

SENATE BILL REPORT

2SSB 5342

As Passed Senate, January 19, 2022

Title: An act relating to irrigation district elections.

Brief Description: Concerning irrigation district elections.

Sponsors: Senate Committee on Housing & Local Government (originally sponsored by Senators Schoesler, Dozier, Hunt and Mullet).

Brief History:

Committee Activity: Housing & Local Government: 2/02/21, 2/10/21 [DPS]; 1/13/22 [DP2S].

Floor Activity: Passed Senate: 3/2/21, 48-0; 1/19/22, 49-0.

Brief Summary of Second Substitute Bill

- Allows mail-in ballot elections for irrigation districts.
- Identifies qualified district electors for irrigation districts.
- Creates a gross misdemeanor violation when election security requirements for irrigation district elections are violated.

SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

Majority Report: That Second Substitute Senate Bill No. 5342 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Kuderer, Chair; Das, Vice Chair; Fortunato, Ranking Member; Gildon, Assistant Ranking Member; Cleveland, Lovelett, Salomon, Sefzik, Trudeau, Warnick and Wilson, J.

Staff: Maggie Douglas (786-7279)

Background: Irrigation Districts-Generally. Irrigation districts provide for the

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construction, improvement, maintenance, and operation of irrigation systems. An irrigation district is formed when 50 or a majority of the landowners in an area propose the creation of a district and the district is approved by two-thirds of voters.

An irrigation district board of directors may consist of three, five, or seven directors. Elections for directors are held on the second Tuesday of December of each year. Directors serve staggered three-year terms.

Irrigation Districts-Voting Rights. Voters must hold title or evidence of title to land in the district to be eligible to vote.

In a district with 200,000 acres or more, landowners receive one vote for their first ten acres of land and an additional vote for all land over ten acres. If land is community property, both owners may vote if otherwise qualified. An agent of a corporation owning land in the district may vote on behalf of the corporation if appropriately registered.

In a district with fewer than 200,000 acres, each landowner receives two votes for each five acres of assessable land or fraction thereof. However, no one ownership may possess more than 49 percent of the votes in the district. "Ownership" means the aggregate of all assessable acres owned by an elector, individually or jointly, within one district. If land is community property, votes are divided equally between the owners. A corporation, partnership, limited liability company, or other legal business entity that owns land in the district is entitled to vote.

If more than 50 percent of the total acreage of the district consists of individual ownerships of less than five acres, electors are entitled to two votes regardless of the size of ownership. If land is community property, each owner receives one vote or may vote by common agreement.

Irrigation Districts-Elections. The board of directors determines the polling location for an election and appoints an inspector and two judges for each election, who together constitute the board of elections.

Absentee voting is permitted upon request and certification that the qualified district elector cannot conveniently be present to cast their ballot at their proper election precinct on the day of the irrigation district election. Absentee ballots may also be furnished to qualified district electors in any way deemed convenient without regard to requests having been made.

Ballots are counted in public by the inspector. As soon as votes are counted at a polling place, a certificate is drawn and signed by the board of elections. The board of directors meets the following Monday to canvass the returns.

Summary of Second Substitute Bill: Mail-In Ballot Provisions. An irrigation district

board of directors may, by adoption of resolution, conduct an election using mail-in ballots in lieu of polling places and absentee ballots. The district must provide ballots to qualified electors derived from its assessment roll, toll and charge roll, or other district records and may also use the county assessor's or other public records to assist in determining qualified electors.

Persons or entities who have not received a ballot and believe they are qualified electors may provide documents demonstrating they are qualified electors at the district main office by the close of business on the day before the election and receive a ballot if qualified to vote in the election. Any qualified district elector is entitled to vote by absentee ballot.

To be counted, an absentee ballot or ballots in a mail-in election must be placed in a security envelope and sealed within an additional outer envelope. The voter must sign a certificate of qualifications certifying under penalty of perjury that they meet the qualifications to vote. The certificate may be printed on the outer envelope.

Qualified District Elector. A person 18 years old, a citizen of the United States and a Washington resident who holds title to land that is assessed or is assessable by the district may vote.

An agent of a corporation, general partnership, limited partnership, limited liability company, or other legal entity formed pursuant to the laws of the state of Washington or qualified to do business in the state of Washington owning land in the district, duly authorized in writing, may vote on behalf of the land owning entity by filing with the election officers their instrument of authority. The agent of such entity is considered an elector of the district. An elector resident in the district will vote in the precinct in which they reside or where the landowning entity's principal office is located; all others will vote in the precinct nearest their residence.

In irrigation districts where more than 50 percent of the total acreage of the district is owned in individual ownerships of less than five acres, each elector who is otherwise qualified to vote in districts of less than 200,000 acres is entitled to two votes regardless of the size of ownership.

Candidates. Candidates must have filed with the secretary of the district a petition of nomination not later than 5p.m. on the first Monday in October. Candidates for the position of director must file with the secretary of the district a declaration of their candidacy by submitting a petition of nomination on a form prescribed by the district no later than 5p.m. on the first Monday in October.

A qualified elector for the position of director must be 18 years old, a United States citizen, a resident of the division of the district for which the director is being elected, or the designated agent of an entity that owns land within that division.

