

BILL ANALYSIS: WA H.B. 1003 & S.B. 5143

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**LOOK
AHEAD
AMERICA**
THE VOTER INTEGRITY PROJECT

Bill Sponsors

Republican Representatives Brad Klippert [WA-8], Jesse Young [WA-26], Jenny Graham [WA-6] and Robert J. Sutherland [WA-39] introduced House Bill (H.B.) 1003.

Republican state Senators Phil Fortunato [WA-31], Mike Padden [WA-4], and Mark Schoesler [WA-9] introduced Senate Bill (S.B.) 5143.

Brief Descriptions

H.B. 1003 requires watermarks on mail-in ballots; amends RCW 29A.40.180 (Elections: Elections by Mail: Student Engagement Hubs) and RCW 29A.40.110 (Elections: Elections by Mail: Ballots by Mail); and adds a new section to chapter 29A.36 RCW (Elections: Ballots and Voting Forms).

S.B.5143 would be known as “Creating the free and fair elections act of 2021” (This is section 1).

Brief Backgrounds

Following the dramatic increase in mail in ballot voting in 2020, Washington state representatives introduced H.B. 1003 in December. It appears that they wrote it in response to the election panel of Washington state that confirmed a mailed-in napkin with the candidate written in would qualify.¹ The bill has remained in committee since then.

S.B. 5143 addresses some of the other issues uncovered related to election vulnerabilities and criticisms of these issues. This includes voter ID accessibility, increased time to vote on election day, ballot harvesting and changes absentee/voting by mail requests.

Acknowledgements

Brendan Byrne researched and drafted of the original summary and analysis of H.B. 1003, and Stephen Johnston oversaw his work while also drafting the initial summary and analysis of S.B. 5143. We thank both of these men for their tireless efforts involved in continuing to educate the general public about pending legislation in the state of Washington.

¹ <https://komonews.com/news/local/mail-in-your-vote-on-a-napkin-election-official-in-washington-state-says-that-counts-voter-election-seattle-katie-daviscourt>

Analysis of WA H.B. 1003

Although Look Ahead America has summarized H.B. 1003, one can find the details of this 3-page bill at <https://lawfilesexternal.wa.gov/Biennium/2021-22/Pdf/Bills/House%20Bills/1003.pdf>

Section 1 – BALLOT WATERMARKS

Adds a new section that requires that the secretary of state design a watermark on official ballots and that that watermark proves that the ballot is an official ballot. The section does not prevent a county auditor from printing replacement ballots so long as those replacement ballots are identical in form to the original ballots including the watermark.

Section 2 – PROCESSING INCOMING BALLOTS

- 1) The opening and subsequent processing of return envelopes for any primary or election can begin upon receipt; but not beginning before 8 p.m. on the day of the election.
- 2) All received envelopes must be placed in secure locations before and after the opening of the envelopes. Ballots may be taken from the inner envelopes and all normal procedural steps may be performed to prepare for tabulation.
- 3) The canvassing board (or its designated representatives) will examine the postmark and signature before processing the ballot. It must either be received prior to 8 p.m. on the day of the election or postmarked on the day of the election. Personnel assigned to verify signatures must receive training on statewide standards. Verification may be conducted by an automated system approved by the secretary of state. A variation between the signature on the ballot and the respective voter on file may be permitted if the difference is the substitution of a signature with initials or the use of a common nickname so long as the surname and handwriting are clearly the same.
- 4) If the postmark is missing or illegible, then the date that the voter has attested to will be accepted. For overseas ballots, the date attested to on the ballot will be accepted; overseas voters may also email or fax their declaration and ballot by 8 p.m. election day. County Auditor must use established secrecy procedures.
- 5) The canvassing board (or its designated representatives) shall examine the ballot to ensure it has the requisite watermark after the ballot is separated from the return envelope. They may not process or count ballots without the watermark.

Section 3 – STUDENT ENGAGEMENT HUB

Removes permission for student engagement hubs to download their “exact ballot” from an online portal.

