

SENATE BILL REPORT

SB 6362

As Reported By Senate Committee On:
Government Operations & Elections, January 30, 2006

Title: An act relating to voter registration.

Brief Description: Modifying voter registration provisions.

Sponsors: Senators Kohl-Welles, Keiser, Jacobsen, and Kline.

Brief History:

Committee Activity: Government Operations & Elections: [DPS]

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 Substitute Bill: Any major political party may file a contact name and number with the county auditor to receive notice of voter challenges. A registered voter challenging the registration of another must, within 24 hours of filing the challenge, provide notice of the challenge to every contact name on file with the auditor. The auditor must send to party representatives a copy of all materials provided to the challenged voter.

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. 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 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. The Secretary of State must provide forms for voter registration challenges.

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 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.

Voters who lack a traditional address will be registered at the location provided, and they have the option of using the address of a county courthouse or other public building. 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.

Substitute Bill Compared to Original Bill: The substitute bill combines SB 6362 and SB 6565, tightens the title, and re-writes the voter challenge statutes as summarized above.

The substitute bill removes the requirement that the county auditor send political party contact information to the challenged voter and the provision allowing major political parties that object to the challenge to present testimony and evidence to the canvassing board.

Existing language providing examples of nontraditional addresses is retained, and marinas and motor homes are added as examples.

The substitute provides that a challenge may be based on an allegation that a residential address does not constitute a residential address. In such challenges, the challenger must provide evidence that he or she exercised due diligence to personally verify that the address provided is not a residence.

The substitute provides that challenges based on a felony conviction discovered by the county auditor or Secretary of State are resolved under a different statute. The substitute also allows that challenges filed after a ballot is received cannot affect the current election, and that a challenge may be dismissed by the auditor if it is not in proper form or is incomplete on its face.

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.