

HOUSE BILL REPORT

SSB 6362

As Passed House - Amended:

March 2, 2006

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

Brief Description: Modifying voter registration provisions.

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

Brief History:

Committee Activity:

State Government Operations & Accountability: 2/17/06, 2/22/06 [DPA].

Floor Activity:

Passed House - Amended: 3/2/06, 94-4.

Brief Summary of Substitute Bill (As Amended by House)

- Modifies existing laws related to challenging voter registrations, the use of a nontraditional address for voter registration purposes, and information required for voter registration.
- Requires county auditors to publish voter challenges of a voter registration on the auditor's internet web site within seventy-two hours of receipt, and to send notice immediately thereafter of such filings to any person who subscribes to receive such notifications.

HOUSE COMMITTEE ON STATE GOVERNMENT OPERATIONS & ACCOUNTABILITY

Majority Report: Do pass as amended. Signed by 5 members: Representatives Haigh, Chair; Green, Vice Chair; Hunt, McDermott and Miloscia.

Minority Report: Do not pass. Signed by 4 members: Representatives Nixon, Ranking Minority Member; Clements, Assistant Ranking Minority Member; Schindler and Sump.

Staff: Kathryn Leathers (786-7114).

Background:

Voter Registration Challenges

Registration of a person as a voter is presumptive evidence of his or her right to vote at any primary or election. A person's right to vote may be challenged at the voting polls only by a precinct judge or inspector upon the belief or knowledge that the voter is unqualified. A person's right to vote may also be challenged by other registered voters. Any challenge to a person's right to vote may not be based on unsupported allegations or by allegations of an anonymous third party.

Registered voters 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.

Article VI, Section 1 of the State Constitution establishes that, in order to be eligible to vote in any election in Washington, a person must:

- be at least 18 years old;
- be a U.S. citizen; and
- have lived in the state, county, and precinct 30 days immediately preceding the election.

In addition, the Constitution further provides that no person may vote in an election if he or she has either been convicted of a felony without having had the right to vote restored or has been judicially declared to be mentally incompetent.

A person's right to vote may be challenged at the polls only by a precinct judge or inspector. Challenges initiated by a voter must be filed no later than one day before the election. 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. If the challenge is based on an improper residential address, the challenger must furnish the address at which the challenged voter actually resides. 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 identity of the challenger, and any third party involved in the challenge, is a public record.

A challenged voter may re-register or transfer his or her registration up until three days before an election. The challenged voter must be permitted to vote a ballot, which must be sealed along with affidavits signed by the challenger and any third party involved in the challenge and kept separate from other ballots. Challenged ballots are transmitted to the Canvassing Board at the close of the election. The County Auditor is responsible for notifying the challenged voter and the challenger by certified mail of the time and place the Canvassing Board will meet to rule on the challenged ballot.

The challenged voter may give testimony, in person or by affidavit. Challengers may appear in person or submit an affidavit supporting the challenge. Challenging parties must prove by clear and convincing evidence that the challenged voter's registration is improper. If the challenger fails to meet this burden, the ballot must be accepted. 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. Challenged ballots must be determined by the time of certification, and the Canvassing Board's determinations are final.

If the challenged voter does not vote, or if the challenge is made 30 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.

Registration at a Nontraditional Address

Voters who lack a traditional residential address but have a non-traditional address, such as a shelter, park, or other identifiable location, are registered to vote at the county courthouse, city hall, or other public building near the location the voter considers his or her residence, and are assigned to a precinct based on the location provided. An otherwise qualified voter is not disqualified to vote because he or she provides a nontraditional address.

Information Required for Voter Registration Purposes

In order to be placed on the voter registration rolls, a person must provide his or her name; residential address; date of birth; Washington state driver's license number, state identification card number, or the last four digits of the person's social security number; a signature attesting to the truth of the information provided on the registration application; and an indication that the person is a U.S. citizen.

Summary of Amended Bill:

Voter Registration Challenges

County auditors must publish the entire content of every voter challenge of a voter's registration on the auditor's internet web site within seventy-two hours of receipt, and must send notice immediately thereafter of such filings to any person who subscribes to receive such notifications.

Any 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 is not qualified to vote based on the existing constitutional requirements, that the voter does not live at the residential address provided on his or her registration record, or that the residential address provided does not constitute a residential address.

- A challenge based on age is modified to state that the voter *is or will not be* 18 by the time of the election, instead of a challenge that the voter is not 18.
- A challenge based on an allegation that the voter does not live at the address provided must be accompanied by the challenged voter's actual residence or submit evidence that he or she exercised due diligence to personally verify that the challenged voter does not reside at the address provided and to attempt to contact the challenged voter to determine his or her actual residence. Due diligence is established by completing the specific enumerated actions.

- Cancellation of a voter registration by county auditors or the Secretary of State based on a felony conviction and confirmation that the person's right to vote has not been restored are resolved under a different statute than voter initiated challenges based on felony convictions.

