

HOUSE BILL REPORT

HB 1752

As Reported by House Committee On:
State Government Operations & Accountability
Appropriations

Title: An act relating to ballot processing and canvassing.

Brief Description: Improving procedures for ballot processing and canvassing.

Sponsors: Representatives Green, Nixon, Shabro, Haigh, Upthegrove, Moeller, Campbell, Simpson, Sells, Schual-Berke and Linville; by request of Secretary of State.

Brief History:

Committee Activity:

State Government Operations & Accountability: 2/23/05, 3/2/05 [DPS];
Appropriations: 3/5/05 [DP2S(w/o sub SGOA)].

Brief Summary of Second Substitute Bill

- Prescribes standards or procedures for distinguishing provisional ballots, processing absentee ballots, counting write-in ballots, manually inspecting ballots, and canvassing returns. Requires that poll-site electronic voting devices be capable of producing a machine countable paper record.

HOUSE COMMITTEE ON STATE GOVERNMENT OPERATIONS & ACCOUNTABILITY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Haigh, Chair; Green, Vice Chair; Clements, Assistant Ranking Minority Member; Hunt, McDermott and Miloscia.

Minority Report: Do not pass. Signed by 3 members: Representatives Nixon, Ranking Minority Member; Schindler and Sump.

Staff: Marsha Reilly (786-7135).

Background:

The basic structure for conducting elections is prescribed by law. As the state's chief election officer, the Secretary of State (Secretary) is authorized to promulgate rules necessary to conduct an election, including procedures to ensure consistency among the counties in preparing ballots, operating vote tallying systems, and canvassing of primaries and elections.

The closeness of the recent gubernatorial election resulted in two recounts and two court battles in front of the state supreme court. The margin of victory was 129 votes out of over 2.8 million votes cast. An election contest was filed in superior court and is pending as of this date. Due to the closeness of the race and the related litigation, much attention has been focused on state election laws.

Summary of Substitute Bill:

The bill adds new provisions and amends statutes relating to conducting an election.

Provisional Ballots. Standards for the design of provisional ballots require that the ballots be distinguishable from other ballots and incapable of being tabulated by poll site counting devices or mixed in and counted with regular ballots at counting facilities.

Poll Site Electronic Voting Devices. Effective January 1, 2006, the Secretary may not approve any poll-site based electronic voting system unless it produces a machine countable paper record that may be reviewed and accepted or rejected by the voter. Rejected records must be destroyed or clearly marked as rejected.

Processing of Returns. The process of opening and processing return envelopes for absentee ballots may begin upon receipt.

Signatures. At least three of the following criteria must be met when matching signatures on an absentee or provisional ballot envelope with the signatures on the registration file:

- capital letters match;
- letters tail off alike;
- letter spacing is the same;
- space between the signature and the line is the same;
- beginning and ending of the signature and the slant are consistent;
- unique letters match; and
- overall appearances match.

In making a determination on signature matches, the canvassing board may consider the age of the voter and the date of the signature on the registration file.

If a voter neglects to sign the envelope, the auditor must notify the voter by telephone of the actions the voter must take in order for the ballot to be counted. If the auditor is unable to personally speak to the voter, the auditor must make notification by first class mail. The voter may sign the original envelope in person or sign and return a copy of the envelope provided by the county auditor no later than the day before election certification.

In the event a voter's signature does not match the signature in the registration file, the auditor must notify the voter either by telephone or by first class mail and inform the voter of the actions necessary to update his or her signature. For the vote to be counted, the voter must appear in person and sign a new registration or sign and return a new form provided by the auditor no later than the day before election certification.

A ballot may be counted when the voter's name has changed but the handwriting is the same. In this instance, the auditor must send the voter a change of name form. If the signature is not the same because the voter used initials or a common nickname, the ballot may be counted if the surname and handwriting are the same.

A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

Records, including dates of all actions, must be kept of all transactions involved in correcting a signature discrepancy. The records are public and may be disclosed to interested parties on written request after certification of the election.

Counting Write-in Votes. A write-in vote for a candidate whose name appears on the ballot is a valid vote, even if the voter also marked a vote for that candidate corresponding to the printed name. These "overvotes" do not need to be counted unless (1) the difference between the number of votes cast for the top two vote getters is less than the sum of the total number of write-in votes cast for the office plus the overvotes and undervotes recorded; or (2) a manual recount is conducted.

