

SENATE BILL REPORT

SSB 6362

As Passed Senate, February 13, 2006

Title: An act relating to modifying processes for challenging voter registration.

Brief Description: Modifying voter registration provisions.

Sponsors: Senate Committee on Government Operations & Elections (originally sponsored by Senators Kohl-Welles, Keiser, Jacobsen and Kline).

Brief History:

Committee Activity: Government Operations & Elections: [DPS]
Passed Senate: 2/13/06, 40-5.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 6362 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kastama, Chair; Berkey, Vice Chair; Roach, Ranking Minority Member; Benton, Haugen, Kline, McCaslin, Mulliken and Pridemore.

Staff: Mac Nicholson (786-7445)

Background: Registration of a person as a voter is presumptive evidence of his or her right to vote. Any registered voter may request that the registration of another voter be canceled if he or she believes that the voter does not meet the requirements of the constitution or that the voter no longer maintains a legal voting residence at the address shown on his or her registration record. The challenger must file a signed affidavit, subject to the penalties of perjury, that to his or her personal knowledge and belief another registered voter does not actually reside at the address as given on his or her registration record or is otherwise not a qualified voter. The person filing the challenge must furnish the address at which the challenged voter actually resides.

Challenges initiated by a registered voter must be filed no later than the day before the election. A challenged voter may properly transfer or re-register until three days before the election. The county auditor must provide notice to the challenged voter and inform the voter that he or she will be issued a challenged ballot. The canvassing board must meet to rule on challenged ballots, and the challenging party must prove that the challenged voter's registration is improper by clear and convincing evidence. The challenged voter has the opportunity to present testimony and evidence to the canvassing board. Challenged ballots must be determined by the time of certification.

If the challenged voter does not vote, or if the challenge is made thirty or more days before the election, the county auditor must hold a hearing at which time both parties may present their arguments. The county auditor must then rule as to the validity of the challenged registration.

The qualifications of any absentee voter may be challenged at the time the signature on the return envelope is verified and the ballot is processed by the canvassing board.

A voter who has a nontraditional address is registered at the county courthouse or other public building near the area the voter considers his or her residence.

Summary of Bill: The auditor is required to publish voter challenges on the auditor's web-page within 72 hours of receipt. The auditor must notify any person who requests to receive notification of challenges immediately after publication. Any person, upon request, may receive copies of all materials provided to the challenged voter by the county auditor.

Challenges initiated by a registered voter against a voter who registered to vote less than 60 days before the election, or who changed residence less than 60 days before the election and didn't transfer his or her registration, must be filed no later than ten days before the election, or within ten days of the voter being added to the registration database, whichever is later. Challenges initiated by a registered voter against all other voters must be filed no later than 45 days before the election. A challenged voter may transfer or re-register until the day before the election.

A voter challenge must be based on personal knowledge, having exercised due diligence to personally verify the evidence that: the voter has been convicted of a felony and civil rights have not been restored; the voter has been declared mentally incompetent by a judge; the voter does not live at the residential address provided on his or her registration; the residential address does not constitute a residential address; the voter is or will not be 18 by the election; or the voter is not a citizen. Challenges based on a felony conviction discovered by the county auditor or Secretary of State are resolved under a different statute.

If the challenge is based on an allegation that the voter does not live at the address provided, the challenger must provide the voter's actual residence. If the challenge is based on an allegation that the residential address provided does not constitute a residential address, the challenger must submit evidence that he or she exercised due diligence to personally verify that the address is not a residence. Due diligence can be demonstrated by at least one visit to the address to determine whether the voter resides there, a search of a phone book, and a search of property records to determine ownership of the address listed.

The challenger must provide the factual basis for the challenge and may not base the challenge on unsupported allegations or allegations by anonymous third parties. A challenge may be dismissed by the auditor if it is not in proper form or is incomplete on its face. A challenge may be prepared using an official electronic challenge form template provided by the auditor or the Secretary of State. The form must be printed and signed by the challenger.

If the challenge is filed before the ballot has been received, the ballot must be treated as a challenged ballot. If the challenge is filed after the ballot has been received, the challenge cannot affect the current election. If the challenge is filed at least 45 days before the election, the county auditor presides over the hearing. If the challenge is filed less than 45 days before the election, the canvassing board presides over the hearing.

The auditor must provide notice by certified mail of the challenge to the challenged voter, and if the challenge is based on the residential address, the auditor must give notice of exceptions to the residency requirement allowed by the constitution and statute (nontraditional address

and excused absence from the state due to military service, college, prison, and navigation of high seas).

If the challenger fails to prove by clear and convincing evidence that the registration is improper, the challenge must be dismissed and the ballot must be counted. If the challenge is based on residency and the canvassing board sustains the challenge, then the challenged voter must be permitted to correct his or her registration and any races or measures on the challenged ballot that the voter would have been qualified to vote for had his or her registration been correct shall be counted.

A residential address may be either a "traditional address" or a "non-traditional address." Either way, 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 his or her 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 his or her 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.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill ensures that all legitimate votes are counted and that all illegitimate votes are not counted. Two important values are safeguarded by the bill, the right to vote and the right to challenge. The challenge of 2000 voters in King County angered many voters, some of whom didn't get notice of the challenge until the Thursday before the election. Some voters who received notice said they were not going to vote. The state must ensure that type of thing doesn't happen again. Some voters don't have an address or a home but are still entitled to vote. The bill establishes reasonable time periods for challenges and will help avoid the unreasonable time frame faced by the canvassing board that had 2000 challenges filed right before the election. Voters should have the ability to correct their registration if an error was made and any in-common races or measures should be counted. Political parties can assist challenged voters and should receive notice of challenges. The Secretary of State likes some sections of the bill but thinks formally including political parties is inappropriate and will only serve to politicize the issue. Challenges of this type have been filed throughout the nation, including Ohio in 2004, and the integrity of the rolls should be preserved. Voters should not be disenfranchised on a "gotcha."

Testimony Against: None.

Who Testified: PRO: Senator Kohl-Welles, prime sponsor; Sam Reed, Secretary of State; Bob Terwilliger, Snohomish County Auditor and Washington State Association of County Auditors; David Goldstein, HorsesAss.org; Steve Lacey; David Anderson, Your Vote Counts.

House Amendment(s): The provision allowing challenges based on an allegation that the residential address provided does not constitute a residential address is removed. Residential

challenges based on an allegation that the voter does not live at the residential address provided must provide the challenged voter's actual residence on the challenge, or submit evidence that the challenger exercised due diligence to verify that the challenged voter does not reside at the address provided and attempted to contact the voter to learn the challenged voter's actual address. The amendment specifies the minimum actions necessary for a challenger to establish that he or she exercised due diligence, including obtaining a signed affidavit from a person who owns, manages, resides, or is employed at the address as listed on the registration form.