

SENATE BILL REPORT

SB 5459

As Passed Senate, February 28, 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 & Elections: 2/03/23, 2/07/23 [DP].

Floor Activity: Passed Senate: 2/28/23, 43-4.

Brief Summary of Bill

- Requires that all public records requests for information from the statewide voter registration database be submitted to the Secretary of State, rather than county auditors.
- Exempts records of infrastructure of private entities submitted to elections officials from public disclosure requirements for 25 years after submission if the entity states disclosure would increase risk to election operations.
- Exempts voted ballots and voted ballot images from public disclosure requirements.
- Eliminates the requirement that the Secretary of State develop statewide rules for maintenance and reporting of election data.

SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

Majority Report: Do pass.

Signed by Senators Hunt, Chair; Valdez, Vice Chair; Wilson, J., Ranking Member; Dozier, Fortunato, Hasegawa and Kuderer.

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.

Staff: Samuel Brown (786-7470)

Background: Public Records Act. The Public Records Act (PRA), enacted in 1972 as part of Initiative 276, requires all state and local government agencies to make all public records available for public inspection and copying, unless certain statutory exemptions apply. Upon receiving a request for records, the public agency must respond within five business days in one of five ways:

- providing the records;
- providing an internet link to the records or access to an agency computer for the requestor to use the link;
- 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.

Over 500 specific references in the PRA or other statutes remove certain information from application of the PRA, provide exceptions to the public disclosure and copying of certain information, or designate certain information as confidential. The provisions requiring public records disclosure must be interpreted liberally, while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure.

Election Security Information. Certain information pertaining to election security is exempt from public disclosure requirements. This information includes:

- 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
- any information about election infrastructure, security, or potential threats, if disclosure would increase risk to the integrity of election operations or infrastructure.

Information or records pertaining to election security breaches is not exempt from disclosure requirements, except under existing security breach and reporting exemptions. A voter's signature, phone number, and e-mail address on a ballot return envelope, declaration, or signature correction form, whether on an original or copied document, are exempt from public disclosure requirements. Elections officials may disclose this information for official purposes.

State Data and Reporting Standards. Under legislation passed in 2016, the Secretary of State (SOS) develops statewide data and reporting standards for how election data are maintained and reported by county auditors, focused on improving the types and use of data files, public access to election data, and data compilation from all counties for research and analysis. The standards are public, and the SOS makes ongoing analysis of whether counties are in compliance with the current standards.

Summary of Bill: Records Requests. Requests for records from, or existing standard reports generated by, the statewide voter registration database must be submitted to the SOS rather than a county auditor. If the county auditor receives a request for records or reports generated by the statewide voter registration database, the auditor must respond within five business days to refer the requestor to the SOS.

Exemptions. If a private entity, upon submitting records of its infrastructure to elections officials, accompanies that submission with a statement that disclosure of the records would increase risk to the integrity of election operations or infrastructure, the records are exempt from public disclosure requirements for 25 years after submission.

Images, copies, photographs, or cast vote records of voted ballots are exempt from public disclosure requirements during storage through destruction.

State Data and Reporting Standards. The requirement that the SOS develop statewide standards for how election data are maintained and reported by county auditors is removed.

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: PRO: As a result of misinformation and the spread of election lies, administrators have been drowning in public records requests in recent years. The requests tend to be complicated and require legal consultation because they involve sensitive information. Many are strategic, targeted attempts to distract and overwhelm elections offices. This bill will coordinate responses at a central point, ensuring requests are handled consistently, and protect election security systems from cyberattacks.

OTHER: We have concerns with the provision requiring requestors to re-submit requests with the Secretary of State rather than having county auditors pass the requests along without restarting the 5-day response clock. We are also concerned about ballots being inaccessible during the storage period, as this could hamper press coverage of the process of ballot rehabilitation and curing.

Persons Testifying: PRO: Julie Wise, King County Director of Elections.

OTHER: Rowland Thompson, Allied Daily Newspapers of WA, WA Newspaper Publishers Assn, WA State Assn of Broadcasters.

Persons Signed In To Testify But Not Testifying: CON: Richard Grunewald.