

ESB 5856 - H COMM AMD

By Committee on State Government & Tribal Relations

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 29A.08.810 and 2023 c 466 s 28 are each amended to
4 read as follows:

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

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

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

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

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

20 (e) The challenged voter resides at a different address than the
21 residential address provided, and is not subject to RCW 29A.04.151 or
22 29A.08.112, in which case the challenger must either:

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

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

29 (A) Sent a certified letter with return service requested to the
30 challenged voter's residential address provided, and to the
31 challenged voter's mailing address, if provided, using a form
32 provided by the office of the secretary of state that includes the

1 following disclaimer: "THIS FORM WAS NOT SENT BY THE GOVERNMENT AND
2 ANY CLAIM WITHIN HAS NOT BEEN SUBSTANTIATED. YOU ARE NOT REQUIRED TO
3 RESPOND TO THIS DOCUMENT TO MAINTAIN YOUR CURRENT VOTER
4 REGISTRATION.";

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

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

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

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

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

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

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

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

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

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

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

3 **Sec. 2.** RCW 29A.08.820 and 2023 c 466 s 29 are each amended to
4 read as follows:

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

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

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

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

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

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

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

34 (a) Contacting the challenged voter in order to:

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

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

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

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

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

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

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

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

23 **Sec. 3.** RCW 29A.08.835 and 2023 c 466 s 30 are each amended to
24 read as follows:

25 (1) ~~((The))~~ For challenges that have not been dismissed for
26 administrative reasons and that cannot be resolved under RCW
27 29A.08.820(4), the county auditor shall, within ~~((seventy-two hours))~~
28 10 business days of receipt, publish on the auditor's internet
29 website the ~~((entire content))~~ affidavit of any voter challenge filed
30 under this chapter ~~((29A.08 RCW))~~. Immediately after publishing any
31 voter challenge, the county auditor shall notify any person who
32 requests to receive such notifications on an ongoing basis.

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

1 **Sec. 4.** RCW 29A.08.840 and 2023 c 466 s 31 are each amended to
2 read as follows:

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

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

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

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

36 (3) All notice must be by certified mail with return requested to
37 the (~~address~~) addresses provided in the voter registration record
38 for residence and for mailing, and any other addresses at which the
39 challenged voter is alleged to reside or the county auditor
40 reasonably expects the voter to receive notice. The challenger and

1 challenged voter may either appear in person or submit testimony by
2 affidavit. Personal appearance may be accomplished using video
3 telecommunications technology if the auditor or canvassing board
4 chooses.

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

16 (5) If the challenge is based on an allegation under RCW
17 29A.08.810(1) (a), (b), (c), or (d) (~~(, or (e))~~) and the auditor,
18 auditor's designee, or canvassing board sustains the challenge, the
19 voter registration shall be canceled and any challenged ballot shall
20 not be counted. If the challenge is based on an allegation under RCW
21 29A.08.810(1) (~~(e)~~) (e) and the auditor, auditor's designee, or
22 canvassing board sustains the challenge prior to certification, the
23 (~~board shall permit the voter~~) voter shall be permitted to correct
24 the residence address on the voter registration and any races and
25 ballot measures on any challenged ballot that the voter would have
26 been qualified to vote for had the registration been correct shall be
27 counted.

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

35 **Sec. 5.** RCW 29A.24.075 and 2013 c 11 s 25 are each amended to
36 read as follows:

37 (1) A person filing a declaration of candidacy for an office
38 shall, at the time of filing, be a registered voter and possess the

1 qualifications specified by law for persons who may be elected to the
2 office.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 **Sec. 6.** RCW 29A.36.101 and 2013 c 11 s 41 are each amended to
26 read as follows:

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

33 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.

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