
SENATE BILL 5526

State of Washington

59th Legislature

2005 Regular Session

By Senators Oke, Stevens, Roach and Johnson

Read first time 01/27/2005. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to provisional ballots; amending RCW 29A.04.008,
2 29A.08.625, 29A.08.820, 29A.08.830, 29A.40.050, 29A.40.140, 29A.44.330,
3 and 29A.44.340; adding a new chapter to Title 29A RCW; and recodifying
4 RCW 29A.40.050.

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

6 **Sec. 1.** RCW 29A.04.008 and 2004 c 271 s 102 are each amended to
7 read as follows:

8 As used in this title:

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

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

13 (b) A facsimile of the contents of a particular ballot whether
14 printed on a paper ballot or ballot card or as part of a voting machine
15 or voting device;

16 (c) A physical or electronic record of the choices of an individual
17 voter in a particular primary, general election, or special election;
18 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. 2.** 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
36 chapter and who offers to vote at an ensuing election before two

1 federal elections have been held must be allowed to vote a regular
2 ballot and the voter's registration restored to active status.

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

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

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

21 **Sec. 3.** RCW 29A.08.820 and 2003 c 111 s 254 are each amended to
22 read as follows:

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

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

27 **Sec. 4.** RCW 29A.08.830 and 2003 c 111 s 255 are each amended to
28 read as follows:

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

1 otherwise not a qualified voter and that the voter in question is not
2 protected by the provisions of Article VI, section 4, of the
3 Constitution of the state of Washington. The person filing the
4 challenge must furnish the address at which the challenged voter
5 actually resides.

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

21 NEW SECTION. Sec. 5. (1) Provisional or questionable ballots must
22 not be tallied until the validity of the ballot or the voter has been
23 confirmed and, if so, the ballots will be processed in similar manner
24 to absentee ballots. A provisional ballot is issued to a person
25 seeking to vote in a polling place under the following circumstances:

- 26 (a) The name of the voter does not appear in the poll book and:
 - 27 (i) The voter's registration was canceled but the voter questions
 - 28 the validity of the cancellation;
 - 29 (ii) The status of the voter's registration cannot be determined at
 - 30 that time; or
 - 31 (iii) The voter is registered and assigned to another polling place
 - 32 or jurisdiction;
- 33 (b) The voter's name is in the poll book but there is an indication
- 34 that the voter was issued an absentee ballot, and the voter wishes to
- 35 vote at the polls; or
- 36 (c) Other circumstances as determined by the precinct election
- 37 official.

1 (2) The precinct election official shall issue a provisional ballot
2 outer envelope and a security envelope to the voter eligible for a
3 provisional ballot. The voter shall vote the ballot in secrecy and,
4 when done, place the ballot in the security envelope, then place the
5 security envelope with the ballot in it in the provisional ballot outer
6 envelope and return it to the precinct election official. The precinct
7 election official shall ensure that the required information is
8 completed on the outside of the outer envelope and have the voter sign
9 it in the appropriate space, and place it in a secure container
10 designated for provisional ballots only.

11 (3) When the provisional ballot, including provisional ballots from
12 other counties or states, are received in the elections center, the
13 circumstances surrounding the provisional ballot must be investigated
14 before certification of the primary or election. A provisional ballot
15 cannot be tallied if the registered voter did not sign either the poll
16 book or the provisional ballot envelope.

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

23 NEW SECTION. **Sec. 6.** At a minimum, the following information will
24 be required to be printed on the outer provisional ballot envelope:

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

27 "I affirm that I am a registered voter in the jurisdiction in which
28 I am appearing and in which I wish to vote; and that I am eligible to
29 vote in this election.";

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

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

33 (4) Voter's date of birth;

34 (5) Reason for the provisional ballot;

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

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

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

4 NEW SECTION. **Sec. 7.** (1) Upon receipt of the provisional ballot,
5 including provisional ballots from other counties or states, the
6 auditor must investigate the circumstances surrounding the provisional
7 ballot before certification of the primary or election. A provisional
8 ballot cannot be counted if the registered voter did not sign either
9 the poll book or the provisional ballot envelope.

10 (a) If there is no record of the voter ever having been registered,
11 the voter must be offered the opportunity to register and the
12 provisional ballot for the current election will not be counted.

13 (b) If the voter was previously registered and later canceled and
14 the auditor determines that the cancellation was in error, the voter's
15 registration will be immediately restored and the provisional ballot
16 counted.

17 (c) If the auditor determines that the cancellation was not in
18 error, the voter must be given the opportunity to reregister at the
19 voter's correct address, and the provisional ballot for the current
20 election will not be counted.

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

26 (3) If the voter is a registered voter in another county or state,
27 the auditor shall forward the ballot and a corresponding voter guide,
28 or other means by which the ballot can be interpreted including
29 rotation if applicable, within five business days after election day to
30 the supervisor of elections for the county for which the voter is
31 resident. If the provisional ballot envelope is not signed by the
32 voter, a copy of the poll book page must be included. If the county is
33 not known, it shall be forwarded to the secretary of state, or
34 counterpart, for the state in which the voter is resident.

35 (4) If the auditor finds that an absentee voter who voted a

1 provisional ballot at the polls has also voted an absentee ballot in
2 that primary or election, the provisional ballot will not be counted.

