

WSR 24-11-136
PROPOSED RULES
SECRETARY OF STATE

[Filed May 21, 2024, 12:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-20-004.

Title of Rule and Other Identifying Information: Automatic voter registration acknowledgment notice packages, future voter disclosure timeline, voter registration form.

Hearing Location(s): On June 25, 2024, at 10:00 a.m., at the Washington Secretary of State, Washington State Library, 6880 Capitol Boulevard S.E., Tumwater, WA 98501. When attending the hearing in person, walk into the front lobby of the Washington state library. You will be escorted to the conference room at 9:55 a.m. to be present when the hearing begins at 10:00 a.m. If you arrive after that time, there will be a staff member available in the lobby to escort you to the conference room.

Date of Intended Adoption: June 26, 2024.

Submit Written Comments to: Dave Piersma, P.O. Box 40229, Olympia, WA 98504, email dave.piersma@sos.wa.gov, fax 360-664-4619, beginning May 22, 2024, 5:00 p.m., by June 24, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Dave Piersma, phone 360-902-4172, fax 360-664-4619, email dave.piersma@sos.wa.gov, by June 24, 2024, 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to create the processes to enact the opt-out automatic voter registration system established in E2SSB 5112 (2023) in a manner that ensures consistency in counties throughout the state, provide clarification on disclosure timelines related to primary-only voters in SB 5153 (2023), and create a new voter registration application form in accordance with E2SSB 5112 (2023).

Reasons Supporting Proposal: E2SSB 5112 (2023) expanded voter registration participation options for voters and amended the requirements for the prescribed voter registration application form. The consent decree entered in *Washington State Alliance for Retired Americans v. Hobbs, et al.*, W.D.WA. Case No. 3-23-CV-06014-TMC created a required change in the voter registration form's oath. New rules are required to enumerate the procedures to enact the requirements. SB 5153 (2023) updated RCW to state that records pertaining to primary-only voters become publicly available when they are eligible to vote in the next primary, presidential primary, or election, but did not clarify a specific timeline. The proposed rule creates a uniform disclosure timeline for use across the state.

Statutory Authority for Adoption: RCW 29A.04.611.

Statute Being Implemented: RCW 29A.08.030, 29A.08.110, 29A.08.210, 29A.08.359, 29A.08.725.

Rule is necessary because of federal court decision, *Washington State Alliance for Retired Americans v. Hobbs, et al.*, W.D.WA. Case No. 3-23-CV-06014-TMC.

Name of Proponent: Office of the secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Stuart Holmes, Olympia, 360-902-4151.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

May 22, 2024
Amanda Doyle
Chief of Staff

OTS-5434.1

AMENDATORY SECTION (Amending WSR 24-03-053, filed 1/10/24, effective 2/10/24)

WAC 434-232-040 Information pertaining to primary-only voters, when disclosable. (1) Pursuant to RCW 29A.08.720, personally identifiable information from the voter registration record is exempt from public inspection and copying until the voter is 18 years of age, or until 90 days prior to the next presidential primary, primary, or election the ((person)) voter is eligible to participate in ((the next presidential primary, primary, or election)).

(2) Pursuant to RCW 29A.40.130, ballot issuance and return information for a primary-only voter, excluding the date of birth, gender, and address, is subject to public disclosure at the time of ballot issuance by the county auditor for a presidential primary or primary that the voter is eligible to participate in.

(3) Pursuant to RCW 29A.08.170, a person who signs up to register to vote must remain as a "future voter" as defined by RCW 29A.04.070 until such time as they will be eligible to vote in the next election. The voter registration information is exempt from public inspection and copying until they are 18 years of age or until 90 days prior to the next presidential primary, primary, or election the ((person)) future voter is eligible to participate in ((the next presidential primary, primary, or election)).

OTS-5435.1

AMENDATORY SECTION (Amending WSR 24-07-018, filed 3/8/24, effective 5/4/24)

WAC 434-250-120 Verification of the signature and return date.

