

SENATE BILL REPORT

ESSB 5499

As Passed Senate, March 11, 2005

Title: An act relating to election reform.

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).

Brief History:

Committee Activity: Government Operations & Elections: 1/27/05, 2/17/05 [DPS, DNP].
Passed Senate: 3/11/05, 26-21.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 5499 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kastama, Chair; Berkey, Vice Chair; Fairley, Haugen, Kline and Pridemore.

Minority Report: Do not pass.

Signed by Senators Roach, Ranking Minority Member; and Mulliken.

Staff: Mac Nicholson (786-7445)

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 of Bill: 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 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.

Election reviews. Election reviews must be done in each county at least once every three years. If staffing or budget levels do not permit a three year election review cycle, reviews must be done as often as possible. The county auditor or canvassing board is responsible for review follow up and must respond in writing listing the steps that will be taken to correct any problems. The Secretary must visit the county before the next state election to verify the county has taken appropriate steps to correct any problems identified in the review.

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.

The absentee voter's name and address printed absentee return envelopes. The return envelope must also have a secrecy flap that will cover the voter's signature and return address. 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.

A member of the armed forces stationed outside the country who receives an absentee ballot on or after the date of the election, in order to have the ballot counted, must attach an affidavit signed by the person and his or her commanding officer stating the date on which the ballot was received. Ballots received from such voters at any time whether before or after certification of the election until any and all recounts have concluded must be counted.

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 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 ballot. The Secretary must make standards, through the rule making process, that require provisional ballots to be distinguishable from other ballots and incapable of tabulation at the poll site.

If the signature on the absentee or provisional ballot doesn't match the signature on the original registration record, the county auditor must notify the voter within three days by telephone or in writing that the ballot cannot be processed. The county auditor must also advise the voter that in order for the ballot to be processed, the voter must update his or her signature by filling out a new voter registration and mailing it back to the county auditor so that it arrives no later than the day before certification, or appear in person at the auditor's office no later than the day before certification and update his or her signature. If the voter neglected to sign the affidavit on the outer envelope, the auditor must also notify the voter within three days and mail a copy of the unsigned affidavit to the voter or require the voter to appear in person and sign the affidavit. The unsigned affidavit must be signed and returned to the auditor's office no later than the day prior to certification. A voter may not cure a missing or mismatched signature in a recount.

A record must be kept of all ballots with mismatched signatures, and this record becomes a public record once the election has been certified by the county canvassing board.

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 registration records. County election officials must randomly investigate the record of all registered voters within the county contained on the official statewide voter registration list to make corrections regarding persons who have died or whose residence differs from that on the official statewide voter list.

Candidate filing. The candidate filing period is changed from the fourth week in July to the fourth week in June.

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 is satisfied by a voter registration card, or any current and valid government-issued photo identification.

Reconciliation provisions. No later than thirty days after the final certification, the county auditor must prepare and make publicly available an election reconciliation report that discloses, at a minimum, the number of ballots counted; the number of voters credited with voting; the number of provisional and absentee ballots issued, counted, or rejected; the number of federal write-in ballots counted; and the number of ballots sent to overseas voters and the number of such ballots counted. The report may include any other information the county auditor determines to be necessary to the process of reconciling the number of votes counted with the number of voters credited with voting.

A voter casting an absentee ballot is credited with voting only if the ballot was counted. (Existing law gives voters credit for casting an absentee ballot regardless of whether that ballot was counted.).

Ballot duplication. 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 20 days. The Secretary is authorized to adopt rules to exclude Thanksgiving and the day after from the 20 day period. 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 class C felony. 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 more than once at the same election is guilty of a class C felony. A person registered in another state and who intentionally or knowingly votes or attempts to vote in this state is also guilty of a class C felony.

Any person who recklessly or negligently votes or attempts to vote more than once, or who is registered in another state and who recklessly or negligently votes or attempts to vote in Washington has committed a class 1 civil infraction. (Existing law provides a maximum fine of \$250 per infraction). The county prosecuting attorney is authorized to enforce such civil infractions.

