
SENATE BILL 6075

State of Washington

59th Legislature

2005 Regular Session

By Senators Roach, Mulliken, Swecker, Hewitt, Carrell, Parlette, Pflug, Johnson, Benson, Honeyford, Morton, Finkbeiner, Stevens and McCaslin

Read first time 03/03/2005. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to election reform; amending RCW 29A.04.008,
2 29A.04.570, 29A.08.510, 29A.08.510, 29A.08.605, 29A.08.605, 29A.08.625,
3 29A.08.820, 29A.08.830, 29A.40.050, 29A.40.110, 29A.40.140, 29A.44.201,
4 29A.44.330, 29A.44.340, 29A.60.140, 29A.60.210, and 29A.84.720; adding
5 new sections to chapter 29A.08 RCW; adding a new section to chapter
6 29A.36 RCW; adding a new section to chapter 29A.44 RCW; adding a new
7 section to chapter 29A.60 RCW; adding a new section to chapter 29A.64
8 RCW; adding a new chapter to Title 29A RCW; creating new sections;
9 recodifying RCW 29A.40.050; prescribing penalties; providing effective
10 dates; providing expiration dates; and declaring an emergency.

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

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

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

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

18 (2) Senate committee services and the house of representatives
19 office of program research shall provide staff support as mutually

1 agreed by the cochairs of the joint select committee. The president of
2 the senate and the speaker of the house shall designate the cochairs,
3 who must be from different political parties.

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

6 (4) The committee shall seek advice from the secretary of state,
7 business and community representatives, and others during its
8 deliberations.

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

11 NEW SECTION. **Sec. 2.** The joint select committee on election
12 reform shall:

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

15 (2) Investigate whether the secretary of state and county auditors
16 implemented chapter 111, Laws of 2003, which became effective July 1,
17 2004, and if the secretary of state and county auditors did not make
18 such implementation, investigate the reasons why it did not occur;

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

22 (4) Investigate whether WAC 434-262-050 complies with RCW
23 29A.60.210, and if it does not comply, investigate the reasons why the
24 secretary of state did not amend WAC 434-262-050 to comply with RCW
25 29A.60.210;

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

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

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

36 (8) Investigate whether WAC 434-208-100 is in compliance with RCW

1 29A.04.151, 29A.08.230, and 29A.08.110, and if it is not, investigate
2 whether WAC 434-208-100 is in compliance with any statute in the
3 Revised Code of Washington;

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

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

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

19 (12) Investigate whether county auditors treated provisional
20 ballots in accordance with RCW 29A.08.625, and specifically, review and
21 compare the approval rate of provisional ballots in each county, and
22 determine whether inactive voters who cast provisional ballots had
23 their provisional ballots counted in situations where their
24 registration was not an error;

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

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

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

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

37 (17) Investigate whether county election software was tested

1 against federal election standards before the 2004 general election,
2 and formulate model statutes requiring the testing of software against
3 federal standards before each general election;

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

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

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

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

20 (c) Whether and how the secretary of state will review each
21 applicant registering to vote to ensure that driver's license numbers
22 or Social Security numbers match information provided by the department
23 of licensing or Social Security Administration, and whether and how the
24 secretary of state will correspond with the voter to resolve a
25 discrepancy if a match does not exist;

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

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

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

37 (21) Clarify whether a canvassing board that rejects an absentee
38 ballot because the signature on the envelope does not match the

1 signature on file constitutes disenfranchisement, determine what
2 indicia of fraud must be evident to forward the case to the county
3 prosecutor for prosecution as election fraud, and determine which
4 counties currently contact voters whose mismatched signatures have
5 rendered their votes void; and

6 (22) Report its findings to the legislature no later than December
7 31, 2006.

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

10 As used in this title:

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (7) "Nonpartisan ballot" means a primary election ballot that lists
14 all nonpartisan races and ballot measures to be voted on at that
15 primary.