The challenger must provide the factual basis for the challenge in the signed affidavit. A challenge may not be based on unsupported allegations or allegations by anonymous third parties. All documents pertaining to the challenge are public records.

A challenged voter may transfer or re-register until the day before the election. A challenge may be dismissed by the auditor if it is not in proper form or is incomplete on its face. The Secretary of State must provide forms for voter registration challenges. A challenge is not required to be submitted on the provided form, but may be prepared using an official electronic voter challenge form template provided by the auditor or Secretary of State that has been printed and signed by the challenger.

Who May Challenge and Timing of Challenges

If the challenge is filed on election day, only a poll site judge or inspector may file a challenge. Poll site judges and inspectors may only challenge registrations of voters who present themselves to vote at the poll site. Voter initiated challenges may be filed at any time, provided that:

- Challenges initiated 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 10 days before the election or within ten days of the voter being added to the voter registration database, whichever is later.
- Challenges initiated against all other voters must be filed no later than 45 days before the election. Immediately after every such filing, a notation of the filing must be made in the pollbook.

Challenges initiated by the county prosecuting attorney must be filed in the same manner as challenges initiated by a registered voter. 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, the challenged voter shall 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.

Registration at a Non-Traditional Address

A voter who uses a non-traditional address for registration purposes must provide a valid mailing address, and must meet the constitutional requirement that he or she live in the area for at least 30 days before the election. Any person who has a traditional residential address must use that address for registration purposes even if he or she also has a non-traditional address. Motor homes and marinas are added to the existing list of examples of non-traditional residences.

Information Required for Voter Registration Purposes

The residential address provided by a voter 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 locate the voter for purposes of verifying his or her qualification to vote. A residential address provided by a voter may be either a "traditional address" or a "non-traditional address." A "traditional address" consists of a street number and name, optional apartment or unit number, and city or town, as assigned by a local government. A "non-traditional address" consists of a narrative description of the location of the voter's residence, and may be used when a traditional address has not been assigned to the voter's residence. If the voter does not receive mail at his or her residential address, the voter may provide the county auditor with his or her mailing address for mail delivery purposes only, and any such mailing address provided may not be used for precinct assignment or confirmation of residence for voter qualification purposes.

Repealed Provisions

An existing statute related to voter initiated challenges, RCW 29A.08.830, is repealed, and the specific provisions of that statute are modified and moved to other election law statutes.

Appropriation: None.

Fiscal Note: None.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Current law is not entirely clear regarding requirements for voter registration and the exceptions to the requirements. This bill is trying to clarify the requirements and exceptions. The bill also clarifies provisions regarding nontraditional addresses because the current statute is not clear if the person has to be registered at a public building. It has been the position of Office of the Secretary of State that those who do not have a traditional address do not have to be registered at a public building it is an option. The bill also tries to clarify the bases for initiating a challenge to a voter registration; that is, a challenge can only be based on

the constitutional requirements. Current law does not contemplate the absentee ballot and vote by mail environment, and this bill attempts to include them. Another provision of the bill requires a challenged voter to be advised of what is and what is not permitted.

The bill also includes new deadlines for filing challenges. Challenges should not be filed on the eve of election. The purpose of challenges is to question someone's eligibility to vote. A challenge should not become a campaign tool, a tool to harass voters, or a list maintenance tool. Challengers must have legitimate reasons for challenging, and we should not assume that "last-minute" registrations are improper.

The issue of how to assign precincts to people who live in motor homes year-round (or people who do not have a physical residence anywhere in the state) and "snowbirds" is purely a policy decision to be made by the Legislature. This is a very narrow population of persons who do not have a traditional residential address. The Secretary of State does not believe that these people should be barred from voting simply because they do not have a traditional residential address but they consider an area in the state to be their home. The bill allows the motor home couple and "snowbirds" to use the auditor's office as an address.

A person does not lose residency based on leaving the state to perform military duty or to attend a university. Whether a person has changed his or her residency is a question of "intent" to a certain extent, it is a state of mind, and the case law focuses on a person's state of mind in making residency determinations. Any person who leaves the state can continue to use his or her old residence for voter registration purposes if the person does not intend to change his or her residency.

The Secretary of State does have one concern about the provision in this bill that creates a statutory role and process for major political parties in the challenge procedures. The Secretary has great concern about creating a formal role for parties to be involved despite likely ongoing registration challenges.

These are complex issues that should be approached thoughtfully. The Legislature should move forward with caution to make sure that it does not create a system designed to accommodate those who scrub the voter registration database over the right of the voter, wherever or however the voter lives, to be a registered voter. At some point, the Legislature may need to make a decision to err on the side of the voter.

Testimony Against: None.

Persons Testifying: Katie Blinn and Shane Hamlin, Office of the Secretary of State.

Persons Signed In To Testify But Not Testifying: None.