- 1) Each state university, regional university, and The Evergreen State College and higher education campuses shall open a nonpartisan student engagement hub on its campus.
- 2) Each institution shall contract with the county auditor for the operation of a student engagement hub under this section.
- 3) Student engagement hubs that are not voting centers must operate in a manner that avoids partisan influence or electioneering.

Evaluation of H.B. 1003

Unfortunately, the bill fails to address any of LAA’s six election integrity points. It also fails to meaningfully enforce postmark requirements for mail in ballots, however, such as allowing initials and nicknames, or missing or illegible postage. Its watermark requirement prevents mail in ballots from being easily printed by third parties, though does nothing to handle stolen or harvested ballots, nor items in unmonitored drop boxes. More importantly, it does not handle the underlying concern that one could use a napkin or newspaper clipping to submit their vote as allowed by “voter intent” determinations by the canvassing board.

Although it will be a lucrative contract for whichever paper and printing company wins the bid, this bill quite literally papers over the actual problems and loopholes that exist in election security allowable under the current laws.

Analysis of WA S.B. 5143

Although Look Ahead America has summarized this bill, the details of this 22-page bill can be found at <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/Senate%20Bills/5143.pdf>

Section 1

This bill would be known as the “Creating the free and fair elections act of 2021.”

Part I: ELIMINATION OF VOTE BY MAIL AND RETURN TO POLLING PLACE VOTING

Section 2

Adds a new section to chapter 29A.04 RCW (General Provisions) called “Polling place voting” and defines its meaning.

Section 3

Directs each county to establish a polling place in each precinct in the county. If no facilities are available within the precinct, then the precinct election officials and the county election officers will work to establish an alternate facility outside the precinct which must be located within a reasonable distance from the precinct.

Section 4

Upon the creation of a new polling location, the county election officers must update and provide information about the polling locations and voting procedures to county voters.

Section 5

Polling places must be accessible to elderly and disabled persons.

Section 6

Any person who attempts to interfere with a voter attempting to vote violates RCW 29A.84.510 (Elections: Crimes and Penalties: Acts prohibited in voting center—Prohibited practices).

Section 7

A voter may take printed materials into a voting booth or device to assist them when casting a vote, so long as the voter does not use these materials for electioneering. The voter or election workers must remove these items once the voter leaves the booth.

Section 8

During an election or primary, a party may designate a person - not a precinct election officer - as an election observer for each polling place to check the list of registered voters to determine who has and has not voted. The county central committee chair of a political party may appoint election observers to observe elections at polling places.

Section 9

Voters may only use ballots prepared by the county election officer in a polling place. A voter may not vote more than once unless they spoil their ballot; they must return it and receive a new ballot. The precinct election officers must void and return spoiled ballots to the county election officer.

Section 10

All paper records produced by electronic voting devices are subject to all the requirements of this chapter (29A - Elections) and chapter 29A.60 RCW (Canvassing) for ballot handling, preservation, reconciliation, transit to the counting center, and storage. Paper records must be preserved in the same manner and for the same period as ballots.

Section 11

At the direction of the county election officer, designated election officers must pick up sealed containers of voted, untallied ballots to bring for delivery to the counting center. Two precinct election officers must seal the voted ballots in the containers furnished by the county election officer and these containers must have proper identification with uniquely pre-numbered seals.

Section 12

States the county election officer must provide a sufficient number of voting booths or voting devices along with any supplies necessary to enable voters to mark or register their choices on ballots and cast their votes in secrecy in each polling place.

Section 13

Polling places must remain open continuously from 7:00 a.m. to 8:00 p.m. for election day and all primaries. Any voters inside the polling place by 8:00 p.m. must be allowed to cast their votes. Precinct election officers will announce when the polling place has opened before issuing a ballot or permitting a voter to vote and also when it has closed.

