

SSB 5499 - S AMD 79
By Senator Roach

PULLED 03/08/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The joint select committee on election
4 reform is created, composed of twelve members as follows:

5 (a) Six members of the senate, three from each of the major
6 caucuses, to be appointed by the president of the senate; and

7 (b) Six members of the house of representatives, three from each of
8 the major caucuses, to be appointed by the speaker of the house.

9 (2) Senate committee services and the house of representatives
10 office of program research shall provide staff support as mutually
11 agreed by the cochairs of the joint select committee. The president of
12 the senate and the speaker of the house shall designate the cochairs,
13 who must be from different political parties.

14 (3) The legislature shall pay the expenses of the committee members
15 under chapter 44.04 RCW.

16 (4) The committee shall seek advice from the secretary of state,
17 business and community representatives, and others during its
18 deliberations.

19 (5) The committee may issue subpoenas to compel the attendance of
20 witnesses and the production of documents.

21 NEW SECTION. **Sec. 2.** The joint select committee on election
22 reform shall:

23 (1) Investigate the reasons why the secretary of state and county
24 auditors did not implement the Help America Vote Act of 2002 (HAVA);

25 (2) Investigate whether the secretary of state and county auditors
26 implemented chapter 111, Laws of 2003, which became effective July 1,
27 2004, and if the secretary of state and county auditors did not make
28 such implementation, investigate the reasons why it did not occur;

1 (3) Investigate what changes need to be implemented by the
2 secretary of state and county auditors to bring the Revised Code of
3 Washington into compliance with HAVA and chapter 111, Laws of 2003;

4 (4) Investigate whether WAC 434-262-050 complies with RCW
5 29A.60.210, and if it does not comply, investigate the reasons why the
6 secretary of state did not amend WAC 434-262-050 to comply with RCW
7 29A.60.210;

8 (5) Investigate whether the report in 2003 by the secretary of
9 state citing significant problems with the King County Records,
10 Elections and Licensing Services Division were remedied, and if they
11 were not remedied, investigate the reasons why;

12 (6) Investigate whether the report in 2004 by the Citizens Advisory
13 Committee citing significant problems with the King County Records,
14 Elections and Licensing Services Division were remedied, and if they
15 were not remedied, investigate the reasons why;

16 (7) Investigate whether the secretary of state complied with the
17 provisions of RCW 29A.04.235 in the 2004 general election;

18 (8) Investigate whether WAC 434-208-100 is in compliance with RCW
19 29A.04.151, 29A.08.230, and 29A.08.110, and if it is not, investigate
20 whether WAC 434-208-100 is in compliance with any statute in the
21 Revised Code of Washington;

22 (9) Investigate whether the secretary of state and county auditors
23 complied with RCW 29A.08.510 in the 2004 general election, and if they
24 did not comply, investigate the reasons why;

25 (10) Investigate, review, and comment upon the process, and
26 successfulness of the process, by which the courts provide information
27 to the secretary of state or county auditors relating to recently
28 incapacitated individuals' removal from the registered voter list, and
29 investigate whether this process was adhered to by the secretary of
30 state and county auditors in the 2004 general election;

31 (11) Investigate, review, and comment upon the process, and
32 successfulness of the process, found in RCW 29A.08.520, which requires
33 that the county auditors cancel felons from the registered voter list
34 upon receiving official notice of a felony conviction, and investigate
35 whether this process was adhered to by the county auditors in the 2004
36 general election;

37 (12) Investigate whether county auditors treated provisional
38 ballots in accordance with RCW 29A.08.625, and specifically, review and

1 compare the approval rate of provisional ballots in each county, and
2 determine whether inactive voters who cast provisional ballots had
3 their provisional ballots counted in situations where their
4 registration was not an error;

5 (13) Investigate whether confirmation notices for provisional
6 ballots issued by county auditors were on the form prescribed by or
7 approved by the secretary of state;

8 (14) Investigate and determine whether WAC 434-261-080 has any
9 statutory authority, and formulate model statutes regarding ballot
10 enhancement;

11 (15) Investigate whether WAC 434-262-070 has any statutory
12 authority, and determine whether and what statutory authority county
13 canvassing boards have to correct errors in a recount;

14 (16) Investigate, review, and make recommendations on improvements
15 to statutes for making regular, absentee, and provisional ballots more
16 distinguishable;

17 (17) Investigate whether county election software was tested
18 against federal election standards before the 2004 general election,
19 and formulate model statutes requiring the testing of software against
20 federal standards before each general election;

21 (18) Investigate whether, in the past election cycle, the secretary
22 of state and county auditors adhered to Title 29A RCW and Title 434 WAC
23 with respect to requiring people registering to vote to provide photo
24 identification, a Social Security number, or a driver's license as
25 proof of identification;

26 (19) Investigate whether necessary changes will be implemented to
27 bring the Revised Code of Washington into full compliance with the Help
28 America Vote Act by January 1, 2006; specifically:

29 (a) Whether and how the secretary of state will conduct a
30 verification check upon applicants registering to vote through the use
31 of driver's license files from the department of licensing or the last
32 four digits of Social Security numbers from the Social Security
33 Administration, as contained in RCW 29A.08.107 and 29A.08.651;

34 (b) Whether and how the secretary of state will obtain a signature
35 attesting that the voter is a United States citizen, as contained in
36 RCW 29A.08.010;

37 (c) Whether and how the secretary of state will review each
38 applicant registering to vote to ensure that driver's license numbers

1 or Social Security numbers match information provided by the department
2 of licensing or Social Security Administration, and whether and how the
3 secretary of state will correspond with the voter to resolve a
4 discrepancy if a match does not exist;

5 (d) Whether and how the secretary of state or county auditors will
6 screen registered voters and applicants registering to vote against the
7 statewide registered voter data base to prevent duplication, as
8 provided in RCW 29A.08.610;

9 (e) Whether and how the secretary of state or county auditors will
10 keep the statewide registered voter data base updated for last-minute
11 voter registrations in all counties;

12 (20) Clarify the language contained in RCW 29A.04.031, and
13 specifically answer the question of whether an unregistered voter who
14 voted with an absentee ballot could walk into an auditor's office after
15 the election and demand that the vote be counted;

16 (21) Clarify whether a canvassing board that rejects an absentee
17 ballot because the signature on the envelope does not match the
18 signature on file constitutes disenfranchisement, determine what
19 indicia of fraud must be evident to forward the case to the county
20 prosecutor for prosecution as election fraud, and determine which
21 counties currently contact voters whose mismatched signatures have
22 rendered their votes void; and

23 (22) Report its findings to the legislature no later than December
24 31, 2006.