(1) A ballot shall be counted if:

(a) The voter has not already cast a ballot that has been accepted in the election;

(b) The voter signed the ballot declaration with a valid signature, as determined by WAC 434-261-051 through 434-261-053, or the voter has provided identification at a voting center; and

(c) The envelope is returned in one of the following methods:

(i) The envelope is postmarked not later than the day of the election and received not later than close of business the day before certification of the election. A postmark is any official mark, imprint, or application that verifies when a ballot entered the U.S. postal system. The mailing date of a ballot sent through a commercial mailing service, such as FedEx or UPS, may be considered a postmark. The postmark on the envelope is the official date of mailing. If there are multiple postmarks, the earliest postmark is the date of mailing. A hand cancellation by an agent of the U.S. Postal Service is a postmark.

If the postmark is illegible or missing, the date of the voter's signature is the date of mailing as per RCW 29A.40.110. If the postmark is illegible or missing and the voter did not include a date with their signature, county auditors may use available U.S. Postal Service tools to verify the date of mailing;

(ii) The ballot is deposited in a ballot drop box no later than 8:00 p.m. on election day; or

(iii) For service and overseas voters, the ballot is received by fax or email no later than 8:00 p.m. on election day. Only service and overseas voters can submit ballots by fax or email.

(2) Postage that includes a date, such as meter postage or a dated stamp, does not qualify as a postmark. If an envelope lacks a postmark or if the postmark is unreadable, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.110. If a ballot is from a service or overseas voter, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW (~~29A.40.100~~) 29A.40.110.

(3) Consistent with WAC 434-250-080, the voter's current ballot and signed declaration shall be accepted for initial processing; ballots previously or subsequently received for the same voter are not counted nor rejected by the county canvassing board. Such ballots are invalid and categorized as informational only.

(a) If the first ballot received is identical to the voter's current ballot because the voter submitted a replacement ballot, the replacement ballot shall be referred to signature verification for initial processing.

(b) If the first ballot received is suspended because of a voter registration update, the suspended ballot shall be held by the county of current registration. The county of registration may choose to manually check the suspended ballot for signature issues and send a signature update form, while allowing time for the current ballot to be received and accepted.

(4) A ballot may not be rejected merely because the ballot envelope is not dated, unless the date is necessary to validate the timeliness of the ballot. The signature on a ballot declaration may not be rejected merely because the name in the signature is a variation of the name on the voter registration record.

(5) Only service and overseas voters are eligible to return a ballot by fax or email. For ballots returned by fax or email from service or overseas voters, the county auditor must apply procedures to protect the secrecy of the ballot.

(a) If returned by email, the county auditor must print the email and attachments; the printed email and signed declaration page must be processed and retained like other ballot declarations, and the printed ballot must be processed and retained like other ballots. The electronic versions of the email, ballot declaration, and ballot are exempt from public disclosure in order to maintain secrecy of the ballot. Voted service and overseas ballots returned by email may be returned with multiple attachments or in multiple emails.

(b) Service and overseas ballots returned by fax or email with a missing or mismatched signature are processed as established in RCW 29A.60.165 and WAC 434-261-050.

(6) For faxed or emailed ballots received from voters who are not service or overseas voters the county auditor must:

(a) Contact the voter immediately if a faxed or emailed ballot is received to notify the voter that they must return their ballot by mail or ballot drop box.

(b) Count only the ballot received by mail or ballot drop box if the voter returns both a faxed or emailed ballot and a ballot by mail or ballot drop box.

(c) Send the faxed or emailed ballot to the canvassing board for rejection if the voter did not return a ballot by mail or ballot drop box.

(7) The signature verification process shall be open to the public, subject to reasonable procedures adopted and promulgated by the canvassing board to ensure that order is maintained and to safeguard the integrity of the process.

OTS-5442.1

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

WAC 434-324-005 Definitions. As used in this chapter:

(1) "Accepted" means the voter's ballot has been signature verified and is ready for initial processing.

(2) "Active status" means a designation assigned to voters with complete voter registration records signifying that the voter is eligible to vote.

(3) "Applicant" means a person who has applied, or is applying, to become a registered voter in the state of Washington.

(4) "Auditor" or "county auditor" means the county auditor in a noncharter county or the officer in a charter county, irrespective of title, having the overall responsibility to maintain voter registration to conduct state and local elections.

(5) "Automatic voter registration" means the process in which applicants for government services are automatically registered to vote upon completing a transaction that requires proof of United States citizenship.

