**5856.E AMH SGOV H3391.1 - NOT FOR FLOOR USE**

**ESB 5856** - H COMM AMD

By Committee on State Government & Tribal Relations

Strike everything after the enacting clause and insert the following:

"**Sec.**  RCW 29A.08.810 and 2023 c 466 s 28 are each amended to read as follows:

(1) Registration of a person as a voter is presumptive evidence of his or her right to vote. A challenge to the person's right to vote must be based on personal knowledge of one of the following:

(a) The challenged voter has been convicted of a felony that includes serving a sentence of total confinement under jurisdiction of the department of corrections, or a felony conviction in another state's court or federal court and the voter is serving that sentence of total confinement and the person's voting rights have not been restored under RCW 29A.08.520;

(b) The challenged voter has been judicially declared ineligible to vote due to mental incompetency under RCW 29A.08.515;

(c) The challenged voter will not be 18 years of age by the next general election;

(d) The challenged voter is not a citizen of the United States; or

(e) The challenged voter resides at a different address than the residential address provided, and is not subject to RCW 29A.04.151 or 29A.08.112, in which case the challenger must either:

(i) Provide the challenged voter's actual residence on the challenge form; ((~~or~~))

(ii) Submit evidence that he or she exercised due diligence to verify that the challenged voter does not reside at the address provided. The challenger must, at minimum, provide evidence that the challenger personally:

(A) Sent a certified letter with return service requested to the challenged voter's residential address provided, and to the challenged voter's mailing address, if provided, using a form provided by the office of the secretary of state that includes the following disclaimer: "THIS FORM WAS NOT SENT BY THE GOVERNMENT AND ANY CLAIM WITHIN HAS NOT BEEN SUBSTANTIATED. YOU ARE NOT REQUIRED TO RESPOND TO THIS DOCUMENT TO MAINTAIN YOUR CURRENT VOTER REGISTRATION.";

(B) ((~~Searched local telephone directories, including online directories, to determine whether the voter maintains a telephone listing at any address in the county;~~

~~(C)~~)) Searched county ((~~auditor~~)) property records to determine whether the challenged voter owns any property in the county; and

((~~(D)~~)) (C) Searched the statewide voter registration database to determine if the voter is registered at any other address in the state((~~; and~~

~~(E) Searched the voter registration database of another state to determine if the voter is registered to vote in any other state;~~

~~(d) The challenged voter will not be eighteen years of age by the next general election; or~~

~~(e) The challenged voter is not a citizen of the United States~~)); or

(iii) Search the voter registration of database of another state and determine that the challenged voter has registered to vote in another state more recently than the voter registered in Washington.

(2) A person's right to vote may be challenged by another registered voter or the county prosecuting attorney.

(3) The challenger must file a signed affidavit subject to the penalties of perjury swearing that, to his or her personal knowledge and belief, having exercised due diligence to personally verify the evidence presented, the challenged voter either is not qualified to vote or does not reside at the address given on his or her voter registration record based on one of the reasons allowed in subsection (1) of this section. The challenger must provide the factual basis for the challenge, including any information required by subsection (1)((~~(c)~~)) (e) of this section, in the signed affidavit. The challenger must submit the challenge to the county auditor using a form provided by the office of the secretary of state that outlines the reason for the challenge. The challenge may not be based on unsupported allegations or allegations by anonymous third parties. All documents pertaining to the challenge are public records.

(4) Challenges based on a felony conviction under RCW 29A.08.520 must be heard according to RCW 29A.08.520 and rules adopted by the secretary of state.

(5) Voters whose registration is inactive are not subject to voter registration challenges.

**Sec.**  RCW 29A.08.820 and 2023 c 466 s 29 are each amended to read as follows:

(1) Challenges must be filed with the county auditor of the county in which the challenged voter is registered no later than 45 days before the election. The county auditor or auditor's designee presides over the hearing.

(2) Challenges may be filed after 45 days before the election, only when the challenged voter registered to vote less than 60 days before the election, or changed residence less than 60 days before the election without updating the residence address of the voter's voter registration. A challenge may then be filed not later than 10 days before any primary or election, general or special, or within 10 days of the voter being added to the voter registration database, whichever is later.

(a) If the challenge is filed after 45 days before an election at which the challenged voter is eligible to vote, a notation of the challenge must be made immediately to the challenged voter's registration in the voter registration system, and the county canvassing board shall preside over the hearing.

(b) If the challenge is filed before the challenged voter's ballot is received, the ballot must be processed as a challenged ballot, and held until the challenge is resolved.

(c) If the challenge is filed after the challenged voter's ballot is received, the challenge cannot affect the current election. However, the process shall proceed until the challenge is resolved.

(3) The county auditor may dismiss the challenge if the challenged voter's registration is inactive.

