

HOUSE BILL REPORT

SB 5459

As Passed House:

April 10, 2023

Title: An act relating to requests for records containing election information.

Brief Description: Concerning requests for records containing election information.

Sponsors: Senators Hunt, Kuderer, Valdez and Wilson, C..

Brief History:

Committee Activity:

State Government & Tribal Relations: 3/22/23, 3/29/23 [DP].

Floor Activity:

Passed House: 4/10/23, 58-40.

Brief Summary of Bill

- Creates a new Public Records Act (PRA) exemption for records regarding the infrastructure of a private entity submitted to elections officials, for 25 years after creation and when accompanied by a specific statement.
- Creates a new PRA exemption for voted ballots, or images, copies, photographs, or cast vote records of voted ballots.
- Specifies that PRA requests for records from the statewide voter registration database must be submitted to and fulfilled by the Office of the Secretary of State (OSOS), not county elections officials.
- Repeals the requirement for the OSOS to develop statewide election data and reporting standards.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: Do pass. Signed by 4 members: Representatives Ramos, Chair;

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

Stearns, Vice Chair; Gregerson and Mena.

Minority Report: Do not pass. Signed by 3 members: Representatives Abbarno, Ranking Minority Member; Christian, Assistant Ranking Minority Member; Low.

Staff: Jason Zolle (786-7124).

Background:

The Public Records Act.

The Public Records Act (PRA) generally requires state and local governmental entities to make many government records available to the public upon request. There are, however, over 500 statutory exemptions for certain records or information contained in records.

Upon receiving a request for records, the governmental entity must respond within five business days by providing the records or access to the records online; acknowledging receipt of the request and providing a reasonable estimate of the time needed to respond to the request; seeking clarification if the request is unclear; or denying the request on the basis that the records are exempt from disclosure requirements.

One PRA exemption to disclosure is for information regarding the infrastructure and security of computer and telecommunications networks, including security risk assessments. Similar PRA exemptions relate specifically to election security information, including exemptions for:

- continuity of operations plans for election operations;
- security audits, risk assessments, and test results of physical security or cybersecurity of election operations or infrastructure; and
- information about election infrastructure, security, or potential threats to election security, if disclosure would increase risk to the integrity of election operations or infrastructure.

Information or records pertaining to election security breaches is not exempt under the PRA. A voter's signature, phone number, and email address on a ballot return envelope, declaration, or signature correction form are exempt under the PRA.

Election Data and Reporting Standards.

The Office of the Secretary of State (OSOS) is required to develop statewide election data and reporting standards for how election-related data is maintained and reported by county auditors. The standards must focus on improving the types and use of data files, public access to election data, and the efficiency of data compilation from all counties for research and analysis. The standards are public, and the OSOS must conduct ongoing analysis of whether counties are in compliance.

Summary of Bill:

New Public Records Act Exemptions Created.

New PRA exemptions are created for:

- records regarding the infrastructure of a private entity submitted to elections officials, which are exempt for 25 years after creation when they are accompanied by an express statement that the record contains information about the private entity's infrastructure and public disclosure may increase risk to the integrity of election operations or infrastructure; and
- voted ballots, or images, copies, photographs, or cast vote records of voted ballots.

Process for Public Records Act Requests Modified.

All PRA requests for records from any existing reports generated by the statewide voter registration database must be submitted and fulfilled by the OSOS. County elections officials that receive a PRA request for such information must direct the requestor to submit their request to the OSOS within the five-business-day deadline to respond.

Election Data and Reporting Standards Repealed.

The requirement for the OSOS to develop statewide election data and reporting standards is repealed.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The purpose of this bill is to improve the security of our elections. The intense interest against this bill stems from people not understanding what the bill is doing. The bill does not prohibit access to information about who voted; it just prohibits people from obtaining copies of the voted ballots. It is also necessary to prevent disclosure of software codes and hardware specifications, and other "behind the scenes" information that if released would jeopardize election security. There is a statewide voter database so it makes sense to have the Secretary of State be the central access point for public records requests. Widespread misinformation about elections has led to an increased interest in elections records, and county auditors have been overwhelmed with requests as part of a strategic, coordinated effort.

(Opposed) People must be able to verify that elections are as secure as possible. The results of audits must continue to be subject to public disclosure. County auditors may be overwhelmed with requests, but they should organize themselves to be more efficient rather than restrict disclosures. The government must be transparent to the people. Ballots do not contain any identifying information once they are removed from the security envelope.

This bill is intended to provide relief to the government in ongoing litigation in the largest election misconduct case in state history. Ballots should be public records. There must be a way to investigate when there are questions. Legislators have taken an oath to uphold the Constitution. Without access to ballots, people will be unable to know that people are legal voters.

Persons Testifying: (In support) Senator Sam Hunt, prime sponsor; and Lori Larsen, Washington State Association of County Auditors.

(Opposed) Tamborine Borrelli, Washington Election Integrity Coalition United; Cody Hart; Peggy Hutt; Diane deJong; Kathleen Kresly; and Alexandra Schmidt.

Persons Signed In To Testify But Not Testifying:

Nancy Holbrook.