
SENATE BILL 5738

State of Washington 60th Legislature 2007 Regular Session

By Senators Oemig and Swecker; by request of Secretary of State

Read first time 01/30/2007. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to administering elections by mail; amending RCW
2 29A.40.150, 29A.44.090, 29A.48.060, 29A.60.110, 29A.60.170, 29A.60.190,
3 and 29A.60.190; reenacting and amending RCW 29A.40.110 and 29A.60.165;
4 providing an effective date; and providing an expiration date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 29A.40.110 and 2006 c 207 s 4 and 2006 c 206 s 6 are
7 each reenacted and amended to read as follows:

8 (1) The opening and subsequent processing of return envelopes for
9 any primary or election may begin upon receipt. The tabulation of
10 absentee ballots must not commence until after 8:00 p.m. on the day of
11 the primary or election.

12 (2) All received absentee return envelopes must be placed in secure
13 locations from the time of delivery to the county auditor until their
14 subsequent opening. After opening the return envelopes, the county
15 canvassing board shall place all of the ballots in secure storage
16 (~~until after 8:00 p.m. of the day of the primary or election~~).
17 Absentee ballots that are to be tabulated on an electronic vote
18 tallying system may be taken from the inner envelopes and all the

1 normal procedural steps may be performed to prepare these ballots for
2 tabulation.

3 (3) Before opening a returned absentee ballot, the canvassing
4 board, or its designated representatives, shall examine the postmark,
5 statement, and signature on the return envelope that contains the
6 security envelope and absentee ballot. All personnel assigned to
7 verify signatures must receive training on statewide standards for
8 signature verification. Personnel shall verify that the voter's
9 signature on the return envelope is the same as the signature of that
10 voter in the registration files of the county. Verification may be
11 conducted by an automated verification system approved by the secretary
12 of state. For any absentee ballot, a variation between the signature
13 of the voter on the return envelope and the signature of that voter in
14 the registration files due to the substitution of initials or the use
15 of common nicknames is permitted so long as the surname and handwriting
16 are clearly the same.

17 (4) For registered voters casting absentee ballots, the date on the
18 return envelope to which the voter has attested determines the
19 validity, as to the time of voting for that absentee ballot if the
20 postmark is missing or is illegible. For out-of-state voters, overseas
21 voters, and service voters stationed in the United States, the date on
22 the return envelope to which the voter has attested determines the
23 validity as to the time of voting for that absentee ballot.

24 **Sec. 2.** RCW 29A.40.150 and 2006 c 206 s 7 are each amended to read
25 as follows:

26 The secretary of state shall produce and furnish envelopes and
27 instructions for overseas voters and service voters. The information
28 on the envelopes or instructions must explain that:

- 29 (1) Return postage is free if the ballot is mailed through the
30 United States postal service, United States armed forces postal
31 service, or the postal service of a United States foreign embassy;
- 32 (2) The date of the signature is considered the date of mailing;
- 33 (3) The envelope must be signed by election day;
- 34 (4) The signed declaration on the envelope is the equivalent of
35 voter registration;
- 36 (5) A voter may (~~fax~~) return a voted ballot and the accompanying

1 signed envelope electronically if the voter agrees to waive secrecy(~~(-~~
2 ~~The ballot will be counted if the original documents are received~~
3 ~~before certification of the election))~~); and

4 (6) A voter may obtain a ballot via electronic mail, which the
5 voter may print out, vote, and return (~~(by mail)~~). In order to
6 facilitate the electronic acquisition of ballots by overseas and
7 service voters, the ballot instructions shall include the web site of
8 the office of the secretary of state.

9 **Sec. 3.** RCW 29A.44.090 and 2003 c 111 s 1109 are each amended to
10 read as follows:

11 (~~(A registered voter shall not be allowed to vote in the precinct~~
12 ~~in which he or she is registered at any election or primary for which~~
13 ~~that voter has cast an absentee ballot. A registered voter who has~~
14 ~~requested an absentee ballot for a primary or special or general~~
15 ~~election but chooses to vote at the voter's precinct polling place in~~
16 ~~that primary or election shall cast a provisional ballot.))~~ (1) If a
17 registered voter who was issued an absentee or mail ballot requests to
18 vote at a polling place, the voter must be issued a provisional ballot.
19 The canvassing board (~~(shall)~~) may not count the provisional ballot if
20 it finds that the voter (~~(has)~~) also (~~(voted by)~~) cast an absentee or
21 mail ballot (~~(in that primary or election)~~).

