
SUBSTITUTE SENATE BILL 6362

State of Washington

59th Legislature

2006 Regular Session

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

READ FIRST TIME 02/01/06.

1 AN ACT Relating to modifying processes for challenging voter
2 registration; amending RCW 29A.08.010, 29A.08.112, 29A.08.810,
3 29A.08.820, 29A.08.840, 29A.08.850, and 29A.40.140; adding a new
4 section to chapter 29A.08 RCW; and repealing RCW 29A.08.830.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 29A.08 RCW
7 to read as follows:

8 Any major political party may file with the county auditor the
9 name, address, and contact phone number of a party representative
10 authorized by the party to receive notice of voter challenges. The
11 county auditor shall provide the contact information of all such party
12 representatives upon request to a registered voter challenging the
13 registration of another voter. Any registered voter challenging the
14 registration of another voter must, within twenty-four hours of filing
15 the challenge, provide notice of the challenge to every political party
16 who has filed with the county auditor under this section by mailing a
17 copy of the challenge to every designated party representative in the
18 county where the challenge is filed.

1 **Sec. 2.** RCW 29A.08.010 and 2005 c 246 s 2 are each amended to read
2 as follows:

3 As used in this chapter: "Information required for voter
4 registration" means the minimum information provided on a voter
5 registration application that is required by the county auditor in
6 order to place a voter registration applicant on the voter registration
7 rolls. This information includes:

8 (1) Name;

9 (2) Residential address;

10 (3) Mailing address, if different from the residential address;

11 (4) Date of birth;

12 ~~((+4))~~ (5) Washington state driver's license number or Washington
13 state identification card number, or the last four digits of the
14 applicant's Social Security number if the applicant does not have a
15 Washington state driver's license or Washington state identification
16 card;

17 ~~((+5))~~ (6) A signature attesting to the truth of the information
18 provided on the application; and

19 ~~((+6))~~ (7) A check or indication in the box confirming the
20 individual is a United States citizen.

21 If the individual does not have a driver's license, state
22 identification card, or Social Security number, the registrant must be
23 issued a unique voter registration number in order to be placed on the
24 voter registration rolls. All other information supplied is ancillary
25 and not to be used as grounds for not registering an applicant to vote.
26 Modification of the language of the official Washington state voter
27 registration form by the voter will not be accepted and will cause the
28 rejection of the registrant's application.

29 **Sec. 3.** RCW 29A.08.112 and 2005 c 246 s 6 are each amended to read
30 as follows:

31 No person registering to vote, who meets all the qualifications of
32 a registered voter in the state of Washington, shall be disqualified
33 because ~~((of a nontraditional address being used as a residence~~
34 ~~address. Voters using such an)) he or she lacks a traditional~~
35 residential address. A voter who lacks a traditional residential
36 address will be registered and assigned to a precinct based on the
37 location provided~~((. Voters without a traditional address will be~~

1 ~~registered at the~~)), and has the option of using the address of a
2 county courthouse, city hall, or other public building near the area
3 that the voter considers his or her residence. ((Registering at a
4 nontraditional address will not disqualify a voter from requesting
5 ongoing absentee voter status if the voter designates a valid mailing
6 address.))

7 For the purposes of this section, (~~"nontraditional address"~~
8 ~~includes~~) a voter who resides in a shelter((s)), park((s)), motor
9 home, marina, or other identifiable location((s)) that the voter deems
10 to be his or her residence lacks a traditional address. A voter who
11 registers under this section must provide a valid mailing address, and
12 must still meet the requirement in Article VI, section 1 of the state
13 Constitution that he or she live in the area for at least thirty days
14 before the election.

15 A person who has a traditional residential address must use that
16 address for voter registration purposes and is not eligible to register
17 under this section.