(6) "Conditional registration" means an in-person voter registration application submitted when the (~~voter registration~~) election management system is unable to process applications. Conditionally registered voters are issued a current ballot for their precinct whenever possible; they are not issued a provisional ballot.

~~((6))~~ (7) "Current ballot" means the ballot which matches the precinct, precinct portion or split in which the voter is currently registered to vote. This is the most recently issued ballot type or style.

~~((7))~~ (8) "Electronic registration" means the electronic submission of voter registration applications.

~~((8))~~ (9) "Extraction," as used in this chapter, means the creation of an electronic list of specific information from the entire official statewide voter registration database.

~~((9))~~ (10) "Future voter" means a participant in the future voter program established under RCW 29A.08.170.

(11) "New county" means a county in Washington state that a registered voter is moving to from another county within Washington state.

~~((10) "Previous county" means a county in Washington state that a registered voter lived in prior to moving to a new county.~~

~~((11))~~ (12) "Pending status" means a voter registration record is not yet complete, and the applicant is not yet a registered voter or the registration is a potential felon, potential duplicate match, prospective registration applicant, or a future voter.

~~((12))~~ (13) "Previous county" means a county in Washington state that a registered voter lived in prior to moving to a new county.

(14) "Prospective registration applicant" means a pending automatic voter registration applicant who has not yet declined to register and has not yet reached the deadline to be updated to active status.

(15) "Qualified tribal identification" means tribal identification from an issuer of tribal identification that has agreed to make digitized signature information available for the purpose of voter registration.

~~((13))~~ (16) "Received" means the voter's ballot has been returned to the county and entered into the election management system, but not yet accepted.

~~((14))~~ (17) "Registered voter" means any elector who has completed the statutory registration procedures established by Title 29A RCW.

~~((15))~~ (18) "Registration number" means a unique identifier assigned to each registered voter, pursuant to RCW 29A.08.125.

~~((16))~~ (19) "Reissued ballot" means a new ballot issued to a voter due to an address update within the state that changes the voter's ballot type or style. A reissued ballot becomes the current ballot and all other ballots are suspended.

~~((17))~~ (20) "Replacement ballot" means a ballot that is the same type or style as the most recently issued. The request for a replacement ballot does not update the voter's current ballot type or style.

~~((18))~~ (21) "Secretary" means secretary of state or any other person authorized by the secretary of state to act on the secretary's behalf.

~~((19))~~ (22) "Suspended ballot" means any ballot that is not the current ballot. The suspended ballot may be accepted when the current ballot is not received or accepted.

OTS-5448.1

AMENDATORY SECTION (Amending WSR 21-21-001, filed 10/6/21, effective 11/6/21)

WAC 434-324-026 Voter registration form.

Fold and seal, or use an envelope

Instructions

Use this form to register to vote or update your current registration.

Print all information clearly using black or blue pen. Your signature will be used to verify your ballot. Mail this completed form to your county elections office (address on back).

Deadline This registration will be in effect for the next election if received by the elections office no later than eight days before election day.

Voting You will receive your ballot in the mail. Contact your county elections office for accessible voting options.

Future Voters If you are at least 16 years old, use this form to sign up. You'll be automatically registered to vote when you qualify.

Public Information Your registration name, address, gender, and date of birth will be public information when you become eligible to vote.

Notice You must be a United States citizen in order to register to vote. You may register to vote if you are at least sixteen years old. You may vote if you will be at least eighteen years old by the next general election, or are at least eighteen years old for special elections.

Knowingly providing false information about yourself or your qualifications for voter registration is a class C felony punishable by imprisonment for up to five years, a fine of up to \$10,000, or both.

Public Benefits Offices If you received this form from a public benefits office, where you received the form will remain confidential.

Registering or declining to register will not affect the assistance provided to you by that agency.

If you believe someone interfered with your right to register, or your right to privacy in deciding whether to register, you may file a complaint with the Washington State Elections Division.

Contact Information If you would like help with this form, contact the Washington State Elections Division.

web www.votewa.gov
call 1 (800) 448-4881
email elections@sos.wa.gov
mail PO Box 40229 Olympia, WA 98504-0229

For official use:

fold in half

1/2022

Washington State Voter Registration Form

Register online at www.votewa.gov.

