
**State Government Operations &
Accountability Committee**

SSB 6362

Brief Description: Modifying voter registration provisions.

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

Brief Summary of Substitute Bill

- Modifies existing laws related to challenging voter registrations, the use of a nontraditional address for voter registration purposes, and information required for voter registration.
- Permits major political parties to file contact information with county auditors, and requires voters who challenge another person's registration to provide the designated political party contact persons with a copy of the challenge within 24 hours of filing the challenge.

Hearing Date: 2/17/06

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.

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 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.

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 Substitute Bill:

Voter Registration Challenges

Any major political party may file a contact name and number with the county auditor to receive notice of voter challenges. A challenger must, within 24 hours of filing the challenge, provide notice of the challenge to every major political party contact name on file with the auditor by mailing a copy of the challenge to each designated contact person.

Any challenger must file a signed affidavit, subject to the penalties of perjury, swearing that, to his or her personal knowledge and belief, 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.
- A challenge based on an allegation that the residential address provided does not constitute a residential address must be accompanied by evidence that the challenger exercised due diligence to personally verify that the address is not a residence. Due diligence is 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.
- 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.

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. If the challenge is filed any time other than election day, a person's right to vote may be challenged by another registered voter or the county prosecuting attorney, 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 ten days before the election.
- Challenges initiated against all other voters must be filed no later than 45 days before the election.

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 thirty 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

In addition to information currently required to be provided by a voter to be placed on the voter registration rolls, a person must also provide his or her mailing address if it is different from his or her residential address.

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.

Substitute Bill Compared to Original Bill:

The substitute bill combines SB 6362 and SB 6565 (companion bill to HB 2752), narrows the title, and modifies the voter challenge statutes as follows:

The provisions requiring the county auditor to send political party contact information to the challenged voter and allowing major political parties that object to the challenge to present testimony and evidence to the canvassing board are removed.

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

Challenges based on residential addresses may also allege 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.

Challenges based on a felony conviction discovered by the county auditor or Secretary of State are resolved under a different statute. Challenges filed after a ballot is received cannot affect the current election. A challenge may be dismissed by the auditor if it is not in proper form or is incomplete on its face.

Substitute Compared to HB 2752 (SB 6565):

New Provisions Not Addressed in HB 2752:

Major political parties may file contact information with the county auditor, and require voter challengers to mail a copy of his or her challenge to every designated party representative within 24 hours of filing a challenge.

For voter registration purposes, the minimum information required to be provided by a voter is modified to add the voter's mailing address, if that address is different from the voter's residential address.

If a sustained challenge is based on any reason other than improper residential address, the ballot shall not be counted. However, if the sustained challenge is based on an improper residential address, the canvassing board must permit the voter to correct his or her voter registration. If the voter corrects his or her registration, any races and ballot measures on the challenged ballot that the voter would have been qualified to vote for had the registration been correct must be counted. For challenges 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 provided is not a residence. Due diligence is 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.

If the challenge is filed any time other than election day, a person's right to vote may be challenged by another registered voter or the county prosecuting attorney, 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 ten days before the election.
- Challenges initiated against all other voters must be filed no later than 45 days before the election.

Modified Provisions

Existing examples of nontraditional addresses (shelters, parks, and other identifiable locations) are retained, and motor homes and marinas are added as additional examples of nontraditional addresses.

Dismissal of challenges by the county auditor can be made if the challenge is not in proper form or if the factual basis for the challenge does not meet the legal grounds for a challenge. House Bill 2752 provides that dismissal is permissible if the challenge is both not in proper form and does not meet the legal grounds for a challenge.

If the challenge is filed at least 45 days before the election, the county auditor presides over the hearing, not 30 days as provided in HB 2752. If the challenge is filed less than 45 days before the election, the canvassing board presides over the hearing, not 30 days as provided in HB 2752.

A challenged voter may transfer or re-register until the day before the election, whereas HB 2752 allows the transfer or re-registration until four days before the election.

Appropriation: None.

Fiscal Note: Not requested.

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