



King County
Metropolitan King County Council
Committee of the Whole

STAFF REPORT

Agenda Item No.: 5	Date: 2 July 2007
Motion No.: 2007-0312	Prepared by: Nick Wagner

SUBJECT

“A MOTION establishing county policy to ensure the constitutional guarantee of every citizen to cast a secret ballot.”¹

INTRODUCTION

During the past several years the Council has engaged in active oversight of King County elections and has enacted legislation to ensure continued improvement in the conduct of elections.² Among the principles stated in the Council’s legislation has been the need for public confidence, accuracy, reliability, accountability, and security in elections.³

Council Action on Vote-by-Mail and Ballot Tracking

In June of 2006 the Council adopted Ordinance 15523 directing the Executive to conduct all King County elections by mail (“Vote-by-Mail”) on a date in 2007 or 2008 to be determined by the director of Records, Elections and Licensing (“REALS”). One of the conditions for moving to Vote-by-Mail was ballot tracking. Ordinance 15523 provided in part: “There shall be an electronic tracking system established for tracking ballots so that voters can, through use of the Internet, follow the movement of their ballots as they move from King County to the voter and back to King County for counting and crediting the voter for voting.”⁴

Public Concern About Ballot Secrecy

Some voters have voiced concern about ballot tracking systems being used in a way that might violate the secrecy of the ballot. In particular, concern has been expressed about the possibility that ballots might be marked with numbers, bar codes, or other identifying marks that could be used to link an individual voter to his or her ballot. The fear is that such marking might enable the government or another person or entity to learn for whom the individual had voted.

¹ Attachment 1 to this staff report.

² See Ordinances 15333, 15453, 15519, 15523, 15524, 15560, 15623, 15627, 15652 and Motions 12285, 12299, 12307, 12334, and 12493.

³ See, for example, Motion 12493, adopted on 2 April 2007, which called for expert, peer, and citizen review of the Executive’s recommendations for the purchase of voting system equipment and software.

⁴ Ordinance 15523, section 3.

The Executive's Recommendation for Ballot Tracking

In response to the Council's direction, the Executive is recommending purchase of equipment and software that would enable both voters and elections staff to track individual mail ballots at certain points in the election process. A proposed motion that would approve the Executive's recommendation is currently pending before the Council and is scheduled to be considered in the Committee of the Whole in the coming weeks.⁵

In preparing the Executive's business case for ballot tracking equipment and software, elections staff assessed public opinion on the issues of ballot tracking and ballot secrecy through the use of professionally-facilitated focus groups. They found: "Voters in the focus groups concluded that once their ballot is received they trust it will be counted. They are not interested in the use of a barcode because they fear it may be used to identify how they voted."⁶ Based in part on these findings, the Executive decided not to recommend ballot tracking through to tabulation (that is, counting of the ballots) and not to recommend putting a unique identifier on the ballot "at this time," though elections staff believe it may be possible to put a unique identifier on the ballot without compromising ballot secrecy.⁷

EXISTING LEGAL PROVISIONS ON BALLOT SECRECY

Ballot secrecy is addressed in the Washington State Constitution, the Revised Code of Washington, and the Washington Administrative Code, as described below.

Article VI, section 6, of the Washington State Constitution provides:

SECTION 6. BALLOT. All elections shall be by ballot. The legislature shall provide for such method of voting as will secure to every elector absolute secrecy in preparing and depositing his ballot.

RCW 29A.12.080 provides in part:

Requirements for approval. No voting device shall be approved by the secretary of state unless it: (1) Secures to the voter secrecy in the act of voting

WAC 434-335-040 provides in part:

Voting system requirements. (1) No voting device or its component software may be certified by the secretary of state unless it: (a) Secures to the voter secrecy in the act of voting

⁵ Proposed Motion 2007-0328 is scheduled for briefing in the Committee of the Whole on July 9 and for discussion and possible action on July 16.

⁶ Executive's Business Case, p. 7.

⁷ King County Elections memo entitled, "VBM: Ballot tracking with and without a unique identifier on the ballot," p. 3 (Attachment 2 to this staff report).