18 **Sec. 4.** RCW 29A.08.810 and 2003 c 111 s 253 are each amended to
19 read as follows:

20 (1) Registration of a person as a voter is presumptive evidence of
21 his or her right to vote ((at any primary or election, general or
22 special. A person's right to vote may be challenged at the polls only
23 by a precinct judge or inspector. A challenge may be made only upon
24 the belief or knowledge of the challenging officer that the voter is
25 unqualified. The challenge must be supported by evidence or testimony
26 given to the county canvassing board under RCW 29A.08.820 and may not
27 be based on unsupported allegations or allegations by anonymous third
28 parties. The identity of the challenger, and any third person involved
29 in the challenge, shall be public record and shall be announced at the
30 time the challenge is made.

31 ~~Challenges initiated by a registered voter must be filed not later~~
32 ~~than the day before any primary or election, general or special, at the~~
33 ~~office of the appropriate county auditor. A challenged voter may~~
34 ~~properly transfer or reregister until three days before the primary or~~
35 ~~election, general or special, by applying personally to the county~~
36 ~~auditor. Challenges may also be initiated by the office of the county~~

1 ~~prosecuting attorney and must be filed in the same manner as challenges~~
2 ~~initiated by a registered voter)).~~ A challenge to the person's right
3 to vote must be based on personal knowledge of one of the following:

4 (a) The challenged voter has been convicted of a felony and the
5 voter's civil rights have not been restored;

6 (b) The challenged voter has been judicially declared ineligible to
7 vote due to mental incompetency;

8 (c)(i) The challenged voter does not live at the residential
9 address provided, in which case the challenger must provide the
10 challenged voter's actual residence; or

11 (ii) The residential address provided does not constitute a
12 residential address, in which case the challenger must submit evidence
13 that he or she exercised due diligence to personally verify that the
14 address provided is not a residence, including: (A) At least one visit
15 to the address listed by the challenger to personally contact persons
16 residing or employed at the address to determine whether the voter
17 resides at the address; (B) a search by the challenger of the
18 appropriate local telephone directory to determine whether the voter
19 maintains a telephone listing at the address provided; and (C) a search
20 by the challenger of county auditor property records to determine the
21 ownership of the property where the listed residential address is
22 located;

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

25 (e) The challenged voter is not a citizen of the United States.

26 (2) A person's right to vote may be challenged: By another
27 registered voter or the county prosecuting attorney if the challenge is
28 filed anytime other than election day, or by the poll site judge or
29 inspector if the challenge is filed on election day.

30 (3) The challenger must file a signed affidavit subject to the
31 penalties of perjury swearing that, to his or her personal knowledge
32 and belief, the challenged voter either is not qualified to vote or
33 does not reside at the address given on his or her voter registration
34 record based on one of the reasons allowed in subsection (1) of this
35 section. The challenger must provide the factual basis for the
36 challenge in the signed affidavit. The challenge may not be based on
37 unsupported allegations or allegations by anonymous third parties. All
38 documents pertaining to the challenge are public records.

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

4 **Sec. 5.** RCW 29A.08.820 and 2003 c 111 s 254 are each amended to
5 read as follows:

6 ~~((When the right of a person has been challenged under RCW~~
7 ~~29A.08.810 or 29A.08.830(2), the challenged person shall be permitted~~
8 ~~to vote a ballot which shall be placed in a sealed envelope separate~~
9 ~~from other voted ballots. In precincts where voting machines are used,~~
10 ~~any person whose right to vote is challenged under RCW 29A.08.810 or~~
11 ~~29A.08.830(2) shall be furnished a paper ballot, which shall be placed~~
12 ~~in a sealed envelope after being marked. Included with the challenged~~
13 ~~ballot shall be (1) an affidavit filed under RCW 29A.08.830 challenging~~
14 ~~the person's right to vote or (2) an affidavit signed by the precinct~~
15 ~~election officer and any third party involved in the officer's~~
16 ~~challenge and stating the reasons the voter is being challenged. The~~
17 ~~sealed ballots of challenged voters shall be transmitted at the close~~
18 ~~of the election to the canvassing board or other authority charged by~~
19 ~~law with canvassing the returns of the particular primary or election.~~
20 ~~The county auditor shall notify the challenger and the challenged~~
21 ~~voter, by certified mail, of the time and place at which the county~~
22 ~~canvassing board will meet to rule on challenged ballots. If the~~
23 ~~challenge is made by a precinct election officer under RCW 29A.08.810,~~
24 ~~the officer must appear in person before the board unless he or she has~~
25 ~~received written authorization from the canvassing board to submit an~~
26 ~~affidavit supporting the challenge. If the challenging officer has~~
27 ~~based his or her challenge upon evidence provided by a third party,~~
28 ~~that third party must appear with the challenging officer before the~~
29 ~~canvassing board, unless he or she has received written authorization~~
30 ~~from the canvassing board to submit an affidavit supporting the~~
31 ~~challenge. If the challenge is filed under RCW 29A.08.830, the~~
32 ~~challenger must either appear in person before the board or submit an~~
33 ~~affidavit supporting the challenge. The challenging party must prove~~
34 ~~to the canvassing board by clear and convincing evidence that the~~
35 ~~challenged voter's registration is improper. If the challenging party~~
36 ~~fails to meet this burden, the challenged ballot shall be accepted as~~
37 ~~valid and counted. The canvassing board shall give the challenged~~