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

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

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

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

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

31 (b) In addition to conducting reviews under (a) of this subsection,
32 the (~~election review staff~~) state auditor shall also conduct such a
33 review in a county (~~periodically~~) at least once in each four-year
34 period, in conjunction with a county primary or special or general
35 election(~~, at the direction of the secretary of state or at the~~
36 ~~request of the county auditor~~). If staffing or budget levels do not
37 permit a four-year election cycle for reviews, then reviews must be

1 done as often as possible. If any resident of this state believes that
2 an aspect of a primary or election has been conducted inappropriately
3 in a county, the resident may file a complaint with the (~~secretary~~
4 ~~of~~) state auditor. The (~~secretary~~) auditor shall consider such
5 complaints in scheduling periodic reviews under this section.

6 (c) Before an election review is conducted in a county, the
7 (~~secretary of~~) state auditor shall provide the county auditor of the
8 affected county and the chair of the state central committee of each
9 major political party with notice that the review is to be conducted.
10 When a periodic review is to be conducted in a county (~~at the~~
11 ~~direction of the secretary of state~~) under (b) of this subsection, the
12 (~~secretary~~) state auditor shall provide the affected county auditor
13 not less than thirty days' notice.

14 (2) Reviews shall be conducted in conformance with rules adopted
15 (~~under RCW 29A.04.630~~) by the state auditor. In performing a review
16 in a county under this chapter, the (~~election review staff~~) state
17 auditor shall evaluate the policies and procedures established for
18 conducting the primary or election in the county and the practices of
19 those conducting it. As part of the review, the (~~election review~~
20 ~~staff~~) state auditor shall issue to the county auditor and the members
21 of the county canvassing board a report of its findings and
22 recommendations regarding such policies, procedures, and practices. A
23 review conducted under this chapter shall not include any evaluation,
24 finding, or recommendation regarding the validity of the outcome of a
25 primary or election or the validity of any canvass of returns nor does
26 the (~~election review staff~~) state auditor have any jurisdiction to
27 make such an evaluation, finding, or recommendation under this title.

28 (3) The county auditor or the county canvassing board shall respond
29 to the review report in writing, listing the steps that will be taken
30 to correct any problems listed in the report. The state auditor shall
31 visit the county before the next state primary or general election to
32 verify that the county has taken the steps they listed to correct the
33 problems noted in the report.

34 (4) The county auditor of the county in which a review is conducted
35 under this section or a member of the canvassing board of the county
36 may appeal the findings or recommendations of the (~~election review~~
37 ~~staff~~) state auditor regarding the review by filing an appeal with the
38 board created under RCW 29A.04.510.

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

3 (1) The registration of voters who registered to vote before July
4 1, 2005, is canceled effective July 1, 2007, and those persons must
5 reregister in order to vote at an election held after that date. The
6 registration of a person who first registers to vote or reregisters
7 after June 30, 2005, continues to be valid after July 1, 2007, unless
8 canceled or inactivated as otherwise provided by law.

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

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

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

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

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

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

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

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

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

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

28 (2) Findings and Declaration. The legislature finds that illegal
29 immigration is causing economic hardship to this state, and that
30 illegal immigration is encouraged by public agencies within this state
31 that provide public benefits without verifying immigration status. The
32 legislature further finds that illegal immigrants have been given a
33 safe haven in this state with the aid of identification cards that are
34 issued without verifying immigration status, and that this conduct
35 contradicts federal immigration policy, undermines the security of our
36 borders, and demeans the value of citizenship. Therefore, the

1 legislature finds that the public interest of this state requires all
2 public agencies within this state to cooperate with federal immigration
3 authorities to discourage illegal immigration.

4 (3) Form of Registration. In addition to the requirements of RCW
5 29A.08.010, the form of registration provided by the secretary of state
6 or county auditor must include a statement that the applicant must
7 submit evidence of United States citizenship with the application and
8 that the county auditor or secretary of state shall reject the
9 application if no evidence of citizenship is attached.

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

14 (a) The number of the applicant's Washington state driver's license
15 or Washington state identification card issued by the department of
16 licensing, but only if the department indicates on the applicant's
17 driver's license or identification card that the applicant has provided
18 satisfactory proof of United States citizenship;

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

22 (c) A legible photocopy of pertinent pages of the applicant's
23 United States passport identifying the applicant and the applicant's
24 passport number or presentation to the county auditor or the secretary
25 of state of the applicant's United States passport;

26 (d) A presentation to the county auditor or secretary of state of
27 the applicant's United States naturalization documents or the number of
28 the certificate of naturalization. If only the number of the
29 certificate of naturalization is provided, the applicant may not be
30 included in the registration rolls until the number of the certificate
31 of naturalization is verified with the United States Immigration and
32 Naturalization Service by the county auditor or secretary of state;

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

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

37 (5) Notwithstanding subsection (4) of this section, any person who
38 is registered in this state on the effective date of this section is

1 deemed to have provided satisfactory evidence of citizenship and may
2 not be required to resubmit evidence of citizenship unless the person
3 is changing voter registration from one county to another or
4 reregistering to vote.