SUMMARY OF PROPOSED LEGISLATION

Proposed Motion 2007-0312, a copy of which is Attachment 1 to this staff report, would establish a policy “that no unique identifying numbers or marks of any kind may be placed on ballots that could allow an individual voter to be identified with a particular ballot” (lines 15-17). In addition, the motion would set, as “the highest priorities of King County” in the process of tabulating ballots and reporting elections results, “to ensure an accurate vote count and to preserve the secrecy of individual ballots” (lines 18-20).

ANALYSIS

The Executive’s current recommendation for ballot tracking calls for ballots to be tracked only as far as the opening of the envelope in which the voter returns his or her ballot to King County Elections for counting. This tracking can be accomplished by using information on the outside of the return envelope, which includes the voter’s signature (for verification) and other information identifying the voter. This does not require a number, bar code, or other mark on the ballot itself that could be used to link the ballot to the voter. Once the envelope is opened and the ballot is removed and separated from the envelope, there is nothing on the ballot that could be used to link it to the voter.

Proposed Motion 2007-0312 seems consistent with the Executive’s current recommendation for ballot tracking, as described above; however, the Executive’s memo on the use of a unique identifier on the ballot does not rule out the possibility of using such an identifier in the future.⁸ Proposed Motion 2007-0312 states a policy that would rule out the use of any identifier that “could allow an individual voter to be identified with a particular ballot.”

INVITED

1. Sherril Huff, Director Designee, REALS
2. Bill Huennekens, Vote-by-Mail Transition Manager, REALS, DES
3. Laird Hail, Information Systems Manager, REALS

ATTACHMENTS

1. Proposed Motion 2007-0312
2. King County Elections memo entitled, “VBM: Ballot tracking with and without a unique identifier on the ballot”

⁸ See Attachment 2, p. 3.



Signature Report

June 29, 2007

Motion

Proposed No. 2007-0312.1

Sponsors Constantine and Phillips

1 A MOTION establishing county policy to ensure the
2 constitutional guarantee of every citizen to cast a secret
3 ballot.
4

5 WHEREAS, the Washington state Constitution guarantees every citizen the right
6 to cast a secret ballot, and

7 WHEREAS, state laws provide additional guarantees and guidance ensuring
8 every citizen the right to cast a secret ballot, and

9 WHEREAS, King County might purchase and use new elections equipment that
10 has the capability to track individual mail ballot envelopes as well as individual ballots,
11 and

12 WHEREAS, the public has expressed significant concerns that ballot-tracking
13 equipment could identify the ballots of individual voters;

14 NOW, THEREFORE, BE IT MOVED by the Council of King County:

15 A. County policy is hereby established that no unique identifying numbers or
16 marks of any kind may be placed on ballots that could allow an individual voter to be
17 identified with a particular ballot; and

18 B. In the process of tabulating ballots and reporting elections results, the highest
19 priorities of King County shall be to ensure an accurate vote count and to preserve the
20 secrecy of individual ballots.

21

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

ATTEST:

Attachments None



VBM: Ballot tracking with and without a unique identifier on the ballot

The public and election officials expect accurate, problem-free elections. Ballot tracking technology developed for the elections business over the past three years allows voters to do just that. They will be able to verify their ballot is processed and see improved ballot reconciliation as well. Ballot tracking technology will be a feature of King County's move to all-mail voting in 2008.

To track a voter's unique ballot to the point of tabulation would require a unique identifier, such as a bar code, on each ballot. This unique identifier would allow voters to verify their individual ballot is counted using the Internet. Technology exists to track ballots from receipt to tabulation. King County held a series of focus groups in early April to assess how voters want to track their ballots. Do voters want to know their ballot was counted? Or, do voters just want reassurance their mail ballot was received by King County Elections?

Feedback from Focus Groups Conducted in April

Overwhelmingly, voters were most interested in confirming their envelope had been received by King County. Being able to track the ballot all the way to tabulation was important for some people, but the majority felt confident that if their ballot had been received and their signature verified, their vote would be counted.