Section 14

Registered voters may not vote in the precinct in which they registered at any election or primary if they have already cast an absentee ballot in that election. A registered voter who has requested an absentee ballot but chooses to vote at the voter's precinct polling place in that primary or election must cast a provisional ballot. The canvassing board will not count the provisional ballot if it finds that the voter has also voted by mail in that primary or election.

Section 15

The county election officer must provide to precinct election officers at each polling place the following materials no later than the day before a primary or election:

- Ballots.
- Precinct list of registered voters.
- Voting and registration instructions, printed in large type, to be conspicuously displayed at each polling place.
- Accessible voting equipment.

Section 16

Precinct election officers for each precinct must meet at designated polling places at the time set by the county election officer.

Section 17

Before opening a polling place, the election officers must inspect and prepare voting equipment for voting. If the voting equipment can directly tabulate each voter's choices, then the precinct election officers shall verify that the machines have not registered any votes for any issue or office to be voted on at that primary or election. The precinct election officers must periodically examine the voting devices to determine that no one has tampered with them.

Election officers must carefully examine ballot boxes to determine that they are empty. They must then seal or lock the ballot box. The ballot box must remain closed until the polling place has closed on the day of the primary or election.

Section 18

Each polling place must display the United States flag in front during all primaries and elections.

Section 19

Any voting equipment approved by the office of the secretary of state for voting in a polling place must be capable of producing a paper record with a manual audit capacity for the system.

Section 20

Sections 3 through 19 of this Act constitute a new chapter in Title 29A RCW (Elections).

Part II: PICTURE ID REQUIREMENT TO VOTE

Section 21

Adds a new section to chapter 29A.08 RCW (Voters & Registration). Adds a requirement for presenting identification to an election official before signing the poll book. The identification can be a valid driver's license, state identification card, a student identification card, a tribal identification card, or a voter identification card issued by a county election officer. If an individual cannot provide one of these then they must vote with a provisional ballot. This section also directs the secretary of state to adopt rules to carry out this section.

Part III: FREE VOTER ID PROGRAM

Section 22

Adds a new section to chapter 29A.08 RCW (Voters & Registration).

Each county auditor shall provide at least one place in the county at which it accepts applications for and issues Washington voter identification cards to registered Washington electors, valid only for purposes of voter identification under section of this act and available only to registered electors of this state. No fee may be charged or collected for the application for or issuance of a Washington voter identification card.

No person is eligible for a Washington voter identification card if such person has a valid unexpired driver's license or identification card issued under chapter 46.20 RCW (Drivers' Licenses — Identicards).

The Washington voter identification card must be captioned "WASHINGTON VOTER IDENTIFICATION CARD" and contain a prominent statement that under Washington law it is valid only as identification for voting purposes. The Washington voter identification card must be laminated, contain a digital color photograph of the applicant, and include:

- Full legal name
- Address of residence
- Date of Birth
- Date identification card was issued
- Sex
- Height
- Weight
- Eye color
- County where the identification card was issued, including a county number to be assigned for each county by the secretary of state
- Other information or identification as required by rule of the secretary of state.

The application for a Washington voter identification card must have the information required under subsection (3) above and any other information required by the secretary of state. The application must be signed and affirmed by the applicant. It is a misdemeanor for any Washington voter identification card applicant to make a false statement or knowingly conceal a material fact or otherwise commit fraud.

The following information must be presented and verified before a Washington voter identification card is issued:

- A photo identity document, or a non-photo identity document which includes the applicant's full legal name and date of birth.
- Documentation showing the person's date of birth.
- Evidence that the person is registered to vote in Washington.
- Documentation showing the person's name and address of principal residence.

A Washington voter identification card remains valid so long as a person resides in the same county and remains qualified to vote. It is the duty of a person who moves his or her residence within the state outside of the county in which a Washington voter identification card was issued to surrender his or her card to the auditor of the county of his or her new residence; and such person may, after such surrender, apply for and receive a new card if such person is otherwise eligible under this section. It is the duty of a person who moves his or her residence outside the state or who ceases to be qualified to vote to surrender his or her card to the county auditor by which it was issued.

