

# FINAL BILL REPORT

## ESSB 5499

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### PARTIAL VETO

#### C 243 L 05

Synopsis as Enacted

**Brief Description:** Clarifying and standardizing various election procedures.

**Sponsors:** Senate Committee on Government Operations & Elections (originally sponsored by Senators Kastama, Berkey, Fairley, Pridemore, Franklin, Haugen, Shin, Kohl-Welles, Doumit, Rasmussen and Keiser).

**Senate Committee on Government Operations & Elections**

**House Committee on State Government Operations & Accountability**

**House Committee on Appropriations**

**Background:** Generally, county auditors are responsible for conducting elections. The county auditors, as the supervisors of elections, are charged with providing places for holding elections, and providing supplies and materials necessary for the conduct of elections. The Secretary of State is the chief election officer for all federal, state, and local elections. The Secretary is responsible for certifying voting equipment, administering state primaries and general elections, training and certification of state and local elections personnel, filing initiative and referendum petitions, and keeping records of elections as required by law. State law provides a framework in which the county auditors and the Secretary of State must conduct elections. The Secretary also has been given the authority to implement the laws of the state through the rule making process.

The 2004 gubernatorial election was the closest statewide election in Washington State history. After two recounts and two court battles in front of the state supreme court, Governor Gregoire was certified the winner by the Secretary of State. The margin of victory was 129 votes out of over 2.8 million votes cast. An election contest was filed in superior court and is pending as of February 17. Due to the closeness of the race and the related litigation, much attention has been focused on state election laws.

**Summary:** The bill creates and/or amends a number of election statutes as follows:

Training. The secretary of state is to establish guidelines, in consultation with certified document examiners and state and local law enforcement, for signature verification processes. All election personnel assigned to verify signatures on absentee or provisional ballots must receive training on the guidelines.

Provisional and absentee ballots. Opening and processing of absentee return envelopes may begin upon receipt. All received absentee return envelopes must be placed in secure locations from delivery until their subsequent opening. Counties with a population greater than 75,000 must process absentee ballots and canvass the votes cast on a daily basis.

The absentee voter's name and address must be printed on absentee return envelopes. Return envelopes must have space where a voter may include his or her telephone number and a secrecy flap that will cover the voter's signature, return address, and optional phone number. The declaration on the return envelope must inform the voter that it is illegal to vote if the voter is not a citizen; it is illegal to vote if the voter has been convicted of a felony and has not had his or her voting rights restored; and except as otherwise provided by law, it is illegal to cast a ballot or sign an absentee envelope on behalf of another voter.

Provisional ballots must be issued to appropriate voters as required by law or for other circumstances as determined by the precinct election board. The ballot envelope must include information the county auditor can investigate to determine the validity of the ballot.

Provisional and absentee ballots must be visually distinguishable from other ballots and be either printed on colored paper or imprinted with a bar code that identifies the ballot as a provisional or absentee ballot. Provisional and absentee ballots must be incapable of tabulation at the poll site.

If the voter neglected to sign the affidavit on the outer envelope, or if the signature on the absentee or provisional ballot doesn't match the signature on the original registration record, the county auditor must telephone the voter to advise of the procedure to correct an unsigned absentee or provisional ballot envelope or to correct a mismatched signature. If the voter cannot be reached by phone, he or she must be contacted by first class mail. A voice mail message is not considered personal contact. Any signature problems must be fixed no later than the day before certification. A voter may not cure a missing or mismatched signature in a recount.

A record must be kept of all mismatched and unsigned ballots, and this record is a public record and may be disclosed upon written request.

If the signature doesn't match because the name is different, the ballot can be counted as long as the handwriting is clearly the same. If the signature doesn't match because the voter used initials or a common nickname, the ballot may be counted as long as the surname and handwriting are clearly the same.

The county auditor must examine and investigate all provisional ballots before certification. The auditor must provide the disposition of the provisional ballot on a free access system.

Voter identification at the polling location. Any person wanting to vote in person must provide identification. If the person cannot provide identification, they must vote a provisional ballot. The identification requirement can be satisfied by providing a valid photo identification, such as a driver's license or state identification card, student identification card, or tribal identification card, a voter's voter identification issued by a county elections officer, or a copy of a current utility bill, bank statement, paycheck, or government check or other government document.