25 **Sec. 3.** RCW 29A.04.008 and 2004 c 271 s 102 are each amended to
26 read as follows:

27 As used in this title:

28 (1) "Ballot" means, as the context implies, either:

29 (a) The issues and offices to be voted upon in a jurisdiction or
30 portion of a jurisdiction at a particular primary, general election, or
31 special election;

32 (b) A facsimile of the contents of a particular ballot whether
33 printed on a paper ballot or ballot card or as part of a voting machine
34 or voting device;

35 (c) A physical or electronic record of the choices of an individual
36 voter in a particular primary, general election, or special election;

37 or

1 (d) The physical document on which the voter's choices are to be
2 recorded;

3 (2) "Paper ballot" means a piece of paper on which the ballot for
4 a particular election or primary has been printed, on which a voter may
5 record his or her choices for any candidate or for or against any
6 measure, and that is to be tabulated manually;

7 (3) "Ballot card" means any type of card or piece of paper of any
8 size on which a voter may record his or her choices for any candidate
9 and for or against any measure and that is to be tabulated on a vote
10 tallying system;

11 (4) "Sample ballot" means a printed facsimile of all the issues and
12 offices on the ballot in a jurisdiction and is intended to give voters
13 notice of the issues, offices, and candidates that are to be voted on
14 at a particular primary, general election, or special election;

15 (5) "Provisional ballot" means a ballot issued to a voter at the
16 polling place on election day by the precinct election board, for one
17 of the following reasons:

18 (a) The voter's name does not appear in the poll book for the
19 precinct at which the voter appears and who therefore cannot be
20 verified as a registered voter;

21 (b) There is an indication in the poll book that ~~((the voter has~~
22 ~~requested))~~ an absentee ballot~~(, but the voter wishes to vote at the~~
23 ~~polling place))~~ has been issued;

24 (c) There is a question on the part of the voter concerning the
25 issues or candidates on which the voter is qualified to vote;

26 (6) "Party ballot" means a primary election ballot specific to a
27 particular major political party that lists all partisan offices to be
28 voted on at that primary, and the candidates for those offices who
29 affiliate with that same major political party;

30 (7) "Nonpartisan ballot" means a primary election ballot that lists
31 all nonpartisan races and ballot measures to be voted on at that
32 primary.

33 **Sec. 4.** RCW 29A.04.570 and 2003 c 111 s 155 are each amended to
34 read as follows:

35 (1)(a) The ~~((election review staff of the office of the secretary~~
36 ~~of))~~ state auditor shall conduct a review of election-related policies,
37 procedures, and practices in an affected county or counties:

1 (i) If the unofficial returns of a primary or general election for
2 a position in the state legislature indicate that a mandatory recount
3 is likely for that position; or

4 (ii) If unofficial returns indicate a mandatory recount is likely
5 in a statewide election or an election for federal office.

6 Reviews conducted under (ii) of this subsection shall be performed
7 in as many selected counties as time and staffing permit. Reviews
8 conducted as a result of mandatory recounts shall be performed between
9 the time the unofficial returns are complete and the time the recount
10 is to take place, if possible.

11 (b) In addition to conducting reviews under (a) of this subsection,
12 the ~~((election review staff))~~ state auditor shall also conduct such a
13 review in a county ~~((periodically))~~ at least once in each four-year
14 period, in conjunction with a county primary or special or general
15 election~~((, at the direction of the secretary of state or at the~~
16 ~~request of the county auditor))~~. If staffing or budget levels do not
17 permit a four-year election cycle for reviews, then reviews must be
18 done as often as possible. If any resident of this state believes that
19 an aspect of a primary or election has been conducted inappropriately
20 in a county, the resident may file a complaint with the ~~((secretary~~
21 ~~of))~~ state auditor. The ~~((secretary))~~ auditor shall consider such
22 complaints in scheduling periodic reviews under this section.

23 (c) Before an election review is conducted in a county, the
24 ~~((secretary of))~~ state auditor shall provide the county auditor of the
25 affected county and the chair of the state central committee of each
26 major political party with notice that the review is to be conducted.
27 When a periodic review is to be conducted in a county ~~((at the~~
28 ~~direction of the secretary of state))~~ under (b) of this subsection, the
29 ~~((secretary))~~ state auditor shall provide the affected county auditor
30 not less than thirty days' notice.

31 (2) Reviews shall be conducted in conformance with rules adopted
32 ~~((under RCW 29A.04.630))~~ by the state auditor. In performing a review
33 in a county under this chapter, the ~~((election review staff))~~ state
34 auditor shall evaluate the policies and procedures established for
35 conducting the primary or election in the county and the practices of
36 those conducting it. As part of the review, the ~~((election review~~
37 ~~staff))~~ state auditor shall issue to the county auditor and the members
38 of the county canvassing board a report of its findings and

1 recommendations regarding such policies, procedures, and practices. A
2 review conducted under this chapter shall not include any evaluation,
3 finding, or recommendation regarding the validity of the outcome of a
4 primary or election or the validity of any canvass of returns nor does
5 the ((election review staff)) state auditor have any jurisdiction to
6 make such an evaluation, finding, or recommendation under this title.

7 (3) The county auditor or the county canvassing board shall respond
8 to the review report in writing, listing the steps that will be taken
9 to correct any problems listed in the report. The state auditor shall
10 visit the county before the next state primary or general election to
11 verify that the county has taken the steps they listed to correct the
12 problems noted in the report.

13 (4) The county auditor of the county in which a review is conducted
14 under this section or a member of the canvassing board of the county
15 may appeal the findings or recommendations of the ((election review
16 staff)) state auditor regarding the review by filing an appeal with the
17 board created under RCW 29A.04.510.