The secretary of state shall provide each county auditor with the necessary equipment, forms, supplies, and training for the production of voter ID cards and shall maintain such equipment.

The secretary of state may adopt rules for the implementation of this section.

Part IV: EARLY POLL VOTING

Section 23

This section amends RCW 29A.40.160 (Voting Centers) and 2019 c 6 § 6² (Native American voting rights act of Washington). Although there are 16 numbered items in this section, only items 1 - 4 had changes and thus are only shown here for brevity's sake.

Each county auditor shall open a voting center for each primary, special election, and general election. The voting center shall be open during business hours during the voting period, which are from 8:00 a.m. to 8:00 p.m. on the two Saturdays and Sunday before and the day of the primary, special election, or general election. Voting at a voting center may only be conducted during the voting period.

Each county auditor shall register voters in person at each of the following locations:

- At the county auditor's office.
- At the division of elections, if in a separate city from the county auditor's office.
- For each presidential general election, at a voting center in each city in the county with a population of one hundred thousand or greater, which does not have a voting center as required in the above two points.

Voting centers shall be located in public buildings or buildings that are leased by a public entity including, but not limited to, libraries. Centers established must be geographically located so as to provide all voters in the county an equal opportunity to cast a ballot, insofar as practicable.

Each voting center, and at least one of the other locations designated by the county auditor allowing voters to register in person under section 32 (Voter Registration Deadlines), must provide voter registration materials, ballots, provisional ballots, disability access voting units, sample ballots, instructions on how to properly vote the ballot, a ballot drop box, and voters' pamphlets if a pamphlet has been published.

² WA SB 5079 <https://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5079-S.SL.pdf?cite=2019%20c%206%20C2%A7%206>

Section 24

This section amends RCW 29A.40.180 (Student Engagement Hubs) and 2020 c 208 § 10 (the VOTE act)³. Directs state and regional universities, The Evergreen State College, and each higher education campus to open a nonpartisan student engagement hub on its campus during the voting period provided in RCW 29A.40.160(1) (Voting centers). Additionally, these institutions must allow voters to register in person according to section 32 (Voter Registration Deadlines) of this act and provide voter registration materials and ballots.

Part V: ABSENTEE VOTING, INCLUDING REQUIREMENT THAT ABSENTEE BALLOTS BE RETURNED BY ELECTION DAY

Section 25

Amends RCW 29A.40.010 (Ballots by mail) and 2013 c 11 § 47⁴ (Election Laws).

Each active registered voter may request a vote-by-mail ballot – previously this section stated a voter would automatically be issued a vote-by-mail ballot.

Adds a requirement – except as provided by the law – that a registered, overseas, or service voter wanting to cast an absentee ballot must request the ballot from their county auditor no later than ninety days nor earlier than the day before the election or primary in which they seek to vote. Unless otherwise provided by the law the request can be made in person, electronically, or in writing. Adds a requirement that applications must provide valid photo ID.

A voter requesting an absentee ballot for a primary may also request an absentee ballot for the following general election. An overseas voter or service voter requesting an absentee ballot for a primary election will be considered an absentee ballot request for the general election.

A voter requesting an absentee ballot for a special election may also request an absentee ballot for the following primary and general election. A request by an overseas voter or service voter for an absentee ballot for a special election will be considered as a request for an absentee ballot for the following primary and general election.

³ WA SB 6313 (2020) <https://lawfilesexternal.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/6313.SL.pdf?cite=2020%20c%20208%20C2%A7%2010>

⁴ WA SSB 5518 (2013) <https://lawfilesexternal.leg.wa.gov/biennium/2013-14/Pdf/Bills/Session%20Laws/Senate/5518-S.SL.pdf?cite=2013%20c%2011%20C2%A7%2047>

In requesting an absentee ballot, the voter shall state the address to which the absentee ballot should be sent. A request for an absentee ballot from an overseas voter or service voter must include the address of the last residence in the state of Washington and either a written application or the oath on the return envelope must include a declaration of the other qualifications of the applicant as an elector of this state. A request for an absentee ballot from any other voter must state the address at which that voter is currently registered to vote in the state of Washington or the county auditor shall verify that information from the voter registration records of the county.