Notice Requirements. For certain irrigation districts that have designated their own treasurer, the following notice requirements apply:

- the district must annually notify qualified electors, either by mail, electronic communication, or website of the following:
 1. the names of the board of directors and dates their terms expire;
 2. the method and deadline for declaring candidacy; and
 3. a description of the district voting procedure and how the qualified elector may request an absentee ballot;
- the district will use its assessment roll, toll and charge roll, or other district records to provide notice to known qualified electors and may also use the county assessor's or other public records to assist in determining qualified electors;
- a district that makes water deliveries to an entity which is responsible for paying assessments or tolls and charges, and that entity subsequently distributes that water to lands within the entity's jurisdiction is only required to provide the annual notice to the entity paying the assessment or toll and charge; and
- any person who becomes a qualified elector after the annual notice required by this section and before a subsequent election is eligible to vote in the election. Receiving or not receiving the annual notice provided in this section does not affect whether the person or entity is a qualified elector.

Each district must establish and maintain election information on a website, either individually or through the Washington State water resources association, in order to communicate with qualified electors. The website must include, but is not limited to, the names of the board of directors, district election rules, information on elections including election results, and contact information for the district.

Votes. No list, tally paper, or certificate returned from any election shall be set aside or rejected for want of form, if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the second Wednesday after each election, to canvass the returns. If an undeclared write-in candidate for a position of director receives the most votes, the board of directors must determine whether that candidate is a qualified elector for that specific position. If that candidate is not a qualified elector, the qualified elector receiving the next highest number of votes will be deemed elected to the position.

Election Security. At all times when ballots are being controlled including, but not limited to, receipt, opening of ballots, certification, tabulation, reconciliation, or any other type of processing, two individuals not on the ballot must be present. Each ballot box must be secured and locked, with a deposit slot, and clearly marked as an "official ballot box."

Ballot box keys must be provided to district election officials only, or designated district staff if available. Each ballot box must be closed with tamper-evident seals with a paper seal log. Each time the box is opened, a new seal log must be signed, with the seal number noted and dated. When the box is opened, the previous seal log must be compared to the cut seal and initialed. All seal logs must be retained for six months after the day of the

election. Each ballot box must be physically secured so that it cannot be stolen or moved, and may only be moved by district election officials, or designated district staff if available. Any election officials or district staff carrying out official ballot or election duties may not be a candidate on the election ballot.

Ballot envelopes may not be opened immediately after voter deposit. Ballot tabulation may only begin after the polls are closed and ballots must be opened in batches, rather than individually. The number of tabulated ballots must be reconciled with the number of ballots received. Tabulated ballots must be stored separately from uncounted or challenged ballots. Canvassing of ballots must be open to observation by the public. Any election officials or district staff participating in the processing of ballots may not be a candidate on the ballot.

Once canvassing of ballots is completed, date and time of the verification of canvassing must be posted in either the district office, for at least two weeks; on the district website, for at least two weeks; or at least once a week for two weeks in one or more newspapers of general circulation within the irrigation district.

Each district must establish a written challenge process in order to allow individuals to challenge the vote of an individual voter. Written challenge procedures must be established for challenges made by both the public and district election officials or staff, including the time period during which challenges must be made. Within seven days of the resolution of the challenge, the outcome of the challenge must be posted in either the district office, for at least two weeks; on the district website, for at least two weeks; or at least once a week for two weeks in one or more newspapers of general circulation within the irrigation district.

Each district must establish a written cure procedure for curing errors that occurred during ballot canvassing or are discovered through valid voter challenges, including a clear timeline for when the cure will occur. Lists and reports of ballots, election outcomes, voter challenges and challenge outcomes, and curing of errors must be maintained by each district for six months after the date of the election and made available to the public.

These election security requirements apply to certain districts that have designated their own treasurer.

Any person who willfully violates any of the election security provisions is guilty of a gross misdemeanor. Any person who, without lawful authority, removes a ballot from a polling place or ballot drop location is guilty of a gross misdemeanor. A person is guilty of a gross misdemeanor who knowingly deceives any voter in recording their vote by providing incorrect or misleading recording information or by providing faulty election equipment or records; or records the vote of any voter in a manner other than as designated by the voter.

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 Original Bill (Regular Session 2021): *The committee recommended a different version of the bill than what was heard.* PRO: This bill incorporates some of the suggestions by irrigation districts. Elections by irrigation districts are outdated and a cause for concern. This bill increases election security. There was a workgroup that reviewed election policies and procedures used by irrigation districts and concluded many of the statutes needed to be updated. This bill reflects the final recommendations of that workgroup.

CON: We are generally supportive of this bill however the uncontested elections section does not make sense. It is possible to have a write-in candidate win who is not qualified to be a director. The requirement of an uncontested election is a problem. The additional cost to hold an election every year is between a 1 percent and 7 percent increase in water rates without any additional benefit to customers.

OTHER: Irrigation districts are concerned with efficiency and avoiding unnecessary costs. Some irrigation districts are small and have no employees. There is an elections guide available on the association's website. The requirement to hold an uncontested election will result in unnecessary expenses.

Persons Testifying (Housing & Local Government): PRO: Senator Mark Schoesler, Prime Sponsor; Heidi Hunt, Adams County Auditor.

CON: Joseph Carroll, retired attorney; Clancy Flynn, Columbia Irrigation District.

OTHER: Mike Schwisow, Washington State Water Resources Association.

Persons Signed In To Testify But Not Testifying (Housing & Local Government): No one.

Staff Summary of Public Testimony on Second Substitute (Regular Session 2022):

No public hearing was held.

Persons Testifying (Housing & Local Government): N/A

Persons Signed In To Testify But Not Testifying (Housing & Local Government): N/A