The secretary of state may adopt rules to implement the identification requirement.

Reconciliation provisions. The county auditor must prepare a report and make it available at the time of certification that discloses the number of registered voters; the number of ballots counted; the number of provisional and absentee ballots issued, counted, and rejected; the

number of federal write-in ballots; and the number of out-of-state, overseas, and service ballots issued, counted, and rejected. Within 30 days of certification, the county auditor must prepare a final report that discloses the numbers of different types of voters that were credited with voting and any other information deemed necessary to reconcile the number of votes counted with the number of voters credited with voting.

Ballot duplication. A voter's original ballot may not be altered. If a ballot is damaged or otherwise unreadable, the county auditor may refer the ballot to the canvassing board or duplicate the ballot if so authorized by the canvassing board. A ballot may only be duplicated if voter intent is clear. Duplication must be done by two or more people working together and an audit trail must be created for each duplicated ballot.

Re-canvass and rejection of ballots. The canvassing board can re-canvass ballots during the initial counting process or during any subsequent recount if the board finds that election staff has made an error regarding the treatment or disposition of a ballot.

A ballot is not considered rejected until the canvassing board has rejected the ballot individually, or the ballot was included in a batch or on a report of ballots that was rejected in its entirety by the canvassing board.

Recount provisions. With regards to recounts, the canvassing board determines the date at which the recount will be conducted and the secretary may require that the amended abstracts be certified by each canvassing board on a uniform date.

The vote difference necessary to trigger an automatic recount is changed for statewide elections from 150 votes to 1,000 votes. (Existing law also requires that the difference be less than one quarter of one percent of all votes cast, and this remains unchanged).

Certification. The deadline for canvassing boards to complete the canvass and certify the results of a general election is changed from 15 days to 21 days. After the Secretary receives election returns from all counties, the Secretary must canvass and certify the returns of the election as to candidates for state offices, federal offices, and all other candidates whose districts extend into multiple counties. The Secretary must transmit a copy of the certification to the Governor and legislature.

Election contests. An affidavit alleging that an error or omission has occurred or is about to occur in the issuance of a certificate of election must be filed in court no later than 10 days following official certification, or in the case of a recount, no later than 10 days after official certification of the amended abstract. (Existing law requires such an affidavit to be filed no later than 10 days following the issuance of a certificate of election).

Write-in provisions. A write-in vote for a candidate who also appears on the ballot is a valid vote as long as the candidate's name is clearly discernible, even if the voter also marked the ballot next to the candidate's name such that an over vote was registered. The write-in votes need not be tabulated unless the difference between the number of votes cast for the apparent winner and non-winner is less than the sum of the total number of write-in votes cast plus over and under votes; or a manual recount is conducted for that office.

Transmittal of cumulative returns. Cumulative returns produced by the county auditors for state, judicial, and federal offices must be immediately transmitted by electronic means to the Secretary.

Criminal and civil infraction provisions. The bill creates the crime of destroying, altering, defacing, or discarding a completed voter registration form or signature affidavit. The crime is a gross misdemeanor. It is not a criminal act if the voter who completed the form or the county auditor or authorized registration assistant destroys the voter registration form.

The statute criminalizing double voting is clarified, and the penalty is increased, such that any person who intentionally or knowingly votes or attempts to vote in this state more than once at the same election is guilty of a class C felony. A person who votes or attempts to vote in both this state and another state at any election is also guilty of a class C felony.

Any person who negligently votes or attempts to vote more than once has committed a class 1 civil infraction.

Study provisions. The Secretary of State must study the feasibility of requiring that the top two vote-getters for judicial and superintendent of public instruction races appear on the general election ballot, regardless of whether the top vote-getter receives a majority of the vote.

**Votes on Final Passage:**

Senate	26	21	
House	56	39	(House amended)
Senate			(Senate refused to concur)

Conference Committee

House	97	1
Senate	30	19

**Effective:** July 24, 2005

**Partial Veto Summary:** The section imposing additional requirements for absentee return envelopes is removed. The same absentee envelope requirements appear in another bill (ESSB 5743) that was passed by the legislature and signed by the governor.