A request for an absentee ballot from a registered voter who is within this state must be made directly to their county auditor. An absentee ballot request from a registered voter who is temporarily outside this state or from an overseas voter or service voter may be made either to the appropriate county auditor or to the secretary of state, who shall promptly forward the request to the appropriate county auditor.

Section 26

Amends RCW 29A.40.070 (Date ballots mailed—Replacement ballots). Adds a restriction that vote-by-mail ballots can only be sent to those who request them.

Section 27

Amends RCW 29A.40.091 (Envelopes, declaration, and instructions—Voter's oath—Overseas and service voters—Return of ballots—County auditor's name). Adds a restriction that the county auditor can only send ballots to those who requested them.

Section 28

Adds a new section to chapter 29A.40 RCW (Elections by Mail). Each county auditor:

- Must maintain in their office, open for public inspection, a record of the requests they have received for absentee ballots.
- The information from the requests must be recorded and lists of this information must be available no later than twenty-four hours after their receipt.
- This information about absentee voters must be available according to the date of the requests and by legislative district. It must include the name of each applicant, the address and precinct in which the voter maintains a voting residence, the date on which an absentee ballot was issued to this voter, if applicable, the type of absentee ballot, and the address to which the ballot was or is to be mailed, if applicable.
- The auditor shall make copies publicly available for the cost of production and copying.

Section 29

Adds a new section to chapter 29A.40 RCW (Elections by Mail) which allows the challenge of an absentee voter's status before receipt of their ballot. The canvassing board has the authority to determine the legality of any absentee ballot challenged under this section. Challenged ballots must be handled in accordance with chapter 29A.08 RCW (Voters and Registration).

Section 30

Adds a new section to chapter 29A.40 RCW (Elections by Mail). The information on the envelopes or instructions for overseas voters and service voters must explain that:

- Return postage is free if mailed through the United States postal service, United States armed forces postal service, or a United States foreign embassy postal service;
- The date of the signature is considered the date of mailing;
- The envelope must be signed by election day;
- The signed declaration on the envelope is the equivalent of voter registration;
- A voter may fax a voted ballot and the accompanying envelope if the voter agrees to waive secrecy. The ballot will be counted if the original documents are received before the certification of the election; and
- A voter may obtain a ballot via electronic mail, which the voter may print, vote, and return by mail. To facilitate the electronic acquisition of ballots by overseas and service voters, the ballot instructions must include the secretary of state's web site.

Section 31

Adds a new section to 29A.40 RCW (Elections by Mail). Ballot Harvesting a Class C Felony under RCW 9A.20.021 (Maximum sentences for crimes committed July 1, 1984, and after).

Part VI: VOTER REGISTRATION DEADLINES

Section 32

Adds a new section to chapter 29A.08 RCW (Voters & Registration).

In order to vote in any primary, special election, or general election, a person who is not registered to vote in Washington must submit a registration application that is physically or electronically received by an election official no later than the close of business 14 days before the day of the primary, special election, or general election.

To change a residential address for voting in any primary, special election, or general election, a person already registered to vote in Washington may update it by:

- Submitting an address change using a registration application or making notification via any non-in-person method received by election officials no later than the close of business 14 days before the day of the primary, special election, or general election; or
- Appearing in person, at a county auditor's office, the division of elections if in a separate city from the county auditor's office, a voting center, or other location designated by the county auditor, no later than the close of business 14 days before the day of the primary, special election, or general election to be in effect for that primary, special election, or general election.
- A registered voter who fails to update his or her residential address by this deadline may vote according to his or her previous registration address.
- To register or update a voting address in person at a county auditor's office, a voting center, or other location designated by the county auditor, a person must appear in person at a county auditor's office, a voting center, or other location designated by the county auditor at a time when the facility is open and complete the voter registration application by providing the information required by RCW 29A.08.010. (Minimum information required for voter registration.)

