

# SENATE BILL REPORT

## ESSB 5079

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As Passed Senate, February 6, 2019

**Title:** An act relating to enacting the Native American voting rights act of Washington.

**Brief Description:** Enacting the Native American voting rights act of Washington.

**Sponsors:** Senate Committee on State Government, Tribal Relations & Elections (originally sponsored by Senators McCoy, Billig, Cleveland, Conway, Frockt, Hunt, Kuderer, Saldaña and Van De Wege).

**Brief History:**

**Committee Activity:** State Government, Tribal Relations & Elections: 1/23/19, 1/30/19 [DPS, DNP, w/oRec].

**Floor Activity:**

Passed Senate: 2/06/19, 34-13.

**Brief Summary of Engrossed First Substitute Bill**

- Authorizes Indian tribes to request ballot drop boxes on reservations and designation of state facilities on reservations as voter registration sites, with legal enforcement for election officials' failure to comply.
- Permits the use of nontraditional residential addresses by any person residing on an Indian reservation or lands for voter registration purposes.
- Permits the use of tribal identification for electronic voter registration where the Secretary of State can obtain a copy of the applicant's signature.

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**SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS**

**Majority Report:** That Substitute Senate Bill No. 5079 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Zeiger, Ranking Member; Hasegawa and Takko.

**Minority Report:** Do not pass.

Signed by Senator Hawkins.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** That it be referred without recommendation.

Signed by Senator Bailey.

**Staff:** Samuel Brown (786-7470)

**Background:** Indian Tribes. Federal law recognizes Indian tribes as sovereign governments with inherent powers of self-governance. Tribal sovereignty includes the power to regulate within tribal territory and certain immunity from state authority.

In the 1850s, the federal government entered into a series of treaties with the tribes occupying lands within the Washington Territory. In the treaties, the tribes ceded their interest in vast portions of the territory to the federal government in exchange for monetary compensation, certain lands reserved for their exclusive use, and other rights reserved by the tribes. The state cannot abrogate the treaty rights. Most of the 29 federally-recognized Indian tribes in Washington State today are parties to and beneficiaries of the guarantees in the territorial treaties.

Voter Registration. Persons who are age 18 or older and who are United States citizens that have lived in the state, county, and precinct for 30 days immediately preceding an election are entitled to vote. To register to vote, a person must provide a name, traditional or nontraditional residential address, date of birth, signature attesting the truth of the information provided, and an indication of United States citizenship. Nontraditional residential addresses consist of a narrative description of the voter's residence, and may be used if a traditional address number has not been assigned to the residence, as in the case of a shelter, park, motor home, marine, or other identifiable location.

Washington adopted the Motor Voter Act, requiring the Department of Licensing (DOL) to provide voter registration services. In addition to DOL, the following agencies and programs offer voter registration:

- the Department of Social and Health Services (DSHS) Community Services Division;
- the DSHS Aging and Long-Term Support Administration;
- the DSHS Division of Vocational Rehabilitation;
- the DSHS Developmental Disabilities Administration;
- the DSHS Aging and Disabilities Service Administration;
- the Department of Services for the Blind;
- the Health Care Authority; and
- the Health Benefits Exchange.

Persons may also register to vote electronically through the Secretary of State's website. Persons seeking to register electronically must have a valid Washington State driver's license or state identification card so that the Secretary of State may obtain a copy of the person's signature.

Ballot Drop Locations. All counties in the state conduct elections entirely by mail. For a ballot to be counted, the voter must either return the ballot to the county auditor no later than 8:00 p.m. election day or mail the ballot to the county auditor with a postmark dated no later than election day. Counties must establish ballot drop boxes for voters to return ballots. Each county must establish at least one ballot drop box per 15,000 registered voters in the

county, and a ballot drop box in each city, town, and census-designated place with a post office.

Ballots must be removed from each ballot drop box by at least two people, with a record of date and time ballots were removed and the persons removing ballots, which are transported to the county auditor in secured containers. Containers are verified by the county auditor at the ballot counting center.

**Summary of Engrossed First Substitute Bill:** Ballot Drop Locations. At a tribe's request, the county auditor must establish at least one ballot drop box on the tribe's reservation on a site selected by the tribe. Tribes may designate ballot pickup and collection locations at no cost. The county auditor must collect ballots from designated pickup and collection locations using the same procedures as collection from ballot drop boxes.

Nontraditional Residential Addresses. Voters who reside on an Indian reservation or lands may use nontraditional residential addresses for voter registration purposes. If the tribe has designated a ballot pickup and collection location, a voter may use that location as their residential and mailing address if the voter's residence is in the same precinct, or mailing address if the voter's residence is in a different precinct.

Use of Tribal Identification. A person with a valid tribal identification card may use that identification card to register to vote on the Secretary of State's website if the Secretary of State can obtain a copy of the applicant's signature from the tribal identification issuer. Tribal identification does not need to include a residential address to be considered valid.

Enforcement. The Attorney General may sue the county auditor for failure to establish a tribally-requested ballot drop box or collect ballots from a tribally-designated pickup and collection location. Any person or a tribal government may sue the county auditor for failure to establish a tribally-requested ballot drop box or collect ballots from a tribally-designated pickup and collection location, the Secretary of State for failure to allow a tribal voter to use a nontraditional residential address, or the Governor for failure to designate a facility to provide voter registration services. If more than 30 days before an election, the person or tribal government must provide notice to the Secretary of State. If notice is filed more than 120 days before an election, the Secretary of State has 90 days to act before a suit may be filed; otherwise, the Secretary of State has 20 days to act before a suit may be filed.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Proposed Substitute:** *The committee recommended a different version of the bill than what was heard.* PRO: Each tribe in the state has a different way of handling voting, and we have tried to make this bill broad enough to be workable for all of them. Turnout is high for tribal elections, but low for off-

reservation elections. We need to increase turnout and stress the importance of participation. This will provide equal opportunities for tribal residents to vote. Our tribe is in multiple districts, so we appreciate the opportunity to have multiple ballot drop boxes. It is currently difficult for us to vote because our reservation is so rural. Our tribe uses enhanced identification cards, so being able to use those for voter registration would be advantageous. The Attorney General is willing to enforce the rights protected by this bill. This will empower Native participation in state and local government and allow more voices to be heard in policymaking in their communities. We can not let abuses of voting rights like what happened to Native Americans in North Dakota happen here.

OTHER: There are some potential loopholes. We had a ballot box installed in front of our tribal headquarters, but the county did not consistently check it. We also see discrepancies regarding gerrymandering.

**Persons Testifying:** PRO: Senator John McCoy, Prime Sponsor; Alex Hur, OneAmerica, Washington Voting Justice Coalition; Margie Hutchinson, Confederated Tribes of the Colville Reservation; July Simpson, Attorney General's Office; Cindy Black, Fix Democracy First; Cheryl Wapes'a-Mayes, National Organization for Women.

OTHER: Mathew Tomaskin, Yakama Nation.

**Persons Signed In To Testify But Not Testifying:** No one.