more than one elector residing  
16 outside the county or counties is voted for as director, only that  
17 one who receives the highest number of votes shall be considered in  
18 ascertaining the result of the election. An agent of an entity owning  
19 land in the district, duly authorized in writing, may vote on behalf  
20 of the entity by filing with the election officers his or her  
21 instrument of authority. The agent of such entity is considered an  
22 elector of the district, and shall vote in the precinct where the  
23 entity's principal office is located or in the precinct nearest the  
24 location of the principal office. An elector resident in the district  
25 shall vote in the precinct in which he or she resides, all others  
26 shall vote in the precinct nearest their residence. No director shall  
27 be qualified to take or retain office unless the director holds title  
28 or evidence of title to land within the district.

29 **Sec. 6.** RCW 87.03.071 and 1985 c 66 s 3 are each amended to read  
30 as follows:

31 In any irrigation district where more than ~~((fifty))~~ 50 percent  
32 of the total acreage of the district is owned in individual  
33 ownerships of less than five acres, each elector who is otherwise  
34 qualified to vote pursuant to RCW ~~((87.03.045))~~ 87.03.051 shall be  
35 entitled to two votes regardless of the size of ownership. Each  
36 ownership shall be represented by two votes. If there are multiple  
37 owners or joint owners of a single ownership, the owners shall decide  
38 among themselves what their two votes shall be. If the ownership is  
39 held as community property, ~~((the husband shall be entitled to one~~

1 ~~vote and the wife))~~ each spouse shall be entitled to one vote or they  
2 may vote by common agreement.

3 **Sec. 7.** RCW 87.03.075 and 2013 c 23 s 485 are each amended to  
4 read as follows:

5 Voting in an irrigation district shall be by ballot. Ballots  
6 shall be of uniform size and quality, provided by the district, and  
7 for the election of directors shall contain only the names of the  
8 candidates who have filed with the secretary of the district a  
9 declaration (~~(in writing)~~) of their candidacy(~~(, or)~~) by submitting a  
10 petition of nomination as hereinafter provided, not later than five  
11 o'clock p.m. on the first Monday in (~~November~~) October. Ballots  
12 shall contain space (~~(for sticker voting or)~~) for the writing in of  
13 the name of an undeclared candidate. Ballots shall be issued by the  
14 election board according to the number of votes an elector is  
15 entitled to cast. A person filing a declaration of candidacy(~~(, or)~~)  
16 by submitting a petition of nomination as hereinafter provided, shall  
17 designate therein the position for which he or she is a candidate. No  
18 ballots on any form other than the official form shall be received or  
19 counted.

20 In any election for directors where the number of votes which may  
21 be received will have no bearing on the length of the term to be  
22 served, the candidates for the position of director(~~(, in lieu of~~  
23 ~~filing a declaration of candidacy hereunder, shall file with the~~  
24 ~~secretary of the district))~~ shall file with the secretary of the  
25 district a declaration of their candidacy by submitting a petition of  
26 nomination, on a form prescribed by the district, signed by at least  
27 ten qualified electors of the district, or of the division if the  
28 district has been divided into director divisions, not later than  
29 five o'clock p.m. on the first Monday in (~~November~~) October. If,  
30 after the expiration of the date for filing (~~(petitions of~~  
31 ~~nomination))~~) a declaration of candidacy, it appears that only one  
32 qualified candidate has (~~(been nominated thereby))~~) declared their  
33 candidacy for each position to be filled it shall not be necessary to  
34 hold an election, and the board of directors shall at their next  
35 meeting declare such candidate elected as director. The secretary  
36 shall immediately make and deliver to such person a certificate of  
37 election signed by him or her and bearing the seal of the district.  
38 The procedure set forth in this paragraph shall not apply to any  
39 other irrigation district elections.

