

# ELECTION REFORM IN WASHINGTON STATE

A CONTINUATION OF  
THE LEAGUE'S 2003-2004 ELECTION REFORM STUDY

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Our thanks to Shane Hamlin of the Secretary of State's office who read our draft for accuracy.

# ELECTION REFORM IN WASHINGTON STATE

## Introduction

The League of Women Voters of Washington completed a two-year study of election laws and procedures in 2005. Two publications were issued: *Voting Equipment and Procedures on Trial*, Winter 2003, and *Voting Inside and Outside the Box*, Fall 2004. The publications looked at the newly enacted Help America Vote Act (HAVA) and examined how its provisions affected elections in Washington State. Current election laws were reviewed.

The controversial 2004 governor's election raised even more questions, and demonstrated that the League's work was not done. Although much has been accomplished to make the ballot handling process more uniform, secure and understandable and to make every aspect of the election process more transparent, elections officials from the Secretary of State to county election officials continue to work with citizen groups to restore voter confidence in Washington's election procedures.

This study reviews for members and the public the issues raised by that historically close election and the resulting changes in state law. Committee members examined the new state Voter Registration Database system and the various approaches to auditing election results. Included is a synopsis of *Building Confidence in U.S. Elections*, (The Carter-Baker Report) and a summary of recommendations of the Brennan Center for Justice and the Leadership Conference on Civil Rights for Improving Reliability of Direct Recording Electronic (DRE) Voting Systems.

Although King County is only one of Washington's 39 counties, much of the 2004 election controversy was centered there, so we have included a report on the conclusions of several groups examining King County election procedures. We also surveyed county auditors on their use of citizen advisory committees to help them choose voting equipment, and a summary of their replies is included.

## The State Makes Changes in Election Laws

The problems of the 2004 election served as the impetus for much activity in the legislative session beginning in January 2005. A segment of the public seemed to have lost confidence in the integrity of the election process, and the Governor, the Secretary of State and members of the Legislature made improving the process a high priority.

The Governor appointed a blue ribbon committee to take the pulse of the electorate. Public hearings were held in several locations and the results were put into the mix. Legislative hearings were held on many of the bills that were introduced and 11 were passed. An overview of new legislation follows:

**ESSB 5499** created new election statutes and amended others as follows:

- **Requires guidelines for verifying signatures, and training for staff.** Voters must be notified by phone or mail if their signature is missing on their absentee ballot envelope, or does not match the signature on file. The voter may cure the signature problem in person or by mail until the day before certification. The problem cannot be addressed during a recount.
- **Requires the county auditor to notify the voter if he or she failed to sign the absentee ballot envelope, or if the signatures do not match.** The county auditor must contact the voter by telephone and then by mail if there is no answer. Leaving a voice mail message is not considered contact. The voter must cure the problem by the day before certification. If the second signature still does not match, the voter must appear in person to sign a new signature card.
- **Records regarding cured signatures are public records.**

- **Provisional and absentee ballots must be distinguishable, one from the other, and either printed on colored paper or imprinted with a bar code.** Provisional and absentee ballots must be incapable of being counted by poll ballot counters. Auditors must provide a way for a provisional voter to learn whether a ballot was counted.
- **Provisional ballot outer envelopes must have the same declaration that appears on absentee ballots and the same description of penalties.**
- **Requires a poll voter to provide a photo ID, voter registration card, a utility bill, bank statement, paycheck, government check or other government document.** A voter without ID may vote a provisional ballot.
- **Auditors may begin processing absentee ballots upon receipt.** Ballot enhancement is prohibited; ballot duplication is allowed only if voter intent is clear and it is necessary for machine to count the ballot. Only the canvassing board can reject ballots or votes on a ballot.
- **More details are required on the county reconciliation reports concerning the number of votes cast and the number counted.** The first reconciliation report is required at the time of certification. A second reconciliation report must be filed 30 days after certification, and must include the number of registered voters, all voters credited, poll voters credited, provisional voters credited, absentee voters credited, federal write-in voters credited, Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) voters credited, voters credited even though the ballot was late and not counted, any other information necessary to reconcile the number of ballots counted with the number.
- **Automatic manual recount threshold for statewide candidate elections changes from a difference of 150 votes between candidates to less than 1,000 votes and a difference of one-quarter of one percent between candidates.** The threshold for statewide ballot measures is fewer than 2000 votes and less than one-half of one percent. An election contest (challenge) must be filed within 10 days of certification. General election certification is extended from 15 days to 21 days.
- **Makes it a crime to alter, destroy or discard a completed voter registration form or to intentionally vote twice.**
- **The Secretary of State is directed to study the impact of the current law that allows a candidate for the Supreme Court, Court of Appeals, Superior Court or Superintendent of Public Instruction who receives a majority of votes in the primary to be the only candidate listed for that race in the general election.**