Motor-Voter registration: Licensing agents must ask and confirm whether the applicant is a United States citizen, and whether the applicant is at least 18 years of age. (Current law requires the licensing agent to state that the applicant must be a citizen and at least 18 in order

to vote). If the applicant answers in the negative to either question, the agent shall not provide the applicant with a voter registration form.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill makes a number of good election law changes, but some sections do cause concern. Formal election reviews will help identify and resolve election problems, but funding needs to be provided so the Secretary of State can conduct them. Withholding state and federal funding is not the appropriate way to ensure corrective action regarding review findings, as many election problems are funding related in the first place. A uniform ballot and voting system would provide consistency throughout the state, however, a uniform ballot and voting system is not realistic and would likely have to come from the same vendor, which would eliminate competition and may increase costs. Reimbursing counties for costs associated with recounts of statewide races is good for the counties. It might be difficult to contact every voter whose ballot has signature problems within three days, especially towards the end of the counting process. Taking a snapshot 10 days before the election would not help in the reconciliation process, as voting databases are updated up until the day of the election, and some voters, like those in the address confidentiality program, are not listed in the voter database. The bill provides no standards to determine voter intent in the duplication process.

Testimony Against: None.

Who Testified: PRO: Katie Blinn, Shane Hamlin, Office of Secretary of State; Pat McCarthy, Pierce County Auditor; Bob Terwilliger, Snohomish County Auditor; Ruth Bennet, Libertarian.

House Amendment(s): The requirement that the Secretary of State conduct formal election audits of every county at least once every three years is removed.

In establishing guidelines for signature verification processes, the Secretary of State may consult with certified document examiners.

The provision allowing a member of the armed forces stationed outside the country, who receives a ballot on or after the date of the election, to vote with that ballot and have it counted at any time whether before or after certification of the election until all recounts have been concluded is removed.

Provisional, mail, and absentee ballots must be visually distinguishable from each other and must be imprinted with a bar code that identifies the ballot as a provisional, mail, or absentee ballot. Provisional, mail, and absentee ballots must be incapable of tabulation at the poll-site.

Return envelopes must have space where a voter may include his or her telephone number.

The county auditor is required to telephone the voter to advise of the procedure to correct an unsigned absentee or provisional ballot envelope or to correct an 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. 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.

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.

The provision requiring county election officials to randomly investigate the record of all registered voters in the county is removed.

The provision changing the candidate filing period from the fourth week in July to the fourth week in June is removed.

The identification required of voters at the poll can be satisfied by providing an original or copy of a current and valid photo identification, utility bill, bank statement, government check, paycheck, student or tribal identification card, or other government document that shows the name and address of the voter. The address is not required to match the voter's voter identification card. The identification requirement can also be satisfied by providing a verbal or written statement of the voter's name, year of birth, and unique identifier as determined by the Secretary of State. If the voter does not have identification and does not know his or her unique identifier, the voter must vote with a provisional ballot.

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 for reconciliation. The House amendment removes the provision that credits a voter casting an absentee ballot with voting only if the ballot was counted.

The deadline for certification of the general election is changed from 15 days to 21 days.

The penalty for destroying completed voter registration forms or signed signature affidavits is changed to a gross misdemeanor. The language regarding double voting is amended, such that a person who intentionally votes or attempts to vote in this state more than once, or votes or attempts to vote in both this state and another state at any election is guilty of a class C felony.

The provisions requiring licensing agents to ask and confirm whether the applicant is a United States citizen and whether the applicant is at least 18 years of age, rather than stating that the applicant must be a citizen and at least 18 years of age, prior to providing a voter registration form is removed.

Counties with a population greater than 75,000 must process absentee ballots on a daily basis.

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.

The House amendment adds an effective date of January 1, 2006.

Passed House: 56-39.