1 ~~voter the opportunity to present testimony, either in person or by~~
2 ~~affidavit, and evidence to the canvassing board before making their~~
3 ~~determination. All challenged ballots must be determined no later than~~
4 ~~the time of canvassing for the particular primary or election. The~~
5 ~~decision of the canvassing board or other authority charged by law with~~
6 ~~canvassing the returns shall be final. Challenges of absentee ballots~~
7 ~~shall be determined according to RCW 29A.40.140.))~~ (1) Challenges
8 initiated by a registered voter against a voter who registered to vote
9 less than sixty days before the election, or who changed residence less
10 than sixty days before the election without transferring his or her
11 registration, must be filed not later than ten days before any primary
12 or election, general or special, at the office of the appropriate
13 county auditor. Challenges initiated by a registered voter against any
14 other voter must be filed not later than forty-five days before the
15 election. Challenges initiated by the office of the county prosecuting
16 attorney must be filed in the same manner as challenges initiated by a
17 registered voter.

18 (2)(a) If the challenge is filed within forty-five days before an
19 election at which the challenged voter is eligible to vote, a notation
20 of the challenge must be made in the poll book or voter registration
21 system, and the county canvassing board presides over the hearing.

22 (b) If the challenge is filed before the challenged voter's ballot
23 is received, the ballot must be treated as a challenged ballot. A
24 challenged ballot received at a polling place must be placed in a
25 sealed envelope separate from other voted ballots.

26 (c) If the challenge is filed after the challenged voter's ballot
27 is received, the challenge cannot affect the current election.

28 (3) If the challenge is filed at least forty-five days before an
29 election at which the challenged voter is eligible to vote, the county
30 auditor presides over the hearing.

31 **Sec. 6.** RCW 29A.08.840 and 2003 c 111 s 256 are each amended to
32 read as follows:

33 ~~((All challenges of voter registration under RCW 29A.08.830 made~~
34 ~~thirty days or more before a primary or election, general or special,~~
35 ~~shall be delivered to the appropriate county auditor who shall notify~~
36 ~~the challenged voter, by certified mail, that his or her voter~~
37 ~~registration has been challenged.~~

1 ~~The notification shall be mailed to the address at which the~~
2 ~~challenged voter is registered, any address provided by the challenger~~
3 ~~under RCW 29A.08.830, and to any other address at which the individual~~
4 ~~whose registration is being challenged is alleged to reside or at which~~
5 ~~the county auditor would reasonably expect that individual to receive~~
6 ~~notice of the challenge of his or her voter registration. Included in~~
7 ~~the notification shall be a request that the challenged voter appear at~~
8 ~~a hearing to be held within ten days of the mailing of the request, at~~
9 ~~the place, day, and hour stated, in order to determine the validity of~~
10 ~~his or her registration. The challenger shall be provided with a copy~~
11 ~~of this notification and request. If either the challenger or the~~
12 ~~challenged voter is unable to appear in person, he or she may file a~~
13 ~~reply by means of an affidavit stating under oath the reasons he or she~~
14 ~~believes the registration to be invalid or valid.~~