The Legislature responded to wide citizen pressure to require all electronic voting devices to produce a recountable paper record for the voter's review prior to finalizing his/her vote. **ESSB 5395** also requires auditors to randomly select 4% of the direct recording electronic machines (DREs) to compare the results recorded electronically with the results recorded on paper of three randomly selected races. Paper records must be tabulated manually on 25% of the devices subject to audit and by machine on the remaining devices.

Other successful legislation in 2005 included:

- **HB 1447—authorizes a pilot project using instant runoff voting for non-partisan elections.** (Vancouver, Spokane and Tacoma are the only cities meeting the criteria in the bill.) The project must begin by August 1, 2008, and conclude by 2013.
- **SHB 1132—Candidacy filings for single county legislative, Court of Appeals and Superior Court races may be filed electronically.**
- **HB 1749—The Secretary of State must review each county's elections procedures at least once every three years.**

- **SHB 1754—Counties are allowed to conduct elections entirely by mail.** The Secretary of State must report on available technologies that would allow a voter to determine whether his/her ballot was received and counted.
- **SHB 1876—The court order establishing guardianship shall specify whether or not the individual retains the right to vote.**
- **SB 5564 – Requires the Secretary of State to prepare a manual of election laws for distribution to all vote counting centers.**
- **SB 5565—Requires the envelopes or ballot instructions for out-of-state, overseas, and service voters to explain that:** 1) the date of the signature is considered the date of mailing; return postage is free; the envelope must be signed by election day; a signed declaration may serve as registration; ballot and envelope may be faxed if the voter waives secrecy and originals arrive prior to certification; ballot may be obtained electronically; the Secretary of State’s (SOS) website is included to facilitate electronic acquisition of ballots. This is to conform to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).
- **ESSB 5743 -- Directs that a voter registration applicant must provide a Washington driver’s license or state ID card; lacking these he/she must provide the last four digits of his/her social security number.** The Secretary of State must validate driver’s license, state ID card or Social Security number. The applicant must confirm citizenship. A voter who registers by mail and does not have the required ID at that time is issued a unique identifying number randomly selected by computer. The voter must provide secondary ID when voting for the first time after registration, or vote by provisional ballot. The Department of Licensing and other agencies must ask the applicant, “Are you a U.S. citizen?” and “Are you or will you be 18 on or before the next election?” Illegal registration is made a class C felony. Changes have been made to the registration form and absentee ballot envelope. The duties of the Secretary of State in administering the voter registration database (VRDB) are also outlined. (See VRDB section of this study on page 8.)
  - a) **Clarifies that a felon must be notified at the time of conviction:** 1) that the right to vote has been lost; 2) that his/her voter registration has been cancelled; 3) that voting before the right has been restored is a felony, and 4) of the process for getting the right restored.
  - b) **Clarifies that the Secretary of State must provide lists of registered voters upon request just like county auditors.** Makes a voter’s birthdate a matter of public record.

### **And the Changes Continued**

Although the Legislature made significant changes to Washington state election law in 2005, 2006 saw further activity, including action on one of the Secretary of State’s highest priorities. **ESB 6236** moved the date of the state primary to the third Tuesday in August, with the date for filing moved to the first week in June. Ballots to overseas and service voters must be mailed at least 30 days before any election. The county canvassing board must certify the results of a primary or special election in 15 days. The end of the campaign fundraising freeze for incumbent office holders is changed to the day of adjournment of the Legislature, rather than the current 30 days after adjournment. These changes are effective January 1, 2007.