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

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

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

14 In addition to case-by-case maintenance under RCW 29A.08.620 and
15 29A.08.630 and the general program of maintenance of voter registration
16 lists under RCW 29A.08.605, deceased voters will be canceled from voter
17 registration lists as follows:

18 (1) Every month, the registrar of vital statistics of the state
19 shall prepare a separate list of persons who resided in each county,
20 for whom a death certificate was transmitted to the registrar and was
21 not included on a previous list, and shall supply the appropriate list
22 to each county auditor.

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

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

33 (3) In addition, any registered voter may sign a statement, subject
34 to the penalties of perjury, to the effect that to his or her personal
35 knowledge or belief another registered voter is deceased. This
36 statement may be filed with the county auditor. Upon the receipt of

1 such signed statement, the county auditor shall cancel the registration
2 records concerned and so notify the secretary of state.

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

5 In addition to case-by-case maintenance under RCW 29A.08.620 and
6 29A.08.630 and the general program of maintenance of voter registration
7 lists under RCW 29A.08.605, deceased voters will be canceled from voter
8 registration lists as follows:

9 (1) (~~Periodically~~) Every month, the registrar of vital statistics
10 of the state shall prepare a list of persons who resided in each
11 county, for whom a death certificate was transmitted to the registrar
12 and was not included on a previous list, and shall supply the list to
13 the secretary of state.

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

18 (2) In addition, each county auditor (~~may~~), on a monthly basis,
19 shall also use newspaper obituary articles as a source of information
20 in order to cancel a voter's registration from the official state voter
21 registration list. The auditor must verify the identity of the voter
22 by matching the voter's date of birth or an address. The auditor shall
23 record the date and source of the obituary in the cancellation records.

24 (3) In addition, any registered voter may sign a statement, subject
25 to the penalties of perjury, to the effect that to his or her personal
26 knowledge or belief another registered voter is deceased. This
27 statement may be filed with the county auditor or the secretary of
28 state. Upon the receipt of such signed statement, the county auditor
29 or the secretary of state shall cancel the registration records
30 concerned from the official state voter registration list.

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

33 In addition to the case-by-case maintenance required under RCW
34 29A.08.620 and 29A.08.630 and the canceling of registrations under RCW
35 29A.08.510, the county auditor shall establish a general program of
36 voter registration list maintenance. This program must be a thorough

1 review that is applied uniformly throughout the county and must be
2 nondiscriminatory in its application. Any program established must be
3 completed at least once every two years and not later than ninety days
4 before the date of a primary or general election for federal office.
5 The county may fulfill its obligations under this section in one of the
6 following ways:

7 (1) The county auditor (~~may~~) shall enter into one or more
8 contracts with the United States postal service, or its licensee, which
9 permit the auditor to use postal service change-of-address information.
10 If the auditor receives change of address information from the United
11 States postal service that indicates that a voter has changed his or
12 her residence address within the county, the auditor shall transfer the
13 registration of that voter and send a confirmation notice informing the
14 voter of the transfer to the new address. If the auditor receives
15 postal change of address information indicating that the voter has
16 moved out of the county, the auditor shall send a confirmation notice
17 to the voter and advise the voter of the need to reregister in the new
18 county. The auditor shall place the voter's registration on inactive
19 status;

20 (2) A direct, nonforwardable, nonprofit or first-class mailing to
21 every registered voter within the county bearing the postal endorsement
22 "Return Service Requested." If address correction information for a
23 voter is received by the county auditor after this mailing, the auditor
24 shall place that voter on inactive status and shall send to the voter
25 a confirmation notice;