18 NEW SECTION. Sec. 5. A new section is added to chapter 29A.08 RCW
19 to read as follows:

20 (1) The registration of voters who registered to vote before July
21 1, 2005, is canceled effective July 1, 2007, and those persons must
22 reregister in order to vote at an election held after that date. The
23 registration of a person who first registers to vote or reregisters
24 after June 30, 2005, continues to be valid after July 1, 2007, unless
25 canceled or inactivated as otherwise provided by law.

26 (2) Reregistrations conducted under subsection (1) of this section
27 must comply with the provisions contained in RCW 29A.08.010, including:

28 (a) The applicant's name must be his or her legal name;

29 (b) The complete residential address must be provided;

30 (c) The date of birth must be provided;

31 (d) The Washington state driver's license number, Washington state
32 identification card number, or the last four digits of the Social
33 Security number must be provided;

34 (e) A signature attesting to the truth of the information provided
35 on the application must be provided;

36 (f) A check or indication confirming the person is a United States
37 citizen must be provided;

1 (g) If the person does not have a Social Security number or
2 driver's license number, a unique voter registration number must be
3 issued.

4 NEW SECTION. **Sec. 6.** A new section is added to chapter 29A.08 RCW
5 to read as follows:

6 (1) Short Title. This section may be cited as the "Washington
7 Taxpayer and Citizen Protection Act."

8 (2) Findings and Declaration. The legislature finds that illegal
9 immigration is causing economic hardship to this state, and that
10 illegal immigration is encouraged by public agencies within this state
11 that provide public benefits without verifying immigration status. The
12 legislature further finds that illegal immigrants have been given a
13 safe haven in this state with the aid of identification cards that are
14 issued without verifying immigration status, and that this conduct
15 contradicts federal immigration policy, undermines the security of our
16 borders, and demeans the value of citizenship. Therefore, the
17 legislature finds that the public interest of this state requires all
18 public agencies within this state to cooperate with federal immigration
19 authorities to discourage illegal immigration.

20 (3) Form of Registration. In addition to the requirements of RCW
21 29A.08.010, the form of registration provided by the secretary of state
22 or county auditor must include a statement that the applicant must
23 submit evidence of United States citizenship with the application and
24 that the county auditor or secretary of state shall reject the
25 application if no evidence of citizenship is attached.

26 (4) The county auditor or secretary of state shall reject any
27 application for registration that is not accompanied by satisfactory
28 evidence of United States citizenship. Satisfactory evidence of
29 citizenship includes any of the following:

30 (a) The number of the applicant's Washington state driver's license
31 or Washington state identification card issued by the department of
32 licensing, but only if the department indicates on the applicant's
33 driver's license or identification card that the applicant has provided
34 satisfactory proof of United States citizenship;

35 (b) A legible photocopy of the applicant's birth certificate that
36 verifies citizenship to the satisfaction of the county auditor or
37 secretary of state;

1 (c) A legible photocopy of pertinent pages of the applicant's
2 United States passport identifying the applicant and the applicant's
3 passport number or presentation to the county auditor or the secretary
4 of state of the applicant's United States passport;

5 (d) A presentation to the county auditor or secretary of state of
6 the applicant's United States naturalization documents or the number of
7 the certificate of naturalization. If only the number of the
8 certificate of naturalization is provided, the applicant may not be
9 included in the registration rolls until the number of the certificate
10 of naturalization is verified with the United States Immigration and
11 Naturalization Service by the county auditor or secretary of state;

12 (e) Other documents or methods of proof that are established under
13 the federal Immigration Reform and Control Act of 1986; or

14 (f) The applicant's Bureau of Indian Affairs card number, tribal
15 treaty card number, or tribal enrollment number.

16 (5) Notwithstanding subsection (4) of this section, any person who
17 is registered in this state on the effective date of this section is
18 deemed to have provided satisfactory evidence of citizenship and may
19 not be required to resubmit evidence of citizenship unless the person
20 is changing voter registration from one county to another or
21 reregistering to vote.

22 (6) Proof of voter registration from another state or county is not
23 satisfactory evidence of citizenship.

24 (7) After a person has submitted satisfactory evidence of
25 citizenship, the county auditor or secretary of state shall indicate
26 this information in the person's permanent voter file. After two
27 years, the county auditor or secretary of state may destroy all
28 documents that were submitted as evidence of citizenship.

29 **Sec. 7.** RCW 29A.08.510 and 2003 c 111 s 232 are each amended to
30 read as follows:

31 In addition to case-by-case maintenance under RCW 29A.08.620 and
32 29A.08.630 and the general program of maintenance of voter registration
33 lists under RCW 29A.08.605, deceased voters will be canceled from voter
34 registration lists as follows:

35 (1) Every month, the registrar of vital statistics of the state
36 shall prepare a separate list of persons who resided in each county,

1 for whom a death certificate was transmitted to the registrar and was
2 not included on a previous list, and shall supply the appropriate list
3 to each county auditor.

4 A county auditor, on a monthly basis, shall compare this list with
5 the registration records and cancel the registrations of deceased
6 voters (~~((within at least forty five days before the next primary or
7 election held in the county))~~) after the auditor receives the list.

8 (2) In addition, the county auditor (~~((may))~~), on a monthly basis,
9 shall also use newspaper obituary articles as a source of information
10 in order to cancel a voter's registration. The auditor must verify the
11 identity of the voter by matching the voter's date of birth or an
12 address. The auditor shall record the date and source of the obituary
13 in the cancellation records.

14 (3) In addition, any registered voter may sign a statement, subject
15 to the penalties of perjury, to the effect that to his or her personal
16 knowledge or belief another registered voter is deceased. This
17 statement may be filed with the county auditor. Upon the receipt of
18 such signed statement, the county auditor shall cancel the registration
19 records concerned and so notify the secretary of state.

20 **Sec. 8.** RCW 29A.08.510 and 2004 c 267 s 124 are each amended to
21 read as follows:

22 In addition to case-by-case maintenance under RCW 29A.08.620 and
23 29A.08.630 and the general program of maintenance of voter registration
24 lists under RCW 29A.08.605, deceased voters will be canceled from voter
25 registration lists as follows:

26 (1) (~~((Periodically))~~) Every month, the registrar of vital statistics
27 of the state shall prepare a list of persons who resided in each
28 county, for whom a death certificate was transmitted to the registrar
29 and was not included on a previous list, and shall supply the list to
30 the secretary of state.