Other changes included:

- **SHB 1226—Campaign contribution limits are extended to candidates for county office in a county that has over 200,000 registered voters, and to candidates for judicial office.**

- **SSB 6362—The county auditor is required to publish voter challenges on the auditor’s web page within 72 hours of receipt.** The regulations for challenging a voter are specified. The auditor must provide notice by certified mail of the challenge to the voter. The residential address must identify the actual physical residence of the voter with sufficient detail to allow the voter to be assigned to the proper precinct and to be located to confirm residence. Voters with a “non-traditional address” are no longer permitted to use the address of a county courthouse, city hall or other public building as an address for voter registration purposes. A voter without a traditional address must provide a valid mailing address and meet the 30 day residence requirement in Article VI, section 1 of the state Constitution. A challenged voter may transfer or re-register until the day before the election.
- **ESHB 2479—The requirement that a voting device be used in another state before it may be certified in Washington is removed.** The device must be tested and certified by the U.S. Election Assistance Commission. In-person disability access voting must be available 20 days before an election and end on the day of the election. Auditors are to establish an advisory committee to assist in developing a plan to improve election accessibility. This bill authorizes the use of automated signature verification systems approved by the Secretary of State and directs the Secretary of State to adopt rules and standards for approval and implementation of these systems.

## Statewide Voter Registration Databases

“The Help America Vote Act of 2002 (HAVA) requires the Chief Election Official in each state to implement a single, uniform, official, centralized, interactive computerized statewide voter registration list. That list is to be defined, maintained, and administered at the state level and must contain the name and registration information of every legally registered voter in the state.” The law required these databases to have been operational by January 1, 2006.

The Washington Secretary of State’s office met that deadline. This system is expected to solve many of the problems that surfaced in the 2004 elections by cleaning up the registration lists. This would include removing duplicate registrations, eliminating registered felons who have not had their voting rights restored and removing deceased persons from the voter registration rolls.

When someone attempts to register to vote, the system will compare information submitted by the applicant with that on file in other databases, such as the state drivers license database, Social Security lists, and death records from the Department of Health. The HAVA and the Election Assistance Commission have developed a broad range of requirements to be met by these voter registration database systems.

The following section focuses on two aspects of the system:

- What criteria define an acceptable match? and
- Does the system have effective means to resolve cases where a mismatch is detected?

If a successful match is defined as one in which there is an “exact” match between two records—i.e., the two are identical in all respects, there could be some problems. For example, if an apostrophe is missing in the spelling of a name in one record, but is present in the other, the match fails.

The match criteria became a topic of discussion here in Washington state when The Brennan Center for Justice at New York University’s School of Law released a report on the work of all the states in implementing the Help America Vote Act (HAVA) requirements. They reported that a 2004 trial run in New York City showed that up to 20% of eligible new applicants could have been rejected

under the above criteria because of data entry errors by election officials. A similar situation occurred in Los Angeles County where the voter database rejected 14,629 people, 43% of those who tried to register, between January 1 and March 15, 2006.

Regarding this state, The Brennan Center's report included the following: "Washington reports that they will reject the application of citizens whose information cannot be matched to the state's motor vehicle database or the database of the Social Security Administration, barring the applicant entirely from the polls." The Secretary of State's office maintains the language of this report is somewhat misleading. The SOS says that election staff operating the system can reverse any unwarranted automatic disbarment. The real question, they say, is not just what criteria are used, but how the system as a whole—database and staff—handles mismatches.

The Secretary of State's voter registration database design team knew that handling mismatches would be a major part of the system workload. The technical design—hardware and software—had to be structured to simplify the operators' tasks. The planning and funding for the staff had to be done so that enough qualified people would be available to do the job.

Because the counties had always maintained voter registration databases of their own citizens, and because Washington State law requires that signatures on initiatives and referenda be confirmed, the counties and the state had a long history of cooperating on systems and procedures to handle voter information. For instance, the counties' databases had been built up over time, using a diverse set of purchased database systems as foundations. Working with the state, all agreed that each county would use a system from a list of only four voter registration database systems; the Secretary of State and county auditors selected the systems for the list together. Thus the voter registration database team profited from a large base of information and detailed knowledge of how data had to be managed.

When a person first completes an application for voter registration, he/she must submit information on a form, prescribed by the Secretary of State, to the auditor of the county in which he/she resides. This information is entered into the county's database, which is connected to the state voter registration database, where it is scanned for match with entries in other data bases—e.g., the State Department of Licensing, Social Security Administration, and others.