Part VII: ELECTION DAY A STATE HOLIDAY

Section 33

Amends RCW 1.16.050 (“Legal holidays” and “legislatively recognized days”—Unpaid holidays for employees with appointments or contracts of less than twelve consecutive months) and 2020 c 74 § 2.⁵ Adds the Tuesday immediately following the first Monday in November as a Washington State holiday, to be known as Election Day. Makes non-substantive changes in re-naming sections to accommodate the addition of the new holiday.

Part VIII: DATE OF LEVIES AND NONEMERGENCY BOND MEASURES

Section 34

Amends RCW 29A.04.321 (State share) and 2015 c 146 § 1.⁶ Makes non-substantive changes.

⁵ WA SB 6567 (2020) <https://lawfilesexternal.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/6567.SL.pdf?cite=2020%20c%2074%20C2%A7%202>

⁶ WA SSB 1919 (2015) <https://lawfilesexternal.leg.wa.gov/biennium/2015-16/Pdf/Bills/Session%20Laws/House/1919-S.SL.pdf?cite=2015%20c%20146%20C2%A7%201>

Section 35

Amends RCW 29A.04.330 (City, town, and district general and special elections—Exceptions.) and 2015 c 146 § 2.⁷ Makes non-substantive changes.

Section 36

Repeals the following:

- RCW 29A.08.140 (Voter registration deadlines)
- 2020 c 208 § 22
- 2019 c 391 § 4
- 2018 c 112 § 1
- 2011 c 10 § 15
- 2009 c 369 § 15
- 2006 c 97 § 1
- 2004 c 267 § 112
- 2003 c 111 § 212

Evaluation of S.B. 5143

This bill has a number of positive and even quite progressive aspects: it makes voter ID available for free and makes election day a state holiday. This eliminates many complaints of voter suppression as it provides a day to vote in person and makes photo ID free for the poor. There is nothing racist about these measures.

It also makes ballot harvesting a felony and allows only for absentee ballots/vote by mail for those who request them as opposed to mass mailing. It also makes a copy of all absentee ballot requests available. Essentially this eliminates vote by mail, which has a number of election security vulnerabilities easily exploited. This does not entirely eliminate the vulnerability, but it is a good start. It would be even better if it incorporated our election integrity point **#1**.

Thumbprint Authentication of Absentee Ballots. Likewise, publishing all requests for absentee

⁷ WA SSB 1919 (2015) <https://lawfilesexternal.wa.gov/biennium/2015-16/Pdf/Bills/Session%20Laws/House/1919-S.SL.pdf?cite=2015%20c%20146%20C2%A7%201>

ballots is a step in the right direction for transparency, although we would recommend adding **#2. Mandated and Public Voter List Hygiene** to verify that those requesting are even eligible.⁸

The bill must correct some issues before passing, as some parts are self-contradicting. For example, "6. A Washington voter identification card remains valid so long as a person resides in the same county and remains qualified to vote" conflicts with the following if the voter moved out of the county: "3. A registered voter who fails to update his or her residential address by this deadline may vote according to his or her previous registration address."

Nevertheless, the overall bill is a good step in the right direction and arguably progressive in a number of spots that progressive critics will be hard-pressed to argue against. While the current draft certainly suffices, incorporating the above suggestions would make it that much more effective to close even more loopholes and strengthen the integrity of Washington state's elections.

How to Help

Only when more people get involved, will meaningful, impactful change occur. That's how Look Ahead America will positively impact election reform.

Support Look Ahead America by signing up to volunteer at <https://www.lookaheadamerica.org/volunteer>

If you can volunteer 10-15 hours a week in your state, then we could use your help as well at <https://lookaheadamerica.org/lead>

Or you may make a tax-deductible contribution at <https://www.lookaheadamerica.org/donate>

You can also join our Discord community server at <https://discord.gg/lookaheadamerica>.

⁸ <https://lookaheadamerica.org/integrity/>