31 The secretary of state shall, on a monthly basis, compare this list
32 with the registration records and cancel the registrations of deceased
33 voters (~~((within at least forty five days before the next primary or
34 election))~~).

35 (2) In addition, each county auditor (~~((may))~~), on a monthly basis,
36 shall also use newspaper obituary articles as a source of information
37 in order to cancel a voter's registration from the official state voter

1 registration list. The auditor must verify the identity of the voter
2 by matching the voter's date of birth or an address. The auditor shall
3 record the date and source of the obituary in the cancellation records.

4 (3) In addition, any registered voter may sign a statement, subject
5 to the penalties of perjury, to the effect that to his or her personal
6 knowledge or belief another registered voter is deceased. This
7 statement may be filed with the county auditor or the secretary of
8 state. Upon the receipt of such signed statement, the county auditor
9 or the secretary of state shall cancel the registration records
10 concerned from the official state voter registration list.

11 **Sec. 9.** RCW 29A.08.605 and 2003 c 111 s 236 are each amended to
12 read as follows:

13 In addition to the case-by-case maintenance required under RCW
14 29A.08.620 and 29A.08.630 and the canceling of registrations under RCW
15 29A.08.510, the county auditor shall establish a general program of
16 voter registration list maintenance. This program must be a thorough
17 review that is applied uniformly throughout the county and must be
18 nondiscriminatory in its application. Any program established must be
19 completed at least once every two years and not later than ninety days
20 before the date of a primary or general election for federal office.
21 The county may fulfill its obligations under this section in one of the
22 following ways:

23 (1) The county auditor (~~may~~) shall enter into one or more
24 contracts with the United States postal service, or its licensee, which
25 permit the auditor to use postal service change-of-address information.
26 If the auditor receives change of address information from the United
27 States postal service that indicates that a voter has changed his or
28 her residence address within the county, the auditor shall transfer the
29 registration of that voter and send a confirmation notice informing the
30 voter of the transfer to the new address. If the auditor receives
31 postal change of address information indicating that the voter has
32 moved out of the county, the auditor shall send a confirmation notice
33 to the voter and advise the voter of the need to reregister in the new
34 county. The auditor shall place the voter's registration on inactive
35 status;

36 (2) A direct, nonforwardable, nonprofit or first-class mailing to
37 every registered voter within the county bearing the postal endorsement

1 "Return Service Requested." If address correction information for a
2 voter is received by the county auditor after this mailing, the auditor
3 shall place that voter on inactive status and shall send to the voter
4 a confirmation notice;

5 (3) Any other method approved by the secretary of state.

6 **Sec. 10.** RCW 29A.08.605 and 2004 c 267 s 128 are each amended to
7 read as follows:

8 In addition to the case-by-case maintenance required under RCW
9 29A.08.620 and 29A.08.630 and the canceling of registrations under RCW
10 29A.08.510, the secretary of state and the county auditor shall
11 cooperatively establish a general program of voter registration list
12 maintenance. This program must be a thorough review that is applied
13 uniformly throughout the county and must be nondiscriminatory in its
14 application. Any program established must be completed at least once
15 every two years and not later than ninety days before the date of a
16 primary or general election for federal office. This obligation may be
17 fulfilled in one of the following ways:

18 (1) The secretary of state (~~may~~) shall enter into one or more
19 contracts with the United States postal service, or its licensee, which
20 permit the use of postal service change-of-address information. If the
21 change of address information is received from the United States postal
22 service that indicates that a voter has changed his or her residence
23 address within the state, the auditor shall transfer the registration
24 of that voter and send a confirmation notice informing the voter of the
25 transfer to the new address;

26 (2) A direct, nonforwardable, nonprofit or first-class mailing to
27 every registered voter bearing the postal endorsement "Return Service
28 Requested." If address correction information for a voter is received
29 by the county auditor after this mailing, the auditor shall place that
30 voter on inactive status and shall send to the voter a confirmation
31 notice;

32 (3) Any other method approved by the secretary of state.

33 **Sec. 11.** RCW 29A.08.625 and 2003 c 111 s 240 are each amended to
34 read as follows:

35 (1) A voter whose registration has been made inactive under this

1 chapter and who offers to vote at an ensuing election before two
2 federal elections have been held must be allowed to vote a regular
3 ballot and the voter's registration restored to active status.

4 (2) A voter whose registration has been properly canceled under
5 this chapter shall vote a provisional ballot. The voter shall mark the
6 provisional ballot in secrecy, the ballot placed in a security
7 envelope, the security envelope placed in a provisional ballot
8 envelope, and the reasons for the use of the provisional ballot noted.

9 (3) Upon receipt of such a voted provisional ballot the auditor
10 shall investigate the circumstances surrounding the original
11 cancellation. If he or she determines that the cancellation was in
12 error, the voter's registration must be immediately reinstated, and the
13 voter's provisional ballot must be counted. If the original
14 cancellation was not in error, the voter must be afforded the
15 opportunity to reregister at his or her correct address, and the
16 voter's provisional ballot must not be counted.

17 (4) The names and addresses of provisional voters is not a matter
18 of public record, and no one other than an election officer may contact
19 an individual provisional voter. The election officer shall contact
20 the voter by first class mail within forty-eight hours of discovery and
21 shall inform the voter of relevant deadlines.