Each record must contain the following:

- name,
- complete residential address,
- complete mailing address,
- county registration number,
- state registration number,
- gender,
- date of birth,
- date of registration,
- applicable district and precinct codes,
- the individual's voting record, if available,
- Washington State Driver's License number (or Washington state identification card number, or last four digits of the social security number), and
- a scanned image file of the applicant's signature.

If the applicant does not have a Washington state driver's license number or Social Security number, the system will then assign a unique registration number and the registration will be accepted. Upon entry of an applicant's information, the auditor must check for duplicate entries.

When the Secretary of State receives a registration from the county auditor, and on a monthly basis, the SOS must search for potential duplicate registration records in the official state database. Duplicates are confirmed by comparing the signatures on all available records.

The matching of signatures involves identifying specific elements of a signature to take into account and processes for deciding if a match has been found. This is done only if a match needs to be confirmed, as in a change of address case. However, it is important in other processes, such as confirming signatures on ballot initiatives. The voter registration database provides the system for managing these tasks. In the past, signature match decisions were done differently from county to county. Now new procedures are being put into place to regularize the process statewide.

If a mismatch is found, the originating county is notified. According to the Secretary of State's office, "If the mismatch is because the name provided on the registration form is a version of the name in the Department of Licensing or the Social Security Administration databases, such as Bob and Robert, the county auditor may resolve the defect without contacting the voter. If it is clear that digits are reversed, the staff member can accept it. A mismatch in a driver's license number, however, triggers an obligatory request for clarification." The auditor and/or the Secretary of State must notify the applicant to resolve the defect.

State regulations and legislation have an extensive list of provisions covering variations from the normal application. For instance, if the applicant has none of the numbers specified in the above list, he/she checks a box on the application form; the system will then assign a unique registration number, as described earlier, and the application may be accepted.

The voter registration database is expected to go a long way toward solving some of Washington state's registration problems, but will require constant monitoring by citizens' groups, the Legislature and county elections offices.

In June 2006, the Brennan Center filed a lawsuit in Washington state against the Secretary of State on behalf of a coalition of citizens and groups concerned about voting rights to block implementation of a five-month-old state election law. The law (RCW 29A.08.107) bars citizens from registering to vote in the fall election of 2006 unless the Secretary of State first succeeds in matching their names, driver's license or Social Security numbers, and birth dates from their voter registration forms with records kept in other government databases. In August, a federal judge barred the state from enforcing the law. U.S. District Judge Ricardo S. Martinez agreed with lawyers who claimed that under the law, misspelled names or other minor errors could improperly prevent people from voting.

## **Auditing**

Washington State HB 5395 (enacted by the 2005 Legislature) states that, starting in January 2006, all electronic voting devices must produce a paper record of each vote that may be accepted or rejected by the voter before finalizing his or her vote, and that this paper record must be stored for use in the random audit of results. This bill also provides that the audit of electronic voting devices must be conducted by randomly selecting at least one and up to four percent, whichever is greater, of the direct recording electronic voting devices (DRE) and comparing the results electronically recorded with the results recorded on paper. For this audit, one-fourth of the results recorded on paper must be tabulated by hand. The rest of the results on paper may be tabulated by an approved mechanical device. The audits are subject to observation by political party representatives. Three randomly selected races or issues must be audited on each device.



Provisions of this law apply only to elections conducted with DREs. Currently, these are in use only in King, Snohomish and Yakima Counties. Most ballots are handled by Optical Scan machines which convert the voters' marks on paper ballots into digital form for subsequent processing by central tabulator machines. This means that Vote by Mail ballots and all ballots filled in by voters at polling places are not subject to an audit.

Many computer scientists and statisticians are troubled to find that the vast majority of voted ballots received are not subject to an audit. No rationale has been given for the sample size required for the machine audit: four percent of the machines and three races or issues. Many believe that the mathematically optimal size of samples to be audited should depend on how close the race is, what probability of failing to detect fraud is acceptable, how many contests or machines there are, and how big the population size is, among other variables. California state law requires poll officials to do a random manual recount of one percent of ballots cast as a check against election malfunction and fraud. U.S. Representative Rush Holt's bill, HR 550, mandates an audit of two percent, randomly selected, for Federal elections. It is not known how these sample sizes were arrived at.