1 Personal Information

last first middle suffix
date of birth (mm/dd/yyyy) gender
residential address in Washington state apt#
city ZIP
mailing address, if different
city state and ZIP
phone number (optional) email address (optional)

2 Qualifications

If you answer no, do not complete this form.
I am a citizen of the United States of America.
I am at least sixteen years old and will not vote in a special or general election until I turn eighteen.

3 Military / Overseas Status

I am currently serving in the military.
I live outside the United States.

4 Identification - Washington Driver License, Permit, or ID

Grid for driver license, permit, or ID number.
If you do not have a Washington driver license, permit, or ID, you may use the last four digits of your Social Security number to register.

5 Change of Name or Address

This information will be used to update your registration, if applicable.
previous last name first middle
previous residential address city state and ZIP

6 Declaration

I declare that the facts on this voter registration form are true. I am a citizen of the United States, I will have lived at this address in Washington for at least thirty days immediately before the next election at which I vote, and I am at least sixteen years old. I am not disqualified from voting due to a court order, and I am not currently serving a sentence of total confinement under the jurisdiction of the department of corrections for a Washington felony conviction, and I am not currently incarcerated for a federal or out-of-state felony conviction.

sign here [] date here []

Fold and seal, or use an envelope

Instructions

Use this form to register to vote or update your current registration.

Print all information clearly using a black or blue pen. Your signature will be used to verify your ballot. Mail this completed form to your county elections office (address on back).

Deadline

This registration will be in effect for the next election if received by the elections office at least eight days before election day. If it is within seven days of an election, register in person at a voting center. Locations are listed at www.sos.wa.gov/elections/auditors

Notice

You must be a United States citizen in order to register to vote.

If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration you will have committed a class C felony that is punishable by imprisonment for up to five years, a fine of up to ten thousand dollars, or both.

Future Voters

If you are at least 16 years old, use this form to sign up as a Future Voter. You'll be automatically registered to vote when you qualify. You may vote if you will be at least 18 years old by the next general election, or are at least 18 years old for special elections.

Public Information

Your registration name, address, gender, and year of birth will be public information when you become eligible to vote.

Voting

You will receive your ballot in the mail. Contact your county elections office for accessible voting options.

Public Benefits Offices

If you received this form from a public benefits office, where you received the form will remain confidential. Registering or declining to register will not affect the assistance provided to you by that agency.

If you believe someone interfered with your right to register, or your right to privacy in deciding whether to register, you may file a complaint with the Washington State Elections Division.

Contact Information

If you would like help with this form, contact the Washington State Elections Division.

- web www.sos.wa.gov/elections
call 1 (800) 448-4881
email elections@sos.wa.gov
mail PO Box 40229 Olympia, WA 98504-0229

fold in half

Washington State Voter Registration Form

Register online at www.VoteWA.gov.

1 Personal Information

last name first middle suffix (Sr., Jr., etc.)
date of birth (mm/dd/yyyy) gender (optional)
residential address in Washington state (cannot be a PO Box or PMB) apt/unit #
city ZIP
mailing address, if different from above apt/unit #
city state and ZIP
phone number (optional) email address (optional)

2 Citizenship

I am a citizen of the United States.
yes no If you answered no, do not complete this form.

3 Military or Overseas Status

I am actively serving in the military.
Includes National Guard or Reserves, and spouses or dependents away from home due to service.
yes no
I currently live outside the country.
yes no

4 Identification - Washington Driver License, Permit, or ID; or SSN

Grid for driver license, permit, ID, or SSN information.

5 Previous Name or Address

This information will be used to update your registration, if applicable.
previous last name first middle
previous residential address city state and ZIP

6 Declaration and Signature

I declare that the facts on this voter registration form are true. I am a citizen of the United States, I am a Washington state resident, and I am at least sixteen years old. I am not disqualified from voting due to a court order, and I am not currently serving a sentence of total confinement under the jurisdiction of the department of corrections for a Washington felony conviction, and I am not currently incarcerated for a federal or out-of-state felony conviction.