(4) When a challenge is based on a voter residing at a different address than the one to which they are registered, prior to any hearing the county auditor shall attempt to determine the validity of the challenge through one or more of the following methods:

(a) Contacting the challenged voter in order to:

(i) Update the voter's residence address for voting within the county or state;

(ii) Determine whether the voter no longer considers themselves a resident for voting purposes, and if so obtain a cancellation signed by the voter; or

(iii) Learn whether the voter is currently residing at a temporary address with the intent to return to the registered address;

(b) Search the statewide voter registration database to determine if the voter is registered at any other address within the state, and if so determine if any address is valid and obtain a cancellation of registration for any other address;

(c) Determine if the voter's registered address is permissible under RCW 29A.04.151 or 29A.08.112;

(d) Contact the department of licensing to determine the address provided on the voter's driver's license, identification card, and vehicle registrations, if any; or

(e) If the challenger provides an out-of-state address for the challenged voter, search the current official voter registration database for the jurisdiction of the address provided, or contact the election official's office in that jurisdiction and determine if the challenged voter has registered to vote in that jurisdiction more recently than the voter registered in Washington.

(5) If the county auditor is successful in determining the validity of the challenge through any of the methods contained in subsection (4) of this section the auditor shall dismiss the challenge and notify the challenger of the dismissal.

**Sec.**  RCW 29A.08.835 and 2023 c 466 s 30 are each amended to read as follows:

(1) ((~~The~~)) For challenges that have not been dismissed for administrative reasons and that cannot be resolved under RCW 29A.08.820(4), the county auditor shall, within ((~~seventy-two hours~~)) 10 business days of receipt, publish on the auditor's internet website the ((~~entire content~~)) affidavit of any voter challenge filed under this chapter ((~~29A.08 RCW~~)). Immediately after publishing any voter challenge, the county auditor shall notify any person who requests to receive such notifications on an ongoing basis.

(2) The information on the website may be removed 45 days following certification of an election. Information related to the challenge must be maintained by the county auditor for the appropriate retention period, and is subject to disclosure upon request.

**Sec.**  RCW 29A.08.840 and 2023 c 466 s 31 are each amended to read as follows:

(1) The county auditor shall determine within 10 business days of receipt of a challenge whether the challenge is in proper form and the factual basis meets the legal grounds for a challenge. If the challenge is not in proper form or the factual basis for the challenge does not meet the legal grounds for a challenge, the county auditor may dismiss the challenge and, when permitted, shall notify the challenger of the reasons for the dismissal. A challenge is not in proper form if it is incomplete on its face or does not substantially comply with the form issued by the secretary of state as described in RCW 29A.08.810.

(2) If the challenge is in proper form and the factual basis meets the legal grounds for a challenge, and the challenge has not been dismissed for administrative reasons or resolved by the voter updating information, the county auditor must notify the challenged voter ((~~and provide a copy of the affidavit~~)) via certified mail to the mailing address and residential address provided in the voter registration record. If the affidavit is returned as undeliverable, the county auditor shall move the challenged voter to an inactive status and send a confirmation notice pursuant to RCW 29A.08.030. The county auditor shall also provide to any person, upon request under chapter 42.56 RCW, a copy of all materials provided to the challenged voter, except that materials provided to a voter whose registered address is permissible under RCW 29A.04.151 or 29A.08.112 are exempt from disclosure under that chapter.

(a) If the challenge is to the residential address provided by the voter, the challenged voter must be provided notice of the exceptions allowed in RCW 29A.08.112 and 29A.04.151, and Article VI, section 4 of the state Constitution, ((~~and~~)) or may update the residence address on the voter's voter registration, or reregister until 8:00 p.m. the day of the election.

(b) The county auditor must schedule a hearing and notify the challenger and the challenged voter of the time and place for the hearing.

(3) All notice must be by certified mail with return requested to the ((~~address~~)) addresses provided in the voter registration record for residence and for mailing, and any other addresses at which the challenged voter is alleged to reside or the county auditor reasonably expects the voter to receive notice. The challenger and challenged voter may either appear in person or submit testimony by affidavit. Personal appearance may be accomplished using video telecommunications technology if the auditor or canvassing board chooses.

(4) The challenger has the burden to prove by clear and convincing evidence that the challenged voter's registration is improper. The challenged voter must be provided a reasonable opportunity to respond. If the challenge is to the residential address provided by the voter, the challenged voter may provide evidence that he or she resides at the location described in his or her voter's registration records, or meets one of the exceptions allowed in RCW 29A.08.112 or 29A.04.151, or Article VI, section 4 of the state Constitution. If either the challenger or challenged voter fails to appear at the hearing, the challenge must be resolved based on the available facts.

(5) If the challenge is based on an allegation under RCW 29A.08.810(1) (a), (b), (c), or (d)((~~, or (e)~~)) and the auditor, auditor's designee, or canvassing board sustains the challenge, the voter registration shall be canceled and any challenged ballot shall not be counted. If the challenge is based on an allegation under RCW 29A.08.810(1)((~~(c)~~)) (e) and the auditor, auditor's designee, or canvassing board sustains the challenge prior to certification, the ((~~board shall permit the voter~~)) voter shall be permitted to correct the residence address on the voter registration and any races and ballot measures on any challenged ballot that the voter would have been qualified to vote for had the registration been correct shall be counted.