22 **Sec. 12.** RCW 29A.08.820 and 2003 c 111 s 254 are each amended to
23 read as follows:

24 When the right of a person has been challenged under RCW 29A.08.810
25 or 29A.08.830(2), the challenged person shall be permitted to vote a
26 provisional ballot, which shall be placed in a sealed envelope separate
27 from other voted ballots. In precincts where voting machines are used,
28 any person whose right to vote is challenged under RCW 29A.08.810 or
29 29A.08.830(2) shall be furnished a provisional paper ballot, which
30 shall be placed in a sealed envelope after being marked. Included with
31 the ((challenged)) provisional ballot shall be (1) an affidavit filed
32 under RCW 29A.08.830 challenging the person's right to vote or (2) an
33 affidavit signed by the precinct election officer and any third party
34 involved in the officer's challenge and stating the reasons the voter
35 is being challenged. The sealed provisional ballots ((of challenged
36 voters)) shall be transmitted at the close of the election to the
37 canvassing board or other authority charged by law with canvassing the

1 returns of the particular primary or election. The county auditor
2 shall notify the challenger and the challenged voter, by certified
3 mail, of the time and place at which the county canvassing board will
4 meet to rule on (~~challenged~~) provisional ballots. If the challenge
5 is made by a precinct election officer under RCW 29A.08.810, the
6 officer must appear in person before the board unless he or she has
7 received written authorization from the canvassing board to submit an
8 affidavit supporting the challenge. If the challenging officer has
9 based his or her challenge upon evidence provided by a third party,
10 that third party must appear with the challenging officer before the
11 canvassing board, unless he or she has received written authorization
12 from the canvassing board to submit an affidavit supporting the
13 challenge. If the challenge is filed under RCW 29A.08.830, the
14 challenger must either appear in person before the board or submit an
15 affidavit supporting the challenge. The challenging party must prove
16 to the canvassing board by clear and convincing evidence that the
17 challenged voter's registration is improper. If the challenging party
18 fails to meet this burden, the (~~challenged~~) provisional ballot shall
19 be accepted as valid and counted. The canvassing board shall give the
20 challenged voter the opportunity to present testimony, either in person
21 or by affidavit, and evidence to the canvassing board before making
22 their determination. All (~~challenged~~) provisional ballots must be
23 determined no later than the time of canvassing for the particular
24 primary or election. The decision of the canvassing board or other
25 authority charged by law with canvassing the returns shall be final.
26 Challenges of absentee ballots shall be determined according to RCW
27 29A.40.140.

28 **Sec. 13.** RCW 29A.08.830 and 2003 c 111 s 255 are each amended to
29 read as follows:

30 (1) Any registered voter may request that the registration of
31 another voter be canceled if he or she believes that the voter does not
32 meet the requirements of Article VI, section 1 of the state
33 Constitution or that voter no longer maintains a legal voting residence
34 at the address shown on his or her registration record. The challenger
35 shall file with the county auditor a signed affidavit subject to the
36 penalties of perjury, to the effect that to his or her personal
37 knowledge and belief another registered voter does not actually reside

1 at the address as given on his or her registration record or is
2 otherwise not a qualified voter and that the voter in question is not
3 protected by the provisions of Article VI, section 4, of the
4 Constitution of the state of Washington. ((The person filing the
5 challenge must furnish the address at which the challenged voter
6 actually resides.))

7 (2) Any such challenge of a voter's registration and right to vote
8 made less than thirty days before a primary or election, special or
9 general, shall be administered under RCW 29A.08.820. The county
10 auditor shall notify the challenged voter and the precinct election
11 officers in the voter's precinct that a challenge has been filed,
12 provide the name of the challenger, and instruct both the precinct
13 election officers and the voter that, in the event the challenged voter
14 desires to vote at the ensuing primary or election, a ((challenged))
15 provisional ballot will be provided. The voter shall also be informed
16 that the status of his or her registration and the disposition of any
17 ((challenged)) provisional ballot will be determined by the county
18 canvassing board in the manner provided by RCW 29A.08.820. If the
19 challenged voter does not vote at the ensuing primary or election, the
20 challenge shall be processed in the same manner as challenges made more
21 than thirty days prior to the primary or election under RCW 29A.08.840.

22 NEW SECTION. Sec. 14. A new section is added to chapter 29A.36
23 RCW to read as follows:

24 All provisional ballots and related materials, including the inner
25 security envelope and the outer return envelope, must be materially
26 distinguishable from regular ballots, absentee ballots, and their
27 related materials.

28 NEW SECTION. Sec. 15. (1) Provisional or questionable ballots
29 must not be tallied until the validity of the ballot or the voter has
30 been confirmed and, if so, the ballots will be processed in a manner
31 similar to absentee ballots. A provisional ballot is issued to a
32 person seeking to vote in a polling place under the following
33 circumstances:

- 34 (a) The name of the voter does not appear in the poll book and:
 - 35 (i) The voter's registration was canceled but the voter questions
36 the validity of the cancellation;

1 (ii) The status of the voter's registration cannot be determined at
2 that time; or

3 (iii) The voter is registered and assigned to another polling place
4 or jurisdiction;

5 (b) The voter's name is in the poll book but there is an indication
6 that the voter was issued an absentee ballot, and the voter wishes to
7 vote at the polls; or

8 (c) Other circumstances as determined by the precinct election
9 official.

10 (2) The precinct election official shall issue a provisional ballot
11 outer envelope and a security envelope to the voter eligible for a
12 provisional ballot. The voter shall vote the ballot in secrecy and,
13 when done, place the ballot in the security envelope, then place the
14 security envelope with the ballot in it in the provisional ballot outer
15 envelope and return it to the precinct election official. The precinct
16 election official shall ensure that the required information is
17 completed on the outside of the outer envelope and have the voter sign
18 it in the appropriate space, and place it in a secure container
19 designated for provisional ballots only.

20 (3) When the provisional ballot, including provisional ballots from
21 other counties or states, are received in the elections center, the
22 circumstances surrounding the provisional ballot must be investigated
23 before certification of the primary or election. A provisional ballot
24 cannot be tallied if the registered voter did not sign either the poll
25 book or the provisional ballot envelope.

26 (4) When it is determined that the ballot is to be counted, the
27 ballot must be processed in a manner similar to an absentee ballot
28 except the provisional ballot outer envelopes must be retained
29 separately from the absentee ballot return envelopes. The manual
30 inspection of the ballots as required in WAC 434-261-070 or its
31 successor must also be carried out.

32 NEW SECTION. **Sec. 16.** At a minimum, the following information
33 will be required to be printed on the outer provisional ballot
34 envelope:

35 (1) An oath for the voter to sign, as required by the Help America
36 Vote Act, which must be included in substantially the following form:

1 "I affirm that I am a registered voter in the jurisdiction in which
2 I am appearing and in which I wish to vote; and that I am eligible to
3 vote in this election.";

4 (2) Name and signature of voter (must be the same as on the oath);

5 (3) Voter's registered address both present and former, if
6 applicable;

7 (4) Voter's date of birth;

8 (5) Reason for the provisional ballot;

9 (6) Precinct and polling place at which voter has voted;

10 (7) Sufficient space to list disposition of the ballot after review
11 by the county auditor.