22 (2) If the precinct election officer is able to confirm that the
23 voter has not already returned an absentee or mail ballot, the voter
24 may be issued a regular ballot. Confirmation may be achieved by
25 accessing the county voter registration system by electronic,
26 telephonic, or other means. If the precinct election officer is unable
27 to confirm whether the voter has returned a ballot, the voter must be
28 issued a provisional ballot. If the voter is issued a regular ballot,
29 the voter must be immediately credited or flagged as having voted in
30 order to prevent multiple voting. If an absentee or mail ballot is
31 subsequently returned, the canvassing board may not count the absentee
32 or mail ballot.

33 **Sec. 4.** RCW 29A.48.060 and 2003 c 111 s 1206 are each amended to
34 read as follows:

35 All mail ballots authorized by RCW 29A.48.010, 29A.48.020, or
36 29A.48.030 must contain the same offices, names of nominees or

1 candidates, and propositions to be voted upon, including precinct
2 offices, as if the ballot had been voted in person at the polling
3 place. Except as otherwise provided by law, mail ballots must be
4 treated in the same manner as absentee ballots issued at the request of
5 the voter. If electronic vote tallying devices are used, political
6 party observers must be given the opportunity to be present, and a test
7 of the equipment must be performed as required by RCW 29A.12.130 before
8 tabulating ballots. ~~((Political party observers may select at random
9 ballots to be counted manually as provided by RCW 29A.60.170.))~~

10 **Sec. 5.** RCW 29A.60.110 and 2003 c 111 s 1511 are each amended to
11 read as follows:

12 Immediately after their tabulation, all ballots counted at a ballot
13 counting center must be sealed in containers that identify the primary
14 or election and be retained for at least sixty days or according to
15 federal law, whichever is longer. All ballots tallied by poll-site
16 ballot counting devices must be returned to the elections department in
17 sealed ballot containers on election day. Counties composed entirely
18 of islands or portions of counties composed of islands shall collect
19 the ballots within twenty-four hours of the close of the polls.

20 Ballots tabulated in poll-site ballot counting devices must be
21 sealed by two of the election precinct officers at the polling place,
22 and a log of the seal and the names of the people sealing the container
23 must be completed. One copy of this log must be retained by the
24 inspector, one copy must be placed in the ballot transfer case, and one
25 copy must be transported with the ballots to the elections department,
26 where the seal number must be verified by the county auditor or a
27 designated representative. Ballots may be transported by one election
28 employee if the container is sealed at the poll and then verified when
29 returned to the elections department. Auditors using poll-site ballot
30 counting devices may conduct early pickup of counted ballots on
31 election day.

32 In the presence of major party observers who are available, ballots
33 may be removed from the sealed containers at the elections department
34 and consolidated into one sealed container for storage purposes. The
35 containers may only be opened by the canvassing board as part of the
36 canvass, or to conduct recounts, or under RCW 29A.60.170(~~(+3)~~), or by
37 order of the superior court in a contest or election dispute. If the

1 canvassing board opens a ballot container, it shall make a full record
2 of the additional tabulation or examination made of the ballots. This
3 record must be added to any other record of the canvassing process in
4 that county.

5 **Sec. 6.** RCW 29A.60.165 and 2006 c 209 s 4 and 2006 c 208 s 1 are
6 each reenacted and amended to read as follows:

7 (1) If the voter neglects to sign the ~~((outside envelope of))~~ oath
8 on an absentee or provisional ballot envelope, signs the oath with a
9 mark and fails to have two witnesses attest to the signature, or signs
10 the ballot envelope but the signature on the envelope does not match
11 the signature on the voter registration record, the auditor shall
12 notify the voter by first class mail ~~((and advise the voter))~~ of the
13 correct procedures for ~~((completing the unsigned affidavit))~~ curing the
14 signature. If ~~((the))~~ such an absentee ballot is not received within
15 three business days of the final meeting of the canvassing board, or
16 the voter has been notified by first class mail and has not responded
17 by at least three business days before the final meeting of the
18 canvassing board, ~~((then))~~ the auditor shall attempt to notify the
19 voter by telephone, using information in the voter registration record
20 ~~((information))~~.