For official use:

sign here

date here

7/2024

OTS-5443.1

NEW SECTION

WAC 434-324-104 Automatic voter registration acknowledgment notice packages. (1) Upon receipt of a complete automatic voter registration application, the county auditor must send the automatic voter registration applicant an acknowledgment notice package as defined in RCW 29A.08.030 within five business days. The voter registration transaction can include initial registration, name change, residential address change, mailing address change, or reactivation of an inactive voter registration. The notice package must be sent by nonforwardable, address correction requested mail, and include:

(a) A postage prepaid, preaddressed return automatic voter registration opt-out form as prescribed by the office of the secretary of state or in substantially the same format;

(b) An acknowledgment notice as defined in RCW 29A.08.030 and WAC 434-324-085; and

(c) Other information deemed necessary by the secretary.

(2) If the automatic voter registration application does not contain the minimum information required in RCW 29A.08.010, the county auditor shall mail a verification notice and automatic voter registration opt-out form simultaneously to the prospective registration applicant, following procedure as set forth in RCW 29A.08.110 and WAC 434-324-103.

(3) The county auditor shall mail an automatic voter registration acknowledgment notice package to a primary-only voter, as defined in WAC 434-232-010, no earlier than 90 days before the primary that they are eligible to participate in.

(4) The county auditor shall not mail an automatic voter registration acknowledgment notice package to a participant in the future voter program established under RCW 29A.08.170 until the participant becomes a registered voter.

(5) In addition to mailing the automatic voter registration acknowledgment package, the county auditor may provide notification to the registration applicant by:

(a) Telephone, leaving a voicemail if the automatic voter registration applicant does not answer and voicemail is available (if the automatic voter registration applicant has provided a phone number);

(b) Text message (if the automatic voter registration applicant has opted into text message notifications); or

(c) Email, enclosing a copy of the automatic voter registration acknowledgment notice package (if the automatic voter registration applicant has provided an email address).

(6) If the automatic voter registration information provided by the government agency where the voter applied to government services is for a currently registered voter and does not contain a change to the voter's name or address(es), the county auditor may choose whether to send the voter an automatic voter registration acknowledgment notice package.

(7) Prior to removal from the statewide voter registration database of a new voter registration record upon receipt of the automatic voter registration opt-out form, the county auditor must ensure that the signature on the automatic voter registration opt-out form matches the signature in the voter registration record by utilizing criteria outlined in WAC 434-261-052.

(a) If the signature on the automatic voter registration opt-out form matches the signature on the voter registration record, the registration is removed from the statewide voter registration database,

and the prospective registration applicant is deemed to have never registered to vote.

(b) If the signature on the automatic voter registration opt-out form does not match the signature on the voter registration record, the county auditor must attempt to contact the prospective registration applicant consistent with subsection (5) of this section. To be deemed as never having registered to vote, the prospective registration applicant must either:

(i) Appear in person and sign an automatic voter registration opt-out form no later than close of business 15 days following the date the package was mailed by the county auditor; or

(ii) Sign an automatic voter registration opt-out form and return it to the county auditor no later than close of business 15 days following the date the package was mailed by the county auditor.

(8) Upon receipt of an automatic voter registration opt-out form from a currently registered voter, the county auditor must ensure that the signature on the form matches the signature in the voter registration record by utilizing criteria outlined in WAC 434-261-052.

(a) If the signature on the automatic voter registration opt-out form matches the signature on the voter registration record, the automatic voter registration application changes are nullified, and the voter registration record will revert to the data in the record prior to the application being processed.

(b) If the signature on the automatic voter registration opt-out form does not match the signature on the voter registration record, the county auditor must attempt to contact the voter consistent with subsection (5) of this section. To nullify the voter registration record changes, the voter must either:

(i) Appear in person and sign an automatic voter registration opt-out form no later than close of business 15 days following the date the package was mailed by the county auditor; or

(ii) Sign an automatic voter registration opt-out form and return it to the county auditor no later than close of business 15 days following the date the package was mailed by the county auditor.

(9) The date of registration is the date an election official receives the information to register the person to vote. If an automatic voter registration application is received in the eight days prior to election day, the date of registration is the day after the election, and the county auditor must mail the automatic voter registration acknowledgment package within five business days following election day.

(10) The county auditor must keep a record of the voter opt-out forms sent and received. The record must contain the date on which the notice package was mailed, the date on which the voter was contacted in other means if applicable, as well as the date on which the voter subsequently submitted an automatic voter registration opt-out form to cancel the pending automatic voter registration record.