(6) If the challenger fails to prove by clear and convincing evidence that the registration is improper, the challenge must be dismissed and any pending challenged ballot must be accepted as valid. All challenged ballots must be resolved before certification of the election. The decision of the county auditor, auditor's designee, or canvassing board is final subject only to judicial review by the superior court under chapter 34.05 RCW.

**Sec.**  RCW 29A.24.075 and 2013 c 11 s 25 are each amended to read as follows:

(1) A person filing a declaration of candidacy for an office shall, at the time of filing, be a registered voter and possess the qualifications specified by law for persons who may be elected to the office.

(2) Excluding the office of precinct committee officer or a temporary elected position such as a charter review board member or freeholder, no person may file for more than one office.

(3) The name of a candidate for an office ((~~shall~~)) may not appear on a ballot for that office unless, except for judge of the superior court and as provided in RCW 3.50.057, the candidate is, at the time the candidate's declaration of candidacy is filed, properly registered to vote in the geographic area represented by the office. For the purposes of this section, each geographic area in which registered voters may cast ballots for an office is represented by that office. If a person elected to an office must be nominated from a district or similar division of the geographic area represented by the office, the name of a candidate for the office ((~~shall~~)) may not appear on a primary ballot for that office unless the candidate is, at the time the candidate's declaration of candidacy is filed, properly registered to vote in that district or division. The officer with whom declarations of candidacy must be filed under this title shall review each such declaration filed regarding compliance with this subsection.

(4) The filing officer may not submit the name of a candidate for an office for inclusion on the ballot if, pursuant to this section, at the time that the candidate's declaration of candidacy is filed, the candidate is not properly registered to vote in the geographic area represented by the office or does not possess the qualifications specified by law for persons who may be elected to the office. If the filing officer finds that the candidate is unqualified to hold the office:

(a) In a case in which a primary must be conducted for the office and has already occurred:

(i) If ballots for the general election for the office have not been ordered by the county auditor, the candidate who received the third greatest number of votes for the office at the primary shall qualify as a candidate for general election and that candidate's name shall be printed on the ballot for the office in lieu of the name of the disqualified candidate.

(ii) If general election ballots for the office have been so ordered, votes cast for the disqualified candidate at the general election for the office may not be counted for that office.

(b) In a case in which a primary must be conducted for the office but has not yet occurred:

(i) If ballots for the primary election for the office have not been ordered by the county auditor, the name of the disqualified candidate may not appear on the primary election ballot for the office.

(ii) If primary election ballots for the office have been so ordered, votes cast for the disqualified candidate at the primary election for the office may not be counted for that office.

(c) In a case in which a primary is not conducted for the office:

(i) If ballots for the general election for the office have not been ordered by the county auditor, the name of the disqualified candidate may not appear on the general election ballot for the office.

(ii) If general election ballots for the office have been so ordered, votes cast for the disqualified candidate at the general election for the office may not be counted for that office.

(d) If the disqualified candidate is the only candidate to have filed for the office during a regular or special filing period for the office, a void in candidacy for the office exists.

(5) The requirements of voter registration and residence within the geographic area of a district do not apply to candidates for congressional office. Qualifications for the United States congress are specified in the United States Constitution.

**Sec.**  RCW 29A.36.101 and 2013 c 11 s 41 are each amended to read as follows:

Except as provided in RCW 29A.24.075, for the candidates for president and vice president, or for a partisan or nonpartisan office for which no primary is required, the names of all candidates who, under this title, filed a declaration of candidacy must appear on the appropriate ballot at the primary throughout the jurisdiction for which they filed."

Correct the title.

EFFECT: Provides that a challenger's assertion that a voter is registered to vote in another state more recently than Washington is a type of challenge based on a voter not living at their registered address, rather than a separate basis to challenge a voter's registration.

Rewords provisions relating to the county auditor's prehearing investigation to remove an implication that challenges are presumptively valid, and specifies that this investigation occurs only when the challenge is based on a voter not living at their registered address.

Specifies that the county auditor must contact the Department of Licensing to determine the address provided on a challenged voter's driver's license, identification card, and vehicle registrations, when conducting a prehearing investigation into whether a challenged voter is registered at the correct address.

Clarifies language regarding the effect of two statutes, one defining "residence" and one instructing voters with nontraditional addresses, on the validity of a voter's registration and on the application of the new Public Records Act exemption created by the bill.

Clarifies that the form sent to a challenged voter by a challenger is a different form than the challenge form submitted to a county auditor, and that the disclaimer is required only on the former.

Specifies that the filing officer may not submit the name of a candidate for office for inclusion on the ballot unless that candidate is properly registered to vote in the geographic area represented by the office and possesses the qualification to hold that office at the time that the declaration of candidacy is filed, and provides a procedure to conduct elections if a candidate is unqualified.