15 ~~If both the challenger and the challenged voter file affidavits~~
16 ~~instead of appearing in person, an evaluation of the affidavits by the~~
17 ~~county auditor constitutes a hearing for the purposes of this section.~~

18 ~~The county auditor shall hold a hearing at which time both parties~~
19 ~~may present their facts and arguments. After reviewing the facts and~~
20 ~~arguments, including any evidence submitted by either side, the county~~
21 ~~auditor shall rule as to the validity or invalidity of the challenged~~
22 ~~registration. His or her ruling is final subject only to a petition~~
23 ~~for judicial review by the superior court under chapter 34.05 RCW. If~~
24 ~~either party, or both parties, fail to appear at the meeting or fail to~~
25 ~~file an affidavit, the county auditor shall determine the status of the~~
26 ~~registration based on his or her evaluation of the available facts.))~~

27 (1) If the challenge is not in proper form or the factual basis for the
28 challenge does not meet the legal grounds for a challenge, the county
29 auditor may dismiss the challenge and notify the challenger of the
30 reasons for the dismissal. A challenge is not in proper form if it is
31 incomplete on its face or does not substantially comply with the form
32 issued by the secretary of state.

33 (2) If the challenge is in proper form and the factual basis meets
34 the legal grounds for a challenge, the county auditor must notify the
35 challenged voter and provide a copy of the affidavit. The county
36 auditor shall also provide to each party representative a copy of all
37 materials provided to the challenged voter. If the challenge is to the
38 residential address provided by the voter, the challenged voter must be

1 provided notice of the exceptions allowed in RCW 29A.08.112 and
2 29A.04.151, and Article VI, section 4 of the state Constitution. A
3 challenged voter may transfer or reregister until the day before the
4 election. The county auditor must schedule a hearing and notify the
5 challenger and the challenged voter of the time and place for the
6 hearing.

7 (3) All notice must be by certified mail to the address provided in
8 the voter registration record, and any other addresses at which the
9 challenged voter is alleged to reside or the county auditor reasonably
10 expects the voter to receive notice. The challenger and challenged
11 voter may either appear in person or submit testimony by affidavit.

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

22 (5) If the challenge is based on an allegation under RCW
23 29A.08.810(1) (a), (b), (d), or (e) and the canvassing board sustains
24 the challenge, the challenged ballot shall not be counted. If the
25 challenge is based on an allegation under RCW 29A.08.810(1)(c) and the
26 canvassing board sustains the challenge, the board shall permit the
27 voter to correct his or her voter registration and any races and ballot
28 measures on the challenged ballot that the voter would have been
29 qualified to vote for had the registration been correct shall be
30 counted.

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

1 **Sec. 7.** RCW 29A.08.850 and 2003 c 111 s 257 are each amended to
2 read as follows:

3 The secretary of state (~~((as chief elections officer shall cause~~
4 ~~appropriate forms to be designed to carry out the provisions of RCW~~
5 ~~29A.08.830 and 29A.08.840. The county auditors and registration~~
6 ~~assistants shall have such forms available. Further, a reasonable~~
7 ~~supply of such forms shall be at each polling place on the day of a~~
8 ~~primary or election, general or special))~~ must provide forms for voter
9 registration challenges, and the county auditor must make such forms
10 available.

11 **Sec. 8.** RCW 29A.40.140 and 2003 c 111 s 1014 are each amended to
12 read as follows:

13 The qualifications of any absentee voter may be challenged (~~(at the~~
14 ~~time))~~ before the (~~(signature on the return envelope is verified and~~
15 ~~the ballot is processed by the canvassing board))~~ voted ballot is
16 received. The board has the authority to determine the legality of any
17 absentee ballot challenged under this section. Challenged ballots must
18 be handled in accordance with chapter 29A.08 RCW.

19 NEW SECTION. **Sec. 9.** RCW 29A.08.830 (Affidavit--Administration,
20 notice of challenge) and 2003 c 111 s 255 are each repealed.

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