21 ~~((In order for the ballot to be counted))~~ (2) If the voter neglects
22 to sign the oath on an absentee or provisional ballot envelope, or
23 signs the oath with a mark and fails to have two witnesses attest to
24 the signature, the voter must either:

25 (a) Appear in person and sign the envelope no later than the day
26 before ~~((the))~~ certification of the primary or election; or

27 (b) Sign a copy of the envelope provided by the auditor, and return
28 it to the auditor no later than the day before ~~((the))~~ certification of
29 the primary or election.

30 ~~((2)(a) If the handwriting of the signature on an absentee or~~
31 ~~provisional ballot envelope is not the same as the handwriting of the~~
32 ~~signature on the registration file, the auditor shall notify the voter~~
33 ~~by first class mail, enclosing a copy of the envelope affidavit, and~~
34 ~~advise the voter of the correct procedures for updating his or her~~
35 ~~signature on the voter registration file. If the absentee or~~
36 ~~provisional ballot is received within three business days of the final~~
37 ~~meeting of the canvassing board, or the voter has been notified by~~

1 ~~first class mail and has not responded at least three business days~~
2 ~~before the final meeting of the canvassing board, then the auditor~~
3 ~~shall attempt to notify the voter by telephone, using the voter~~
4 ~~registration record information. In order for the ballot to be~~
5 ~~counted))~~ (3) If the signature on the oath of an absentee or
6 provisional ballot envelope does not match the signature on the voter
7 registration record, the voter must ((either)):

8 ~~((i))~~ (a) Appear in person and sign a new registration form no
9 later than the day before ((the)) certification of the primary or
10 election. The updated signature provided on the new registration form
11 becomes the signature on the voter registration record for the current
12 election and future elections; ((or

13 ~~(ii))~~ (b) Sign a copy of the affidavit provided by the auditor and
14 ~~((return it to the auditor no later than the day before the~~
15 ~~certification of the primary or election. The voter may enclose with~~
16 ~~the affidavit))~~ provide a photocopy of a valid government or tribal
17 issued identification document that includes the voter's current
18 signature. ((If)) The signatures on ((the copy of)) the affidavit
19 ~~((does not match the signature on file or the signature on the copy~~
20 ~~of))~~ , the identification ((document, the voter must appear in person
21 and sign a new registration form)), and the ballot envelope must all
22 match. The voter must return the signed affidavit and the
23 identification to the auditor no later than the day before ((the))
24 certification of the primary or election ((in order for the ballot to
25 be counted)). The county auditor may also send the voter a new
26 registration form to update the signature on the voter registration
27 record for future elections; or

28 (c) Sign a copy of the affidavit provided by the auditor in front
29 of two witnesses who are registered voters and who attest to the
30 signature. The signature on the affidavit must match the signature on
31 the ballot envelope. The voter must return the signed affidavit to the
32 auditor no later than the day before certification of the primary or
33 election. The county auditor may also send the voter a new
34 registration form to update the signature on the voter registration
35 record for future elections.

36 ~~((b))~~ (4) If the signature on an absentee or provisional ballot
37 envelope is not the same as the signature on the registration ((file))
38 record because the name is different, the ballot may be counted as long

1 as the handwriting is clearly the same. The auditor shall send the
2 voter a change-of-name form under RCW 29A.08.440 and direct the voter
3 to complete the form. ~~((e))~~ If the signature on an absentee or
4 provisional ballot envelope is not the same as the signature on the
5 registration ~~((file))~~ record because the voter used initials or a
6 common nickname, the ballot may be counted as long as the surname and
7 handwriting are clearly the same.

8 ~~((3))~~ (5) A voter may not cure a missing or mismatched signature
9 for purposes of counting the ballot in a recount.

10 ~~((4))~~ (6) A record must be kept of all ballots with missing and
11 mismatched signatures. The record must contain the date on which the
12 voter was contacted or the notice was mailed, as well as the date on
13 which the voter signed the envelope, a copy of the envelope, a new
14 registration form, or a change-of-name form. That record is a public
15 record under chapter 42.56 RCW and may be disclosed to interested
16 parties on written request.