Election precincts may differ in size and ballot content. Each has ballot issues and candidates unique to the precinct, as well as issues and candidates in common with other precincts. It could be important to know how well the sampled population reflects the precincts that were not in fact audited.

It has been suggested that audit design should allow for variations according to the size of the population in the audited region. Counties might be divided into three or four categories according to size; and different designs, appropriate to their sizes, would be employed. The types of equipment in use should also influence the audit design, since different types of equipment have different vulnerabilities. It might be desirable to have 10 or 12 combinations of sampling techniques that scramble the totals and percentages. One of those combinations could be implemented by simply drawing it from a hat after the polls are closed.

## **Responses from the County Auditors**

Eighteen Washington state county auditors responded to a survey about whether or not they had used citizen advisory committees to help choose voting machines. There was a good cross section of counties, east and west, populated and rural. Two additional counties, King and Whatcom, were known to have involved citizen groups. Thirty-four of the 39 counties are now Vote-by-Mail (VBM). Island, King, Kittitas, Klickitat, and Pierce continue to offer poll site voting.

It appears that most of the more populated counties have made use of citizens in choosing voting equipment and/or in decisions to change to VBM. Some of the less populated counties held public meetings or hearings.

Most counties have special drop-off locations for VBM, especially on Election Day. Some are staffed; others are in secure locations such as a branch Auditor's office or in familiar locations like school district offices (in Kitsap County). Appropriate security measures are being addressed, as well. One Auditor is lobbying the county commissioners to pay the postage for each ballot.

Many counties are planning for ways that a voter can check to learn if his/her ballot has been received using new technology. One county has an 800 number. Others say that a telephone call to the Auditor's office is all that it takes to check on the return of a voted ballot.

A new state law requires counties to involve citizens in developing plans to implement disabled voting. Some counties have used committees; others convened public meetings with special outreach. One Auditor said that they were planning to take the voting equipment to the handicapped voter.

Auditors were asked if they had heard of cases of coercion in the Vote-By-Mail process. A law making coercion a crime might deter someone wishing to force his/her opinion on another voter, although all of the Auditors who answered this question said that they had never heard of an instance of coercion or had a case reported.

Many counties reported a marked increase in voting when their county switched to VBM. Before implementing VBM, Whatcom, Asotin, Clallam and Kitsap Counties reported 75% voting by mail. In the last two years, Kit sap's average turnout has been 86%. Stevens County reported a turnout of 9,500 in 2003; 16,000 people voted in 2005; Whatcom County reported an increase of 18,000.

The State of Oregon held a special election in 1996 to replace Senator Bob Packwood. This was the first time that VBM was used statewide. There was a 71.31% "turnout." In 1998 Vote-By-Mail was made permanent in Oregon with a disappointing turnout of 59%. Since then the turnout has increased, with 86.4% in 2004, finally surpassing the turnout of the 1960's.

## **National Reports on Election Practices**

The report *Building Confidence in U.S. Elections*, (The Carter-Baker Report) September 2005, organizes its recommendations into what it calls "five pillars." Each pillar becomes part of the foundation of the election reforms envisioned by the Commission on Federal Election Reform co-chaired by President Jimmy Carter and former Secretary of State James A. Baker, III.

The commission asserts that the Help America Vote Act (HAVA) should be fully implemented by 2006, as mandated by the law, and fully funded. The commission also urges that the Voting Rights Act be vigorously enforced and that the provisions of the Act that are due to expire in 2007 be renewed. (The Act was renewed by Congress and signed into law by the President in July of 2006.) These provisions include:

- the minority language provision which supplies ballots and other election materials in the languages of minority groups making up a significant portion of the population, and
- the requirement for federal pre-clearance for all changes to voting rules or procedures made by specified jurisdictions with a history of voter discrimination.