1       **Sec. 8.** RCW 87.03.085 and 1987 c 123 s 1 are each amended to  
2 read as follows:

3       (1) Fifteen days before any election held under this chapter,  
4 subsequent to the organization of any district, the secretary of the  
5 board of directors shall cause notices to be posted in three public  
6 places in each election precinct, of the time and place of holding  
7 the election. The secretary shall also post a general notice of the  
8 same in the office of the board, which shall be established and kept  
9 at some fixed place to be determined by the board, specifying the  
10 polling places of each precinct. Prior to the time for posting the  
11 notices, the board must appoint for each precinct, from the electors  
12 thereof, one inspector and two judges, who shall constitute a board  
13 of election for the precinct. If the board fails to appoint a board  
14 of election, or the members appointed do not attend at the opening of  
15 the polls on the morning of election, the electors of the precinct  
16 present at that hour may appoint the board, or supply the place of an  
17 absent member thereof. The board of directors must, in its order  
18 appointing the board of election, designate the house or place within  
19 the precinct where the election must be held. However, in any  
20 irrigation district that is less than (~~two hundred thousand~~)  
21 200,000 acres in size and is divided into director divisions, the  
22 board of directors in its discretion may designate one polling place  
23 within the district to serve more than one election precinct. The  
24 board of directors of any irrigation district may designate the  
25 principal business office of the district as a polling place to serve  
26 one or more election precincts and may do so regardless of whether  
27 the business office is located within or outside of the boundaries of  
28 the district. If the board of directors does designate a single  
29 polling place for more than one election precinct, then the election  
30 officials appointed by the board of directors may serve more than one  
31 election precinct and the election officials may be electors of any  
32 of the election precincts for which they are the election board.

33       (2)(a) The following additional notice requirements apply to  
34 districts that qualify and have designated their own treasurer as  
35 provided in RCW 87.03.440:

36       (i) The district must annually notify qualified electors, either  
37 by mail, electronic communication, or by posting on the district's  
38 website, of the following:

39       (A) The names of the board of directors and dates their terms  
40 expire;

1 (B) The method and deadline for declaring candidacy under RCW  
2 87.03.075; and

3 (C) A description of the district voting procedure and how the  
4 qualified elector may request an absentee ballot, if the district is  
5 not using the mail-in ballot procedure.

6 (ii) The district will use its assessment roll, toll and charge  
7 roll, or other district records to provide notice to known qualified  
8 electors and may also use the county assessor's or other public  
9 records to assist in determining qualified electors.

10 (iii) A district that makes water deliveries to an entity which  
11 is responsible for paying assessments or tolls and charges and that  
12 entity subsequently distributes that water to lands within the  
13 entity's jurisdiction is only required to provide the annual notice  
14 to the entity paying the assessment or toll and charge.

15 (iv) Any person who becomes a qualified elector after the annual  
16 notice required by this section and before a subsequent election is  
17 eligible to vote in the election. Receiving or not receiving the  
18 annual notice provided in this section does not affect whether the  
19 person or entity is a qualified elector.

20 (b) Each district must establish and maintain election  
21 information on a website, either individually or through the  
22 Washington state water resources association, in order to communicate  
23 with qualified electors. The website must include, but is not limited  
24 to, the names of the board of directors, district election rules  
25 provided in this chapter, information on elections including election  
26 results, and contact information for the district.

27 **Sec. 9.** RCW 87.03.105 and 1889-90 p 676 s 9 are each amended to  
28 read as follows:

29 No list, tally paper or certificate returned from any election  
30 shall be set aside or rejected for want of form, if it can be  
31 satisfactorily understood. The board of directors must meet at its  
32 usual place of meeting on the (~~first Monday~~) second Wednesday after  
33 each election, to canvass the returns. If, at the time of meeting,  
34 the returns from each precinct in the district in which the polls  
35 were opened have been received, the board of directors must then and  
36 there proceed to canvass the returns, but if all the returns have not  
37 been received, the canvass must be postponed from day to day until  
38 all the returns have been received, or until six postponements have  
39 been had. The canvass must be made in public, and by opening the



1 returns and estimating the vote of the district for each person voted  
2 for, and declaring the result thereof. If an undeclared write-in  
3 candidate for a position of director receives the most votes, the  
4 board of directors must determine whether that candidate is a  
5 qualified elector for that specific position. A qualified elector for  
6 the position of director must be 18 years of age, a citizen of the  
7 United States, a resident of the division of the district for which  
8 the director is being elected, or the designated agent of an entity  
9 that owns land within that division. If that candidate is not a  
10 qualified elector, the qualified elector receiving the next highest  
11 number of votes will be deemed elected to the position.