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

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

29 In addition to the case-by-case maintenance required under RCW
30 29A.08.620 and 29A.08.630 and the canceling of registrations under RCW
31 29A.08.510, the secretary of state and the county auditor shall
32 cooperatively establish a general program of voter registration list
33 maintenance. This program must be a thorough review that is applied
34 uniformly throughout the county and must be nondiscriminatory in its
35 application. Any program established must be completed at least once
36 every two years and not later than ninety days before the date of a

1 primary or general election for federal office. This obligation may be
2 fulfilled in one of the following ways:

3 (1) The secretary of state (~~may~~) shall enter into one or more
4 contracts with the United States postal service, or its licensee, which
5 permit the use of postal service change-of-address information. If the
6 change of address information is received from the United States postal
7 service that indicates that a voter has changed his or her residence
8 address within the state, the auditor shall transfer the registration
9 of that voter and send a confirmation notice informing the voter of the
10 transfer to the new address;

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

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

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

20 (1) A voter whose registration has been made inactive under this
21 chapter and who offers to vote at an ensuing election before two
22 federal elections have been held must be allowed to vote a regular
23 ballot and the voter's registration restored to active status.

24 (2) A voter whose registration has been properly canceled under
25 this chapter shall vote a provisional ballot. The voter shall mark the
26 provisional ballot in secrecy, the ballot placed in a security
27 envelope, the security envelope placed in a provisional ballot
28 envelope, and the reasons for the use of the provisional ballot noted.

29 (3) Upon receipt of such a voted provisional ballot the auditor
30 shall investigate the circumstances surrounding the original
31 cancellation. If he or she determines that the cancellation was in
32 error, the voter's registration must be immediately reinstated, and the
33 voter's provisional ballot must be counted. If the original
34 cancellation was not in error, the voter must be afforded the
35 opportunity to reregister at his or her correct address, and the
36 voter's provisional ballot must not be counted.

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

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

8 When the right of a person has been challenged under RCW 29A.08.810
9 or 29A.08.830(2), the challenged person shall be permitted to vote a
10 provisional ballot, which shall be placed in a sealed envelope separate
11 from other voted ballots. In precincts where voting machines are used,
12 any person whose right to vote is challenged under RCW 29A.08.810 or
13 29A.08.830(2) shall be furnished a provisional paper ballot, which
14 shall be placed in a sealed envelope after being marked. Included with
15 the (~~challenged~~) provisional ballot shall be (1) an affidavit filed
16 under RCW 29A.08.830 challenging the person's right to vote or (2) an
17 affidavit signed by the precinct election officer and any third party
18 involved in the officer's challenge and stating the reasons the voter
19 is being challenged. The sealed provisional ballots (~~of challenged~~
20 ~~voters~~) shall be transmitted at the close of the election to the
21 canvassing board or other authority charged by law with canvassing the
22 returns of the particular primary or election. The county auditor
23 shall notify the challenger and the challenged voter, by certified
24 mail, of the time and place at which the county canvassing board will
25 meet to rule on (~~challenged~~) provisional ballots. If the challenge
26 is made by a precinct election officer under RCW 29A.08.810, the
27 officer must appear in person before the board unless he or she has
28 received written authorization from the canvassing board to submit an
29 affidavit supporting the challenge. If the challenging officer has
30 based his or her challenge upon evidence provided by a third party,
31 that third party must appear with the challenging officer before the
32 canvassing board, unless he or she has received written authorization
33 from the canvassing board to submit an affidavit supporting the
34 challenge. If the challenge is filed under RCW 29A.08.830, the
35 challenger must either appear in person before the board or submit an
36 affidavit supporting the challenge. The challenging party must prove
37 to the canvassing board by clear and convincing evidence that the

1 challenged voter's registration is improper. If the challenging party
2 fails to meet this burden, the (~~challenged~~) provisional ballot shall
3 be accepted as valid and counted. The canvassing board shall give the
4 challenged voter the opportunity to present testimony, either in person
5 or by affidavit, and evidence to the canvassing board before making
6 their determination. All (~~challenged~~) provisional ballots must be
7 determined no later than the time of canvassing for the particular
8 primary or election. The decision of the canvassing board or other
9 authority charged by law with canvassing the returns shall be final.
10 Challenges of absentee ballots shall be determined according to RCW
11 29A.40.140.