12 No provisional ballot may be rejected for lack of the information
13 described in this section as long as the voter provides a valid
14 signature and sufficient information to determine eligibility.

15 NEW SECTION. **Sec. 17.** (1) Upon receipt of the provisional ballot,
16 including provisional ballots from other counties or states, the
17 auditor must investigate the circumstances surrounding the provisional
18 ballot before certification of the primary or election. A provisional
19 ballot cannot be counted if the registered voter did not sign both the
20 poll book and the provisional ballot envelope.

21 (a) If there is no record of the voter ever having been registered,
22 the voter must be offered the opportunity to register, but the
23 provisional ballot for the current election will not be counted.

24 (b) If the voter was previously registered and later canceled and
25 the auditor determines that the cancellation was in error, the voter's
26 registration will be immediately restored and the provisional ballot
27 counted.

28 (c) If the auditor determines that the cancellation was not in
29 error, the voter must be given the opportunity to reregister at the
30 voter's correct address, but the provisional ballot for the current
31 election will not be counted.

32 (2) If the voter is a registered voter but has voted a ballot other
33 than the one that the voter would have received at his or her
34 designated polling place, the auditor must ensure that only those votes
35 for the positions or measures for which the voter was eligible to vote
36 are counted, which may require coordination with other county auditors.

1 (3) If the voter is a registered voter in another county or state,
2 the auditor shall forward the ballot and a corresponding voter guide,
3 or other means by which the ballot can be interpreted including
4 rotation if applicable, within five business days after election day to
5 the supervisor of elections for the county in which the voter resides.
6 If the provisional ballot envelope is not signed by the voter, a copy
7 of the poll book page must be included. If the county is not known, it
8 shall be forwarded to the secretary of state, or counterpart, for the
9 state in which the voter resides.

10 (4) If the auditor finds that an absentee voter who voted a
11 provisional ballot at the polls has also voted an absentee ballot in
12 that primary or election, the provisional ballot will not be counted.

13 (5) The auditor shall prepare a tally displaying the number of
14 provisional ballots received, the number found valid and counted, the
15 number rejected and not counted, and the reason for not counting the
16 ballots, as part of the canvassing process and presented to the
17 canvassing board before the certification of the primary or election.

18 NEW SECTION. **Sec. 18.** When the disposition of the provisional
19 ballot determines that the provisional ballot is to be counted, the
20 provisional ballot must be processed in a manner similar to an absentee
21 ballot as provided in chapters 29A.40 and 29A.60 RCW, except that the
22 outer provisional ballot envelopes must be retained separately from the
23 absentee ballot return envelopes. The manual inspection of the ballots
24 as required in WAC 434-261-070 or its successor must also be carried
25 out.

26 NEW SECTION. **Sec. 19.** The secretary of state shall establish a
27 free access system (such as a toll-free telephone number or an Internet
28 web site) that a person who casts a provisional ballot may access to
29 discover whether the vote of that person was counted, and, if the vote
30 was not counted, the reason why the vote was not counted. The
31 secretary of state shall establish and maintain reasonable procedures
32 necessary to protect the security, confidentiality, and integrity of
33 personal information collected, stored, or otherwise used by the free
34 access system established under this section. Access to information
35 about an individual provisional ballot must be restricted to the person
36 who cast the ballot.

1 **Sec. 20.** RCW 29A.40.050 and 2003 c 111 s 1005 are each amended to
2 read as follows:

3 (1) As provided in this section, county auditors shall provide
4 special ((~~absentee~~)) provisional ballots to be used for state primary
5 or state general elections. An auditor shall provide a special
6 ((~~absentee~~)) provisional ballot only to a registered voter who
7 completes an application stating that she or he will be unable to vote
8 and return ((~~a regular~~)) an absentee ballot by normal mail delivery
9 within the period provided for ((~~regular~~)) absentee ballots.

10 The application for a special ((~~absentee~~)) provisional ballot may
11 not be filed earlier than ninety days before the applicable state
12 primary or general election. The special ((~~absentee~~)) provisional
13 ballot will list the offices and measures, if known, scheduled to
14 appear on the state primary or general election ballot. The voter may
15 use the special ((~~absentee~~)) provisional ballot to write in the name of
16 any eligible candidate for each office and vote on any measure.

17 (2) With any special ((~~absentee~~)) provisional ballot issued under
18 this section, the county auditor shall include a listing of any
19 candidates who have filed before the time of the application for
20 offices that will appear on the ballot at that primary or election and
21 a list of any issues that have been referred to the ballot before the
22 time of the application.

23 (3) Write-in votes on special ((~~absentee~~)) provisional ballots must
24 be counted in the same manner provided by law for the counting of other
25 write-in votes. The county auditor shall process and canvass the
26 special ((~~absentee~~)) provisional ballots provided under this section in
27 the same manner as ((~~other~~)) absentee ballots under ((~~this~~)) chapters
28 29A.40 and ((~~chapter~~)) 29A.60 RCW.

29 (4) A voter who requests a special ((~~absentee~~)) provisional ballot
30 under this section may also request an absentee ballot under RCW
31 29A.40.020(4). If the ((~~regular~~)) absentee ballot is properly voted
32 and returned, the special ((~~absentee~~)) provisional ballot is void, and
33 the county auditor shall reject it in whole when special ((~~absentee~~))
34 provisional ballots are canvassed.

35 NEW SECTION. **Sec. 21.** In addition to the material required by RCW
36 29A.40.091, each county auditor shall include with any special
37 provisional ballot mailed the following information:

- 1 (1) Instructions for voting the ballot;
- 2 (2) Instructions for correcting a spoiled ballot;
- 3 (3) The fact that political party designation should be included
- 4 with all write-ins for partisan office;
- 5 (4) A listing of all offices and measures that will appear upon the
- 6 ballot, together with a listing of all persons who have filed for
- 7 office or who have indicated their intention to file for office;
- 8 (5) A copy of any applicable voters' guide available at that time;
- 9 (6) The fact that the voter may vote for as many or as few offices
- 10 or measures as he or she desires;
- 11 (7) The fact that the voter is entitled to request, and
- 12 subsequently vote a regular absentee ballot, and that if the regular
- 13 absentee is received during the time period provided by law for the
- 14 canvassing of absentee ballots it will be tabulated and the special
- 15 provisional ballot will be voided.