The following recommendations make up the five pillars:

- A universal voter registration system managed by the states, not the local jurisdictions. The system would make it possible for states to maintain accuracy of their registration lists, and information could pass between the states so that the file would be updated seamlessly. All states would develop uniform procedures for counting provisional ballots.
- A uniform system of voter identification based on the "REAL ID card." The REAL ID Act requires states to verify a person's personal information before a driver's license is granted. An equivalent ID card would be available for non-drivers. To vote at the polls, a voter would be required to show this ID card. Voters who do not have acceptable ID would be able to vote a provisional ballot
- States should assume more responsibility to register citizens, make voting more convenient and user friendly. More information about voting and about candidates and issues should be provided. Military voters and civilians living overseas need to be better served with timely access to absentee ballots. All states should have provisions in their state laws for allowing restoration of voting rights to ex-felons. Voters should be able to get polling place information more easily by using toll-free numbers and Web sites. There should be a more active effort to prosecute election fraud in all its forms, including systematic efforts to deceive or intimidate voters, as well as fraudulent voting by non-citizens, or by others who are not legally registered.
- Voters must have confidence in whatever voting system is used. The commission recommends that an auditable paper trail be established for electronic voting devices. Independent testing of equipment and systems is necessary. Testing should be extensive and realistic. Elections must be run more professionally and in a non-partisan manner.

Secretaries of State who certify election results should not be simultaneously chairing political campaigns. Elections must be better funded by state and local jurisdictions. Cost cutting that compromises election administration is a mistake and should be discouraged. There should be adequate equipment available to voters on Election Day, and Election Day complaints should be logged, investigated, and the conclusions reported to the public. Electronic poll books should be available so that election workers have an on-line method of assisting voters in finding the correct polling place on Election Day.

- The media must improve coverage of elections by providing some free time when presidential candidates can address the issues. News organizations should refrain from projecting winners until the polls have closed in the 48 contiguous states. We must allow domestic and international election observers to observe at the polling places. The creation of four regional primaries with rotation among states in each region would eliminate the dominance of one or two states in early primaries.

### **The King County Experience, 2002-2005**

King County has over 1,325,300 registered voters, 1,250 precincts and 565 polling places. In recent years, more than 70 percent of King County voters have chosen to vote by mail rather than at a polling place. King County uses the Diebold Accuvote system—paper ballots that are optically scanned. In King County, elections are a responsibility of the Department of Records, Elections and Licensing Services (REALS) headed by a director who is appointed by the County Executive.

In the 2002 general election, tens of thousands of voters did not receive their mail-in ballots until just before election day. The Metropolitan King County Council brought in a consultant to review the election process. The Secretary of State also conducted an investigation. In special elections held in 2003, the supply of ballots ran low at polling places and mail-in ballots again were mailed late. A new Director of REALS was appointed in 2003.

In July 2003 the County Council convened a Citizens' Election Oversight Committee (CEOC) to review the previous reports, to observe all aspects of election operations in 2003 and to make recommendations for improvements. The 13-member committee included representatives of civic groups, political parties, junior taxing districts and citizens at large.

The CEOC found shortcomings in poll worker training, in employee accountability and in the management structure. The group's recommendations were based on direct observations of preparations for and conduct of the primary and general elections in 2003. The committee observed elections in Pierce and Snohomish counties and visited Portland, Oregon, to observe the vote-by-mail system as operated in Multnomah County.

The CEOC reported to the County Council in May 2004. The committee received a response from the Director of REALS on the status of implementation of the CEOC recommendations. By the statewide primary election in 2004, many new procedures were in place. A key recommendation that was not implemented was to consolidate all ballot processing operations into one physical location.

However, existing problems and the new problems that arose were exacerbated by the huge turnout for the 2004 General Election. The incredibly close race for Governor put the spotlight on King County elections. Problems included the following:

- Provisional ballots were inserted into the Accuvote machine at the polling place;
- Ballots were mailed to voters who had duplicate registrations, to deceased voters and to felons still registered to vote;
- Signature matching on mail-in ballots did not follow standard procedures;
- Military ballots were not sent in time; and
- Wrong ballot codes were sent to some jurisdictions.

These problems caused the King County Executive and County Council enough concern that reviews were undertaken on several fronts. The Executive appointed an Independent Task Force to review the County's election systems. The County Council commissioned an audit by the Election Center, and the County Council reconstituted the Citizens' Election Oversight Committee. The reconvened CEOC included six members from the 2003 group and five new members from stakeholder groups. The Secretary of State's representative and the Chelan County Auditor served as ex-officio members.