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

14 (1) Any registered voter may request that the registration of
15 another voter be canceled if he or she believes that the voter does not
16 meet the requirements of Article VI, section 1 of the state
17 Constitution or that voter no longer maintains a legal voting residence
18 at the address shown on his or her registration record. The challenger
19 shall file with the county auditor a signed affidavit subject to the
20 penalties of perjury, to the effect that to his or her personal
21 knowledge and belief another registered voter does not actually reside
22 at the address as given on his or her registration record or is
23 otherwise not a qualified voter and that the voter in question is not
24 protected by the provisions of Article VI, section 4, of the
25 Constitution of the state of Washington. (~~The person filing the
26 challenge must furnish the address at which the challenged voter
27 actually resides.~~)

28 (2) Any such challenge of a voter's registration and right to vote
29 made less than thirty days before a primary or election, special or
30 general, shall be administered under RCW 29A.08.820. The county
31 auditor shall notify the challenged voter and the precinct election
32 officers in the voter's precinct that a challenge has been filed,
33 provide the name of the challenger, and instruct both the precinct
34 election officers and the voter that, in the event the challenged voter
35 desires to vote at the ensuing primary or election, a (~~challenged~~)
36 provisional ballot will be provided. The voter shall also be informed
37 that the status of his or her registration and the disposition of any

1 ((challenged)) provisional ballot will be determined by the county
2 canvassing board in the manner provided by RCW 29A.08.820. If the
3 challenged voter does not vote at the ensuing primary or election, the
4 challenge shall be processed in the same manner as challenges made more
5 than thirty days prior to the primary or election under RCW 29A.08.840.

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

8 All provisional ballots and related materials, including the inner
9 security envelope and the outer return envelope, must be materially
10 distinguishable from regular ballots, absentee ballots, and their
11 related materials.

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

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

30 (2) The precinct election official shall issue a provisional ballot
31 outer envelope and a security envelope to the voter eligible for a
32 provisional ballot. The voter shall vote the ballot in secrecy and,
33 when done, place the ballot in the security envelope, then place the
34 security envelope with the ballot in it in the provisional ballot outer
35 envelope and return it to the precinct election official. The precinct
36 election official shall ensure that the required information is

1 completed on the outside of the outer envelope and have the voter sign
2 it in the appropriate space, and place it in a secure container
3 designated for provisional ballots only.

4 (3) When the provisional ballot, including provisional ballots from
5 other counties or states, are received in the elections center, the
6 circumstances surrounding the provisional ballot must be investigated
7 before certification of the primary or election. A provisional ballot
8 cannot be tallied if the registered voter did not sign either the poll
9 book or the provisional ballot envelope.

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

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

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

21 "I affirm that I am a registered voter in the jurisdiction in which
22 I am appearing and in which I wish to vote; and that I am eligible to
23 vote in this election.";

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

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

27 (4) Voter's date of birth;

28 (5) Reason for the provisional ballot;

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

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

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

35 NEW SECTION. **Sec. 17.** (1) Upon receipt of the provisional ballot,
36 including provisional ballots from other counties or states, the

1 auditor must investigate the circumstances surrounding the provisional
2 ballot before certification of the primary or election. A provisional
3 ballot cannot be counted if the registered voter did not sign both the
4 poll book and the provisional ballot envelope.

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

8 (b) If the voter was previously registered and later canceled and
9 the auditor determines that the cancellation was in error, the voter's
10 registration will be immediately restored and the provisional ballot
11 counted.

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

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

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

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

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

1 NEW SECTION. **Sec. 18.** When the disposition of the provisional
2 ballot determines that the provisional ballot is to be counted, the
3 provisional ballot must be processed in a manner similar to an absentee
4 ballot as provided in chapters 29A.40 and 29A.60 RCW, except that the
5 outer provisional ballot envelopes must be retained separately from the
6 absentee ballot return envelopes. The manual inspection of the ballots
7 as required in WAC 434-261-070 or its successor must also be carried
8 out.

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

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

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

29 The application for a special ((~~absentee~~)) provisional ballot may
30 not be filed earlier than ninety days before the applicable state
31 primary or general election. The special ((~~absentee~~)) provisional
32 ballot will list the offices and measures, if known, scheduled to
33 appear on the state primary or general election ballot. The voter may
34 use the special ((~~absentee~~)) provisional ballot to write in the name of
35 any eligible candidate for each office and vote on any measure.