16 NEW SECTION. **Sec. 22.** No special provisional ballot may be
17 provided earlier than ninety days before a primary or election. An
18 application received by a county auditor more than ninety days before
19 a primary or general election may be either returned to the applicant
20 with the explanation that the request is premature or held by the
21 auditor until the appropriate time and then processed.

22 **Sec. 23.** RCW 29A.40.110 and 2003 c 111 s 1011 are each amended to
23 read as follows:

24 (1) The opening and subsequent processing of return envelopes for
25 any primary or election may begin on or after the tenth day before the
26 primary or election. The tabulation of absentee ballots must not
27 commence until after 8:00 p.m. on the day of the primary or election.

28 (2) After opening the return envelopes, the county canvassing board
29 shall place all of the ballots in secure storage until after 8:00 p.m.
30 of the day of the primary or election. Absentee ballots that are to be
31 tabulated on an electronic vote tallying system may be taken from the
32 inner envelopes and all the normal procedural steps may be performed to
33 prepare these ballots for tabulation.

34 (3) Before opening a returned absentee ballot, the canvassing
35 board, or its designated representatives, shall examine the postmark,
36 statement, and signature on the return envelope that contains the

1 security envelope and absentee ballot. They shall verify that the
2 voter's signature on the return envelope is the same as the signature
3 of that voter in the registration files of the county. For registered
4 voters casting absentee ballots, the date on the return envelope to
5 which the voter has attested determines the validity, as to the time of
6 voting for that absentee ballot if the postmark is missing or is
7 illegible. For out-of-state voters, overseas voters, and service
8 voters, the date on the return envelope to which the voter has attested
9 determines the validity as to the time of voting for that absentee
10 ballot. For any absentee ballot, a variation between the signature of
11 the voter on the return envelope and the signature of that voter in the
12 registration files due to the substitution of initials or the use of
13 common nicknames is permitted so long as the surname and handwriting
14 are clearly the same.

15 (4) All absentee ballots that are in the process of being tallied
16 and canvassed must be placed in a secure storage at the end of each
17 day, and daily counts of the number of returned and tallied or
18 canvassed absentee ballots must be made public at the end of each day.

19 (5) After canvassing has commenced, a daily total of net absentee
20 ballots must be made public at the end of each day. This must include
21 the beginning number of absentee ballots, the number received in the
22 mail that day, the number processed that day, the number rejected that
23 day, and the number remaining to be canvassed.

24 **Sec. 24.** RCW 29A.40.140 and 2003 c 111 s 1014 are each amended to
25 read as follows:

26 The qualifications of any absentee voter may be challenged at the
27 time the signature on the return envelope is verified and the ballot is
28 processed by the canvassing board. The board has the authority to
29 determine the legality of any absentee ballot challenged under this
30 section. Challenged ballots must be handled in accordance with chapter
31 ~~((29A.08))~~ 29A.-- RCW (sections 15 through 22 of this act).

32 **Sec. 25.** RCW 29A.44.201 and 2004 c 271 s 136 are each amended to
33 read as follows:

34 (1) A person desiring to vote at a primary or election must show
35 both a picture and signature identification to be compared with the
36 signature on the poll register. If the signature or photo do not

1 match, the person must be given a provisional ballot, with a notation
2 made by the precinct election officer that the person's identification
3 could not be verified.

4 (2) A voter desiring to vote shall give his or her name to the
5 precinct election officer who has the precinct list of registered
6 voters. This officer shall announce the name to the precinct election
7 officer who has the copy of the inspector's poll book for that
8 precinct. If the right of this voter to participate in the primary or
9 election is not challenged, the voter must be issued a ballot or
10 permitted to enter a voting booth or to operate a voting device. For
11 a partisan primary in a jurisdiction using the physically separate
12 ballot format, the voter must be issued a nonpartisan ballot and each
13 party ballot. The number of the ballot or the voter must be recorded
14 by the precinct election officers. If the right of the voter to
15 participate is challenged, RCW 29A.08.810 and 29A.08.820 apply to that
16 voter.

17 (3) Provisional ballots issued under this section must be processed
18 with all other provisional ballots.

19 NEW SECTION. **Sec. 26.** A new section is added to chapter 29A.44
20 RCW to read as follows:

21 Precinct election officers shall actively monitor applicants in
22 possession of provisional ballots to ensure that applicants do not
23 insert provisional ballots directly into vote counting devices.

24 **Sec. 27.** RCW 29A.44.330 and 2003 c 111 s 1131 are each amended to
25 read as follows:

26 The programmed memory pack for each poll-site ballot counting
27 device must be sealed into the device during final preparation and
28 logic and accuracy testing. Except in the case of a device breakdown,
29 the memory pack must remain sealed in the device until after the polls
30 have closed and all reports and telephonic or electronic transfer of
31 results are completed. After all reporting is complete the precinct
32 election officers responsible for transferring the sealed voted ballots
33 under RCW 29A.60.110 shall ensure that the memory pack is returned to
34 the elections department. If the entire poll-site ballot counting
35 device is returned, the memory pack must remain sealed in the device.
36 If the poll-site ballot counting device is to remain at the polling

1 place, the precinct election officer shall break the seal on the device
2 and remove the memory pack and seal and return it along with the
3 irregularly voted ballots and ((~~special~~)) provisional ballots to the
4 elections department on election day.

5 **Sec. 28.** RCW 29A.44.340 and 2003 c 111 s 1132 are each amended to
6 read as follows:

7 Each poll-site ballot counting device must be programmed to return
8 all blank ballots and overvoted ballots to the voter for private
9 reexamination. The election officer shall take whatever steps are
10 necessary to ensure that the secrecy of the ballot is maintained. The
11 precinct election officer shall provide information and instruction on
12 how to properly mark the ballot. The voter may remark the original
13 ballot, may request a new ballot under RCW 29A.44.040, or may choose to
14 complete a ((~~special~~)) provisional ballot envelope and return the
15 ballot as a ((~~special~~)) provisional ballot.