While participants were split on whether they would actually spend the time to check on their ballot if they could, most agreed that just having the option made them more confident. Several people said they might do it once just to see how it works, but wouldn't regularly check.

On the issue of being able to track ballots through a unique bar coding process, the participants were mixed. Those voters over the age of 50 felt strongly that their vote needs to be 100 percent private – no bar codes. As we gauged the opinions of others, however, the younger the age, the less it mattered.

Asa, 29, cabinet maker – Seattle: "I honestly -- I don't -- I wouldn't have any concerns about, you know, loss of my anonymity. But with the vote, I guess -- and I would probably check to see where my vote was just out of curiosity because it would be a new thing. But I don't have a lot of concern about the security."

Albert, 63, retired – South County: "We forget one major thing here -- it's a secret ballot. Once you start putting barcodes on things like that, it's no longer going to be secret...Maybe I'm too much on the conspiracy theories, but I don't trust big government or Big Brother."

Additionally, women between the ages of 45 and 65 were not as concerned about the privacy of their ballot choices as they were that their names would be



VBM: Ballot tracking with and without a unique identifier on the ballot

given to or used by political parties or private interests and that they would be “placed on more lists for unsolicited mail or phone calls.”

Many people generally felt comfortable having a barcode on their ballot, but they were also not necessarily enthusiastic about adding it. Given that ballot reception and signature verification were the most important tracking points to participants, most focus groups came to a general agreement that a bar code or tracking system on the outer envelope was a much better option than having it on the ballot.

King County Elections’ recommendation

King County Elections recommends King County invest in technology that allows voters to confirm:

- Their ballot packet has been assembled for mailing
- Their voted ballot packet has been received by King County Elections
- Their signature on the outer envelope has been verified; and
- Their ballot envelope has been opened and prepared for tabulation.

The ability to track and account for each ballot is essential to open and transparent elections. However, tying the voter back to his or her ballot may pose legal concerns and has several unknown risks that must be addressed carefully before King County considers ballot tracking through tabulation.

King County Elections is confident that ballot accountability can be maintained with this technology without sacrificing the secrecy of the ballot. Continuing to use the tracking system already in place, a bar code on the **ballot envelope and other data collection tools**, will improve ballot tracking and reconciliation, and give voters ultimately what they want: the ability to verify their ballot was received by King County and their signatures were verified.

The main concerns of placing unique identifiers on the ballot revolve around three aspects: political, legal, and preserving the secrecy of the voter’s ballot.

1. Political Concerns

The State of California has prohibited the use of a unique identifier on the ballot and Washington State may not be far behind. While an amendment was introduced but not adopted in the latest Legislative session, this issue is far from resolved and will likely be discussed in the future.

2. Ongoing Legal Issues

Four counties in Washington State offer voters a Web interface to track their ballot through tabulation. San Juan County is one of these counties and has been named in a lawsuit to remove this feature. The outcome of the court case



VBM: Ballot tracking with and without a unique identifier on the ballot

is not yet decided and will likely set precedent regarding voter secrecy and ballot tracking in Washington.

3. Maintaining the secret ballot

The use of a unique identifier on a ballot for the purpose of tracking voted ballots is viewed by some as compromising the voter's right to a secret ballot. While the encryption technology available is compelling, King County Elections does not want to compromise the spirit or legal definition of the secret ballot. Sufficient accountability can be attained with tracking to the signature envelope level, not to the ballot.

Next Steps

As requested by the County Council in their ordinance to move to all-mail voting, King County Elections' ballot tracking and accountability business case lays out a plan that includes the use of a bar code on the ballot envelope to track ballots. This will give voters the ability to verify their mail ballot packet was mailed to them; their voted mail ballot was received by King County; their signature verified and that their ballot packet was opened and sent tabulation. It is our recommendation that a unique bar code on the ballot not be implemented at this time.

King County Elections' recommends further discussion and study of enhanced ballot tracking using a unique identifier on the ballot when and if legal issues in San Juan County are resolved and acceptance of such technology is studied. Until then, we believe the public is best served by tracking ballots by the outer envelope and not using bar codes.