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

7 (3) Write-in votes on special ((~~absentee~~)) provisional ballots must
8 be counted in the same manner provided by law for the counting of other
9 write-in votes. The county auditor shall process and canvass the
10 special ((~~absentee~~)) provisional ballots provided under this section in
11 the same manner as ((~~other~~)) absentee ballots under ((~~this~~)) chapters
12 29A.40 and ((~~chapter~~)) 29A.60 RCW.

13 (4) A voter who requests a special ((~~absentee~~)) provisional ballot
14 under this section may also request an absentee ballot under RCW
15 29A.40.020(4). If the ((~~regular~~)) absentee ballot is properly voted
16 and returned, the special ((~~absentee~~)) provisional ballot is void, and
17 the county auditor shall reject it in whole when special ((~~absentee~~))
18 provisional ballots are canvassed.

19 NEW SECTION. Sec. 21. In addition to the material required by RCW
20 29A.40.091, each county auditor shall include with any special
21 provisional ballot mailed the following information:

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

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

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

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

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

19 (3) Before opening a returned absentee ballot, the canvassing
20 board, or its designated representatives, shall examine the postmark,
21 statement, and signature on the return envelope that contains the
22 security envelope and absentee ballot. They shall verify that the
23 voter's signature on the return envelope is the same as the signature
24 of that voter in the registration files of the county. For registered
25 voters casting absentee ballots, the date on the return envelope to
26 which the voter has attested determines the validity, as to the time of
27 voting for that absentee ballot if the postmark is missing or is
28 illegible. For out-of-state voters, overseas voters, and service
29 voters, the date on the return envelope to which the voter has attested
30 determines the validity as to the time of voting for that absentee
31 ballot. For any absentee ballot, a variation between the signature of
32 the voter on the return envelope and the signature of that voter in the
33 registration files due to the substitution of initials or the use of
34 common nicknames is permitted so long as the surname and handwriting
35 are clearly the same.

36 (4) All absentee ballots that are in the process of being tallied

1 and canvassed must be placed in a secure storage at the end of each
2 day, and daily counts of the number of returned and tallied or
3 canvassed absentee ballots must be made public at the end of each day.

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

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

11 The qualifications of any absentee voter may be challenged at the
12 time the signature on the return envelope is verified and the ballot is
13 processed by the canvassing board. The board has the authority to
14 determine the legality of any absentee ballot challenged under this
15 section. Challenged ballots must be handled in accordance with chapter
16 (~~29A.08~~) 29A.-- RCW (sections 15 through 22 of this act).

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

19 (1) A person desiring to vote at a primary or election must show
20 both a picture and signature identification to be compared with the
21 signature on the poll register. If the signature or photo do not
22 match, the person must be given a provisional ballot, with a notation
23 made by the precinct election officer that the person's identification
24 could not be verified.

25 (2) A voter desiring to vote shall give his or her name to the
26 precinct election officer who has the precinct list of registered
27 voters. This officer shall announce the name to the precinct election
28 officer who has the copy of the inspector's poll book for that
29 precinct. If the right of this voter to participate in the primary or
30 election is not challenged, the voter must be issued a ballot or
31 permitted to enter a voting booth or to operate a voting device. For
32 a partisan primary in a jurisdiction using the physically separate
33 ballot format, the voter must be issued a nonpartisan ballot and each
34 party ballot. The number of the ballot or the voter must be recorded
35 by the precinct election officers. If the right of the voter to

1 participate is challenged, RCW 29A.08.810 and 29A.08.820 apply to that
2 voter.

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

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

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

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

12 The programmed memory pack for each poll-site ballot counting
13 device must be sealed into the device during final preparation and
14 logic and accuracy testing. Except in the case of a device breakdown,
15 the memory pack must remain sealed in the device until after the polls
16 have closed and all reports and telephonic or electronic transfer of
17 results are completed. After all reporting is complete the precinct
18 election officers responsible for transferring the sealed voted ballots
19 under RCW 29A.60.110 shall ensure that the memory pack is returned to
20 the elections department. If the entire poll-site ballot counting
21 device is returned, the memory pack must remain sealed in the device.
22 If the poll-site ballot counting device is to remain at the polling
23 place, the precinct election officer shall break the seal on the device
24 and remove the memory pack and seal and return it along with the
25 irregularly voted ballots and (~~special~~) provisional ballots to the
26 elections department on election day.