12 NEW SECTION. **Sec. 10.** A new section is added to chapter 87.03  
13 RCW to read as follows:

14 The following election security requirements apply to districts  
15 that qualify and have designated their own treasurer as provided in  
16 RCW 87.03.440:

17 (1) At all times when ballots are being controlled including, but  
18 not limited to, receipt, opening of ballots, certification,  
19 tabulation, reconciliation, or any other type of processing, two  
20 individuals not on the ballot must be present.

21 (2) (a) Each ballot box must be secured and locked, with a deposit  
22 slot, and clearly marked as an "official ballot box." Ballot box keys  
23 must be provided to district election officials only, or designated  
24 district staff if available;

25 (b) Each ballot box must be closed with tamper-evident seals with  
26 a paper seal log:

27 (i) Each time the box is opened, a new seal log must be signed,  
28 with the seal number noted and dated;

29 (ii) When the box is opened, the previous seal log must be  
30 compared to the cut seal and initialed; and

31 (iii) All seal logs must be retained for six months after the day  
32 of the election;

33 (c) Each ballot box must be physically secured so that it cannot  
34 be stolen or moved, and may only be moved by district election  
35 officials, or designated district staff if available;

36 (d) Any election officials or district staff carrying out  
37 official ballot or election duties may not be a candidate on the  
38 election ballot.

1 (3) (a) Ballot envelopes may not be opened immediately after voter  
2 deposit. Ballot tabulation may only begin after the polls are closed  
3 and ballots must be opened in batches, rather than individually;

4 (b) The number of tabulated ballots must be reconciled with the  
5 number of ballots received;

6 (c) Tabulated ballots must be stored separately from uncounted or  
7 challenged ballots as referenced in subsection (4) of this section;

8 (d) Canvassing of ballots must be open to observation by the  
9 public;

10 (e) Any election officials or district staff participating in the  
11 processing of ballots may not be a candidate on the ballot;

12 (f) Once canvassing of ballots is completed, date and time of the  
13 verification of canvassing must be posted in either: (i) The district  
14 office, for at least two weeks; (ii) on the district website, for at  
15 least two weeks; or (iii) at least once a week for two weeks in one  
16 or more newspapers of general circulation within the irrigation  
17 district.

18 (4) (a) Each district must establish a written challenge process  
19 in order to allow individuals to challenge the vote of an individual  
20 voter;

21 (b) Written challenge procedures must be established for  
22 challenges made by both the public and district election officials or  
23 staff, including the time period during which challenges must be  
24 made;

25 (c) Within seven days of the resolution of the challenge, the  
26 outcome of the challenge must be posted in either: (i) The district  
27 office, for at least two weeks; (ii) on the district website, for at  
28 least two weeks; or (iii) at least once a week for two weeks in one  
29 or more newspapers of general circulation within the irrigation  
30 district.

31 (5) Each district must establish a written cure procedure for  
32 curing errors that occurred during ballot canvassing or are  
33 discovered through valid voter challenges, including a clear timeline  
34 for when the cure will occur.

35 (6) Lists and reports of ballots, election outcomes, voter  
36 challenges and challenge outcomes, and curing of errors must be  
37 maintained by each district for six months after the date of the  
38 election and made available to the public.

1        NEW SECTION.    **Sec. 11.**    A new section is added to chapter 87.03  
2    RCW to read as follows:

3        (1) Any person who willfully violates any of the provisions of  
4    section 10 (1) through (3) of this act is guilty of a gross  
5    misdemeanor punishable under RCW 9A.20.021.

6        (2) Any person who, without lawful authority, removes a ballot  
7    from a polling place or ballot drop location is guilty of a gross  
8    misdemeanor punishable under RCW 9A.20.021.

9        (3) A person is guilty of a gross misdemeanor punishable under  
10    RCW 9A.20.021 who knowingly:

11        (a) Deceives any voter in recording his or her vote by providing  
12    incorrect or misleading recording information or by providing faulty  
13    election equipment or records; or

14        (b) Records the vote of any voter in a manner other than as  
15    designated by the voter.

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