The CEOC again took the hands-on approach of observing activities involved in the planning, training, logistics and verification of election preparations and the conduct of the primary and general elections in 2005. Election operations were still spread among four locations, but a facility that had been rented for the 2004 Governor recount was used for training and some mail-in ballot processing.

The Independent Task Force made its report and recommendations to the County Executive in July 2005, and the CEOC final report and recommendations were presented to the County Council in March 2006.

It is worth noting that the three reports had recommendations in common:

- Consolidated facility for all election operations. Easy access, adequate parking, and heavy duty warehouse-type characteristics were among the criteria considered.
- Convert King County to mail-in voting for all elections by the fall of 2007.
- State legislation to make primary elections earlier than September to allow time to process mail-in ballots.
- Make Elections Director position elected. Make elections a stand-alone function.
- Prepare emergency plans; improve security of polling places and processing centers.
- Update and maintain accurate voter registration data base.
- Improve training of poll workers and observers.
- Improve mail-in ballot security, tabulation and reconciliation.
- Comply with HAVA (Help America Vote Act) with voting equipment and locations that are accessible.

In January 2006 the Director of REALS presented to the County Executive a plan for implementing vote-by-mail elections countywide by the primary election in 2007. The 2006 legislature changed the primary election date to the third week in August beginning in 2007.

### **Recommendations of the Brennan Center for Justice and the Leadership Conference on Civil Rights for Improving Reliability of Direct Recording Electronic (DRE) Voting Systems**

Several recommendations were suggested for jurisdictions planning to use DRE voting systems to assess and address potential vulnerabilities in the voting systems.

- Elections officials should hire a well-qualified, independent security team to examine the potential for operational failures of and malicious attacks against the jurisdiction's DRE voting system.
- The assessment performed by the independent experts should cover at least the following areas of concern:

Hardware Design Assessment. Hardware design flaws allow an attacker to access the system to change critical settings, install malicious devices or tamper with the voting terminals or tally servers. So-called "red team" exercises, in which a team of analysts attempts to attack the

system under review, are a critical assessment tool. It is important to study the hardware to identify design flaws that could allow either access or operational failures.

Hardware/Firmware Configuration Assessment. This refers to the manner in which different hardware/firmware components are connected and their operating settings. There is a need to limit potential access points through which attackers can gain access into the voting system.

Software Design Assessment. Vulnerabilities could involve either good faith flaws or malicious software code hidden within the voting system. Design flaws include poor practices, such as including passwords or encryption keys in lines of easily accessible software, or simply faulty software code.

Software Configuration Assessment. This refers to the ways in which the various software elements are set up and arranged together to work properly. Flaws could allow unintended access into the software code by an attacker, or simply expose the software to dangers, such as computer viruses.

Assessment of Election Procedures. Procedures used to handle a voting system can facilitate security breaches, machine malfunctions or fail to stop such problems. Examples would be the absence of adequate security procedures, poor implementation of adequate procedures by elections workers, or departures from protocol.

Physical Security Assessment. Voting systems must be securely stored and kept physically out of the reach of potential attackers.

- Critical recommendations of the independent expert security team should be implemented.
- A thorough training program should be provided for all elections officials and workers on security procedures to ensure that security procedures are followed.
- Procedures should be in place for random parallel testing of the voting systems in use to detect malicious code or bugs in the software.
- There should be a permanent independent technology panel, including experts in voting systems and computer security and citizens.
- There should be a regular review of audit facilities and operating logs for voting terminals and canvassing systems to uncover any evidence of potential security breaches.
- All jurisdictions should prepare and follow standardized procedures for response to alleged or actual security incidents.

## STUDY COMMITTEE RESOURCES

### State Resources

We are especially grateful for information provided by Shane Hamlin and Pamela Floyd of the Secretary of State's Office, and by LWVWA President Barbara Seitle on her meetings with staff members of the Brennan Center for Justice and the Secretary of State's Office

Election Center – hired by Metropolitan King County Council to review Elections Department

Independent Task Force on Elections – Initiative of King County Executive

King County Citizens' Election Oversight Committee – appointed by Metropolitan King County Council

Questionnaires returned from Auditors of Ferry, Grant, Kitsap, Lincoln, Pacific, Pierce, San Juan, Skagit, Snohomish, Spokane, Stevens and Whitman Counties

Snohomish County Auditor Bob Terwiliger

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