17 **Sec. 7.** RCW 29A.60.170 and 2003 c 111 s 1517 are each amended to
18 read as follows:

19 (1) The counting center in a county using voting systems is under
20 the direction of the county auditor and must be observed by one
21 representative from each major political party, if representatives have
22 been appointed by the respective major political parties and these
23 representatives are present while the counting center is operating.
24 The proceedings must be open to the public, but no persons except those
25 employed and authorized by the county auditor may touch any ballot or
26 ballot container or operate a vote tallying system.

27 ~~((In counties in which ballots are not counted at the polling
28 place, the official political party observers, upon mutual agreement,
29 may request that a precinct be selected at random on receipt of the
30 ballots from the polling place and that a manual count be made of the
31 number of ballots and of the votes cast on any office or issue. The
32 ballots for that precinct must then be counted by the vote tallying
33 system, and this result will be compared to the results of the manual
34 count. This may be done as many as three times during the tabulation
35 of ballots on the day of the primary or election.~~

36 ~~(3) In counties using poll site ballot counting devices, the
37 political party observers, upon mutual agreement, may choose as many as~~

1 ~~three precincts and request that a manual count be made of the number~~
2 ~~of ballots and the votes cast on any office or issue. The results of~~
3 ~~this count will be compared to the count of the precinct made by the~~
4 ~~poll-site ballot counting device. These selections must be made no~~
5 ~~later than thirty minutes after the close of the polls.)) Upon mutual~~
6 ~~agreement, the political party observers may request that one race or~~
7 ~~issue be counted manually, and that the results of the manual count be~~
8 ~~compared to the results of the vote tallying system. The mutual~~
9 ~~request must be made by 8:00 p.m. on the day of the primary or~~
10 ~~election. The number of ballots counted may not exceed five hundred~~
11 ~~ballots. The manual count must be completed no later than two days~~
12 ~~after the primary or election. The process must take place at a~~
13 ~~location designated by the county auditor for that purpose. The~~
14 ~~political party observers must receive timely notice of the time and~~
15 ~~location, and have the right to be present. However, the process must~~
16 ~~proceed as scheduled if the observers are unable to attend.~~

17 **Sec. 8.** RCW 29A.60.190 and 2006 c 344 s 16 are each amended to
18 read as follows:

19 (1) Except as provided by subsection (3) of this section, fifteen
20 days after a primary or special election and twenty-one days after a
21 general election, the county canvassing board shall complete the
22 canvass and certify the results. Each absentee ballot that was
23 returned before the closing of the polls, and each absentee ballot
24 bearing a postmark on or before the date of the primary or election and
25 received on or before the date on which the primary or election is
26 certified, must be included in the canvass report. If a service voter
27 or overseas voter returned an absentee ballot by electronic
28 transmission, the original documents need not be received on or before
29 the date on which the primary or election is certified in order to be
30 included in the canvass report.

31 (2) At the request of a caucus of the state legislature, the county
32 auditor shall transmit copies of all unofficial returns of state and
33 legislative primaries or elections prepared by or for the county
34 canvassing board to either the secretary of the senate or the chief
35 clerk of the house of representatives.

36 (3) On or before the thirtieth day after an election conducted

1 under the instant runoff voting method for the pilot project authorized
2 by RCW 29A.53.020, the canvassing board shall complete the canvass and
3 certify the results.

4 **Sec. 9.** RCW 29A.60.190 and 2006 c 344 s 17 are each amended to
5 read as follows:

6 (1) Fifteen days after a primary or special election and twenty-one
7 days after a general election, the county canvassing board shall
8 complete the canvass and certify the results. Each absentee ballot
9 that was returned before the closing of the polls, and each absentee
10 ballot bearing a postmark on or before the date of the primary or
11 election and received on or before the date on which the primary or
12 election is certified, must be included in the canvass report. If a
13 service voter or overseas voter returned an absentee ballot by
14 electronic transmission, the original documents need not be received on
15 or before the date on which the primary or election is certified in
16 order to be included in the canvass report.

17 (2) At the request of a caucus of the state legislature, the county
18 auditor shall transmit copies of all unofficial returns of state and
19 legislative primaries or elections prepared by or for the county
20 canvassing board to either the secretary of the senate or the chief
21 clerk of the house of representatives.

22 NEW SECTION. **Sec. 10.** Section 8 of this act expires July 1, 2013.

23 NEW SECTION. **Sec. 11.** Section 9 of this act takes effect July 1,
24 2013.

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