A write-in vote for a candidate whose name does not appear on the ballot does not need to be counted unless the total number of write-in votes and undervotes recorded is greater than the number of votes cast for the candidate receiving the most votes in that election.

Counting write-in votes in an election for a statewide office or any office whose district encompasses more than one county are counted at the discretion of the county auditor, unless the county auditor is notified by the Secretary of State or another county auditor that the write-in votes may affect the results of the election. The abstract of votes must be modified to reflect the tabulation and certified by the canvassing board. Tabulation of write-in votes may be performed simultaneously with a recount.

Ballot Disputes. Whenever precinct election officers or counting center personnel have a dispute over a ballot that cannot be resolved, they are required to prepare and sign a detailed record of the facts and submit it, along with the disputed ballots, to the canvassing board. Only the canvassing board may reject a ballot or vote as invalid and this authority may not be delegated.

Returns. County auditors are required to electronically transmit cumulative returns for state offices, judicial offices, and United States Senate and congressional offices to the Secretary immediately. The period of time allowed for the canvassing board to complete the canvass and certify the results of a general election is changed from the fifteenth to the twentieth day after the election. The canvassing board is authorized to re-canvass the ballots or voting devices when it finds a discrepancy or inconsistency in the returns due to an error by the county auditor or his or her staff.

No later than the thirtieth day after the general election, the Secretary must canvass and certify the returns for candidates for state office, United States Senate and congressional office, and candidates whose districts encompass two or more counties. A copy of the certification must

be sent to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

For those counties with a population of 75,000 or more, the canvassing board must process absentee ballots and canvass the votes on a daily basis.

Recounts. The provision that a recount occur less than three business days from the time an application is filed, a recount is ordered by the Secretary, or a recount is mandated by law is removed. Rather, the canvassing board is authorized to determine the date of the recount. The Secretary may require that amended abstracts be certified by each canvassing board on the same date.

A contested election may be filed within 10 days of the official certification of the amended abstract, rather than 10 days following the issuance of a certificate of election.

Substitute Bill Compared to Original Bill:

The substitute bill requires that standards for provisional ballots include measures that would not permit provisional ballots to be mixed together with regular ballots at counting facilities. County auditors must notify voters who do not sign the absentee ballot envelopes by telephone to let them know the actions that need to be taken for their ballot to be counted. The auditor must speak directly with the voter and may not leave a message. In the event the voter cannot be reached by phone, the auditor may make contact by first class mail. Provisions regarding duplication of ballots are removed thus restoring the choice to enhance or duplicate ballots as provided in the Washington Administrative Code. Counties with a population of 75,000 or more must process and canvass votes on a daily basis, except for Sundays and holidays.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: There are a lot of provisions in this omnibus bill. Some provisions are already being practiced, but the Legislature has indicated that they would like to enact these as a matter of policy. Provisional ballots must be distinguishable by color and include something like a bar code to prevent them from being read at poll sites. The high number of provisional ballots is due to a large degree because a number of people show up at the wrong poll site. A vote by mail process would greatly alleviate this problem. Dates for filing a contested election under the bill are 10 days after the certification of the amended abstract rather than after issuance of the certificate of election. There is a lot of unhappiness about enhancing ballots and the bill requires that ballots be duplicated instead. However, King County has indicated that this would be very burdensome for them. Some of their ballots have as many as 30 races, so duplication would take much longer.

Testimony Against: None.

Persons Testifying: Sam Reed, Secretary of State.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on State Government Operations & Accountability. Signed by 24 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Armstrong, Bailey, Clements, Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, Miloscia, Pearson, Priest, Schual-Berke and Walsh.

Minority Report: Do not pass. Signed by 3 members: Representatives Alexander, Ranking Minority Member; Buri and McIntire.

Staff: Nona Snell (786-7153).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On State Government Operations & Accountability:

The second substitute bill clarifies that the records regarding voters contacted for missing or mismatched signatures are public records and are available to interested parties prior to election certification, and it returns the date for certification of a general election to current law, or 15 days after the general election.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: The average cost of adding a paper trail accessory to a touchscreen machine is \$500. A machine that is accessible to visually impaired people is required at every poll site by next year. The only type of machine that's accessible is a touch screen. This is not a new requirement. Some of the requirements are federal and some are currently Secretary of State rules.

The cost of the paper trail accessory would be paid by the county, not by the state. The Help America Vote Act requires one paper trail machine at every polling site.

Testimony Against: None.

Persons Testifying: Katie Blinn, Office of the Secretary of State.

Persons Signed In To Testify But Not Testifying: None.