16 NEW SECTION. **Sec. 29.** A new section is added to chapter 29A.60
17 RCW to read as follows:

18 Before a county auditor may make a final certification of election
19 returns, the county auditor shall reconcile by precinct the number of
20 ballots counted from the precinct and the number of voters credited
21 with having cast a counted ballot. The number of ballots counted and
22 the number of voters who cast those ballots will always be equal in a
23 properly administered election. The county auditor shall report by
24 precinct any variance between the number of ballots and the number of
25 voters. If the total number of ballots without voters, or voters
26 without ballots, exceeds the winning margin in an election or primary,
27 the election or primary as to that position is void. No certificate of
28 election may be issued. A revote for that position must be held within
29 sixty days.

30 **Sec. 30.** RCW 29A.60.140 and 2003 c 111 s 1514 are each amended to
31 read as follows:

32 (1) Members of the county canvassing board are the county auditor,
33 who is the chair, the county prosecuting attorney, and the chair of the
34 county legislative body. If a member of the board is not available to
35 carry out the duties of the board, then the auditor may designate a

1 deputy auditor, the prosecutor may designate a deputy prosecuting
2 attorney, and the chair of the county legislative body may designate
3 another member of the county legislative body. Any such designation
4 may be made on an election-by-election basis or may be on a permanent
5 basis until revoked by the designating authority. Any such designation
6 must be in writing, and if for a specific election, must be filed with
7 the county auditor not later than the day before the first day duties
8 are to be undertaken by the canvassing board. If the designation is
9 permanent until revoked by the designating authority, then the
10 designation must be on file in the county auditor's office no later
11 than the day before the first day the designee is to undertake the
12 duties of the canvassing board.

13 (2) The county canvassing board may adopt rules that delegate in
14 writing to the county auditor or the county auditor's staff the
15 performance of any task assigned by law to the canvassing board.

16 (3) The county canvassing board may not delegate the responsibility
17 of certifying the returns of a primary or election, of determining the
18 validity of challenged ballots, or of determining the validity of
19 provisional ballots referred to the board by the county auditor.

20 (4) The county canvassing board shall adopt administrative rules to
21 facilitate and govern the canvassing process in that jurisdiction.

22 (5) Meetings of the county canvassing board are public meetings
23 under chapter 42.30 RCW. All rules adopted by the county canvassing
24 board must be adopted in a public meeting under chapter 42.30 RCW, and
25 once adopted must be available to the public to review and copy under
26 chapter 42.17 RCW.

27 (6) Delegation of county canvassing board duties, including ballot
28 handling, ballot processing, enhancing ballots, or duplicating ballots
29 are public meetings under chapter 42.30 RCW.

30 **Sec. 31.** RCW 29A.60.210 and 2003 c 111 s 1521 are each amended to
31 read as follows:

32 Whenever the canvassing board finds that there is an apparent
33 discrepancy or an inconsistency in the returns of a primary or
34 election, the board may recanvass the ballots or voting devices in any
35 precincts of the county. The canvassing board shall conduct any
36 necessary recanvass activity on or before the last day to certify the
37 primary or election and correct any error and document the correction

1 of any error that it finds. The canvassing board shall not recanvass
2 the returns of a primary or general election for any reason during a
3 recount.

4 NEW SECTION. Sec. 32. A new section is added to chapter 29A.64
5 RCW to read as follows:

6 The county canvassing board shall not recanvass the returns of a
7 primary or general election for any reason during a recount.

8 **Sec. 33.** RCW 29A.84.720 and 2003 c 111 s 2138 are each amended to
9 read as follows:

10 Every (~~person~~) elections officer, precinct election official, and
11 poll site employee, whether temporary, permanent, or volunteer, charged
12 with the performance of any duty under the provisions of any law of
13 this state relating to elections, including primaries, or the
14 provisions of any charter or ordinance of any city or town of this
15 state relating to elections who willfully neglects or refuses to
16 perform such duty, or who, in the performance of such duty, or in his
17 or her official capacity, knowingly or fraudulently violates any of the
18 provisions of law relating to such duty, is guilty of a class C felony
19 punishable under RCW 9A.20.021 and shall forfeit his or her office.
20 The county prosecuting attorney shall vigorously enforce violations
21 under this section.

22 NEW SECTION. Sec. 34. (1) Sections 15 through 19, 21, and 22 of
23 this act constitute a new chapter in Title 29A RCW, to be captioned
24 "Provisional ballots."

25 (2) RCW 29A.40.050, as amended by section 20 of this act, is
26 recodified as a section in the new chapter created in subsection (1) of
27 this section.

28 NEW SECTION. Sec. 35. (1) Section 5 of this act is necessary for
29 the immediate preservation of the public peace, health, or safety, or
30 support of the state government and its existing public institutions,
31 and takes effect June 30, 2005.

32 (2) Sections 8 and 10 of this act take effect January 1, 2006.

1 NEW SECTION. **Sec. 36.** (1) Sections 7 and 9 of this act expire
2 January 1, 2006.
3 (2) Sections 1 and 2 of this act expire December 31, 2006."

SSB 5499 - S AMD 79
By Senator Roach

PULLED 03/08/2005

4 In line 1 of the title, after "reform;" strike the remainder of the
5 title and insert "amending RCW 29A.04.008, 29A.04.570, 29A.08.510,
6 29A.08.510, 29A.08.605, 29A.08.605, 29A.08.625, 29A.08.820, 29A.08.830,
7 29A.40.050, 29A.40.110, 29A.40.140, 29A.44.201, 29A.44.330, 29A.44.340,
8 29A.60.140, 29A.60.210, and 29A.84.720; adding new sections to chapter
9 29A.08 RCW; adding a new section to chapter 29A.36 RCW; adding a new
10 section to chapter 29A.44 RCW; adding a new section to chapter 29A.60
11 RCW; adding a new section to chapter 29A.64 RCW; adding a new chapter
12 to Title 29A RCW; creating new sections; recodifying RCW 29A.40.050;
13 prescribing penalties; providing effective dates; providing expiration
14 dates; and declaring an emergency."

--- END ---