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

29 Each poll-site ballot counting device must be programmed to return
30 all blank ballots and overvoted ballots to the voter for private
31 reexamination. The election officer shall take whatever steps are
32 necessary to ensure that the secrecy of the ballot is maintained. The
33 precinct election officer shall provide information and instruction on
34 how to properly mark the ballot. The voter may remark the original

1 ballot, may request a new ballot under RCW 29A.44.040, or may choose to
2 complete a (~~special~~) provisional ballot envelope and return the
3 ballot as a (~~special~~) provisional ballot.

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

6 Before a county auditor may make a final certification of election
7 returns, the county auditor shall reconcile by precinct the number of
8 ballots counted from the precinct and the number of voters credited
9 with having cast a counted ballot. The number of ballots counted and
10 the number of voters who cast those ballots will always be equal in a
11 properly administered election. The county auditor shall report by
12 precinct any variance between the number of ballots and the number of
13 voters. If the total number of ballots without voters, or voters
14 without ballots, exceeds the winning margin in an election or primary,
15 the election or primary as to that position is void. No certificate of
16 election may be issued. A revote for that position must be held within
17 sixty days.

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

20 (1) Members of the county canvassing board are the county auditor,
21 who is the chair, the county prosecuting attorney, and the chair of the
22 county legislative body. If a member of the board is not available to
23 carry out the duties of the board, then the auditor may designate a
24 deputy auditor, the prosecutor may designate a deputy prosecuting
25 attorney, and the chair of the county legislative body may designate
26 another member of the county legislative body. Any such designation
27 may be made on an election-by-election basis or may be on a permanent
28 basis until revoked by the designating authority. Any such designation
29 must be in writing, and if for a specific election, must be filed with
30 the county auditor not later than the day before the first day duties
31 are to be undertaken by the canvassing board. If the designation is
32 permanent until revoked by the designating authority, then the
33 designation must be on file in the county auditor's office no later
34 than the day before the first day the designee is to undertake the
35 duties of the canvassing board.

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

4 (3) The county canvassing board may not delegate the responsibility
5 of certifying the returns of a primary or election, of determining the
6 validity of challenged ballots, or of determining the validity of
7 provisional ballots referred to the board by the county auditor.

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

10 (5) Meetings of the county canvassing board are public meetings
11 under chapter 42.30 RCW. All rules adopted by the county canvassing
12 board must be adopted in a public meeting under chapter 42.30 RCW, and
13 once adopted must be available to the public to review and copy under
14 chapter 42.17 RCW.

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

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

20 Whenever the canvassing board finds that there is an apparent
21 discrepancy or an inconsistency in the returns of a primary or
22 election, the board may recanvass the ballots or voting devices in any
23 precincts of the county. The canvassing board shall conduct any
24 necessary recanvass activity on or before the last day to certify the
25 primary or election and correct any error and document the correction
26 of any error that it finds. The canvassing board shall not recanvass
27 the returns of a primary or general election for any reason during a
28 recount.

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

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

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

35 Every ((~~person~~)) elections officer, precinct election official, and

1 poll site employee, whether temporary, permanent, or volunteer, charged
2 with the performance of any duty under the provisions of any law of
3 this state relating to elections, including primaries, or the
4 provisions of any charter or ordinance of any city or town of this
5 state relating to elections who willfully neglects or refuses to
6 perform such duty, or who, in the performance of such duty, or in his
7 or her official capacity, knowingly or fraudulently violates any of the
8 provisions of law relating to such duty, is guilty of a class C felony
9 punishable under RCW 9A.20.021 and shall forfeit his or her office.
10 The county prosecuting attorney shall vigorously enforce violations
11 under this section.

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

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

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

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

23 NEW SECTION. Sec. 36. (1) Sections 7 and 9 of this act expire
24 January 1, 2006.

25 (2) Sections 1 and 2 of this act expire December 31, 2006.

--- END ---