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

8 NEW SECTION. **Sec. 8.** When the disposition of the provisional
9 ballot determines that the provisional ballot is to be counted, the
10 provisional ballot shall be processed in a manner similar to an
11 absentee ballot as provided in chapters 29A.40 and 29A.60 RCW except
12 the outer provisional ballot envelopes must be retained separately from
13 the absentee ballot return envelopes. The manual inspection of the
14 ballots as required in WAC 434-261-070 or its successor must also be
15 carried out.

16 NEW SECTION. **Sec. 9.** The secretary of state shall establish a
17 free access system (such as a toll-free telephone number or an Internet
18 web site) that any individual who casts a provisional ballot may access
19 to discover whether the vote of that individual was counted, and, if
20 the vote was not counted, the reason why the vote was not counted. The
21 secretary of state shall establish and maintain reasonable procedures
22 necessary to protect the security, confidentiality, and integrity of
23 personal information collected, stored, or otherwise used by the free
24 access system established under this section. Access to information
25 about an individual provisional ballot must be restricted to the
26 individual who cast the ballot.

27 **Sec. 10.** RCW 29A.40.050 and 2003 c 111 s 1005 are each amended to
28 read as follows:

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

1 The application for a special ((~~absentee~~)) provisional ballot may
2 not be filed earlier than ninety days before the applicable state
3 primary or general election. The special ((~~absentee~~)) provisional
4 ballot will list the offices and measures, if known, scheduled to
5 appear on the state primary or general election ballot. The voter may
6 use the special ((~~absentee~~)) provisional ballot to write in the name of
7 any eligible candidate for each office and vote on any measure.

8 (2) With any special ((~~absentee~~)) provisional ballot issued under
9 this section, the county auditor shall include a listing of any
10 candidates who have filed before the time of the application for
11 offices that will appear on the ballot at that primary or election and
12 a list of any issues that have been referred to the ballot before the
13 time of the application.

14 (3) Write-in votes on special ((~~absentee~~)) provisional ballots must
15 be counted in the same manner provided by law for the counting of other
16 write-in votes. The county auditor shall process and canvass the
17 special ((~~absentee~~)) provisional ballots provided under this section in
18 the same manner as ((~~other~~)) absentee ballots under ((~~this~~)) chapters
19 29A.40 and ((~~chapter~~)) 29A.60 RCW.

20 (4) A voter who requests a special ((~~absentee~~)) provisional ballot
21 under this section may also request an absentee ballot under RCW
22 29A.40.020(4). If the ((~~regular~~)) absentee ballot is properly voted
23 and returned, the special ((~~absentee~~)) provisional ballot is void, and
24 the county auditor shall reject it in whole when special ((~~absentee~~))
25 provisional ballots are canvassed.

26 NEW SECTION. Sec. 11. In addition to the material required by RCW
27 29A.40.091, each county auditor shall include with any special
28 provisional ballot mailed the following information:

29 (1) Instructions for voting the ballot;

30 (2) Instructions for correcting a spoiled ballot;

31 (3) The fact that political party designation should be included
32 with all write-ins for partisan office;

33 (4) A listing of all offices and measures that will appear upon the
34 ballot, together with a listing of all persons who have filed for
35 office or who have indicated their intention to file for office;

36 (5) A copy of any applicable voters' guide available at that time;

1 (6) The fact that the voter may vote for as many or as few offices
2 or measures as he or she desires;

3 (7) The fact that the voter is entitled to request, and
4 subsequently vote a regular absentee ballot, and that if the regular
5 absentee is received during the time period provided by law for the
6 canvassing of absentee ballots it will be tabulated and the special
7 provisional ballot will be voided.

8 NEW SECTION. **Sec. 12.** No special provisional ballot may be
9 provided earlier than ninety days before a primary or election. An
10 application received by a county auditor more than ninety days before
11 a primary or general election may be either returned to the applicant
12 with the explanation that the request is premature or may be held by
13 the auditor until the appropriate time and then processed.

14 **Sec. 13.** RCW 29A.40.140 and 2003 c 111 s 1014 are each amended to
15 read as follows:

16 The qualifications of any absentee voter may be challenged at the
17 time the signature on the return envelope is verified and the ballot is
18 processed by the canvassing board. The board has the authority to
19 determine the legality of any absentee ballot challenged under this
20 section. Challenged ballots must be handled in accordance with chapter
21 (~~29A.08~~) . . . RCW (sections 5 through 12 of this act).

22 **Sec. 14.** RCW 29A.44.330 and 2003 c 111 s 1131 are each amended to
23 read as follows:

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

1 and remove the memory pack and seal and return it along with the
2 irregularly voted ballots and (~~special~~) provisional ballots to the
3 elections department on election day.

4 **Sec. 15.** RCW 29A.44.340 and 2003 c 111 s 1132 are each amended to
5 read as follows:

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

15 NEW SECTION. **Sec. 16.** (1) Sections 5 through 9, 11, and 12 of
16 this act constitute a new chapter in Title 29A RCW, to be captioned
17 "Provisional ballots."

18 (2) RCW 29A.40.050, as amended by section 10 of this act, is
19 recodified as a section in the new chapter created in subsection (1) of
20 this section.

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