

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6362

59th Legislature
2006 Regular Session

Passed by the Senate March 8, 2006
YEAS 47 NAYS 1

President of the Senate

Passed by the House March 7, 2006
YEAS 98 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6362** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6362

AS AMENDED BY THE HOUSE

Passed Legislature - 2006 Regular Session

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 The county auditor shall, within seventy-two hours of receipt,
9 publish on the auditor's internet web site the entire content of any
10 voter challenge filed under chapter 29A.08 RCW. Immediately after
11 publishing any voter challenge, the county auditor shall notify any
12 person who requests to receive such notifications on an ongoing basis.

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

15 As used in this chapter: "Information required for voter
16 registration" means the minimum information provided on a voter
17 registration application that is required by the county auditor in

1 order to place a voter registration applicant on the voter registration
2 rolls. This information includes:

3 (1) Name;

4 (2) Residential address;

5 (3) Date of birth;

6 (4) Washington state driver's license number or Washington state
7 identification card number, or the last four digits of the applicant's
8 Social Security number if the applicant does not have a Washington
9 state driver's license or Washington state identification card;

10 (5) A signature attesting to the truth of the information provided
11 on the application; and

12 (6) A check or indication in the box confirming the individual is
13 a United States citizen.

14 The residential address provided must identify the actual physical
15 residence of the voter in Washington, as defined in RCW 29A.04.151,
16 with detail sufficient to allow the voter to be assigned to the proper
17 precinct and to locate the voter to confirm his or her residence for
18 purposes of verifying qualification to vote under Article VI, section
19 1 of the state Constitution. A residential address may be either a
20 traditional address or a nontraditional address. A traditional address
21 consists of a street number and name, optional apartment number or unit
22 number, and city or town, as assigned by a local government, which
23 serves to identify the parcel or building of residence and the unit if
24 a multiunit residence. A nontraditional address consists of a
25 narrative description of the location of the voter's residence, and may
26 be used when a traditional address has not been assigned to the voter's
27 residence. If the postal service does not deliver mail to the voter's
28 residential address, or the voter prefers to receive mail at a
29 different address, the voter may separately provide the mailing address
30 at which they receive mail. Any mailing address provided shall be used
31 only for mail delivery purposes and not for precinct assignment or
32 confirmation of residence for voter qualification purposes.

33 If the individual does not have a driver's license, state
34 identification card, or Social Security number, the registrant must be
35 issued a unique voter registration number in order to be placed on the
36 voter registration rolls. All other information supplied is ancillary
37 and not to be used as grounds for not registering an applicant to vote.

1 Modification of the language of the official Washington state voter
2 registration form by the voter will not be accepted and will cause the
3 rejection of the registrant's application.

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

6 No person registering to vote, who meets all the qualifications of
7 a registered voter in the state of Washington, shall be disqualified
8 because ~~((of a nontraditional address being used as a residence~~
9 ~~address. Voters using such an))~~ he or she lacks a traditional
10 residential address. A voter who lacks a traditional residential
11 address will be registered and assigned to a precinct based on the
12 location provided((. Voters without a traditional address will be
13 registered at the county courthouse, city hall, or other public
14 building near the area that the voter considers his or her residence.
15 Registering at a nontraditional address will not disqualify a voter
16 from requesting ongoing absentee voter status if the voter designates
17 a valid mailing address)).

18 For the purposes of this section, ~~((“nontraditional address”~~
19 ~~includes))~~ a voter who resides in a shelter((s)), park((s)), motor
20 home, marina, or other identifiable location((s)) that the voter deems
21 to be his or her residence lacks a traditional address. A voter who
22 registers under this section must provide a valid mailing address, and
23 must still meet the requirement in Article VI, section 1 of the state
24 Constitution that he or she live in the area for at least thirty days
25 before the election.

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

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

31 (1) Registration of a person as a voter is presumptive evidence of
32 his or her right to vote ((at any primary or election, general or
33 special. A person's right to vote may be challenged at the polls only
34 by a precinct judge or inspector. A challenge may be made only upon
35 the belief or knowledge of the challenging officer that the voter is
36 unqualified. The challenge must be supported by evidence or testimony

1 ~~given to the county canvassing board under RCW 29A.08.820 and may not~~
2 ~~be based on unsupported allegations or allegations by anonymous third~~
3 ~~parties. The identity of the challenger, and any third person involved~~
4 ~~in the challenge, shall be public record and shall be announced at the~~
5 ~~time the challenge is made.~~

6 ~~Challenges initiated by a registered voter must be filed not later~~
7 ~~than the day before any primary or election, general or special, at the~~
8 ~~office of the appropriate county auditor. A challenged voter may~~
9 ~~properly transfer or reregister until three days before the primary or~~
10 ~~election, general or special, by applying personally to the county~~
11 ~~auditor. Challenges may also be initiated by the office of the county~~
12 ~~prosecuting attorney and must be filed in the same manner as challenges~~
13 ~~initiated by a registered voter)). A challenge to the person's right~~
14 ~~to vote must be based on personal knowledge of one of the following:~~

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

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

19 (c) The challenged voter does not live at the residential address
20 provided, in which case the challenger must either:

21 (i) Provide the challenged voter's actual residence on the
22 challenge form; or

23 (ii) Submit evidence that he or she exercised due diligence to
24 verify that the challenged voter does not reside at the address
25 provided and to attempt to contact the challenged voter to learn the
26 challenged voter's actual residence, including that the challenger
27 personally:

28 (A) Sent a letter with return service requested to the challenged
29 voter's residential address provided, and to the challenged voter's
30 mailing address, if provided;

31 (B) Visited the residential address provided and contacted persons
32 at the address to determine whether the voter resides at the address
33 and, if not, obtained and submitted with the challenge form a signed
34 affidavit subject to the penalties of perjury from a person who owns or
35 manages property, resides, or is employed at the address provided, that
36 to his or her personal knowledge the challenged voter does not reside
37 at the address as provided on the voter registration;

1 (C) Searched local telephone directories, including online
2 directories, to determine whether the voter maintains a telephone
3 listing at any address in the county;

4 (D) Searched county auditor property records to determine whether
5 the challenged voter owns any property in the county; and

6 (E) Searched the statewide voter registration data base to
7 determine if the voter is registered at any other address in the state;

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

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

11 (2) A person's right to vote may be challenged: By another
12 registered voter or the county prosecuting attorney at any time, or by
13 the poll site judge or inspector if the challenge is filed on election
14 day regarding a voter who presents himself or herself to vote at the
15 poll site.

16 (3) The challenger must file a signed affidavit subject to the
17 penalties of perjury swearing that, to his or her personal knowledge
18 and belief, having exercised due diligence to personally verify the
19 evidence presented, the challenged voter either is not qualified to
20 vote or does not reside at the address given on his or her voter
21 registration record based on one of the reasons allowed in subsection
22 (1) of this section. The challenger must provide the factual basis for
23 the challenge, including any information required by subsection (1)(c)
24 of this section, in the signed affidavit. The challenge may not be
25 based on unsupported allegations or allegations by anonymous third
26 parties. All documents pertaining to the challenge are public records.

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

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

32 ~~((When the right of a person has been challenged under RCW~~
33 ~~29A.08.810 or 29A.08.830(2), the challenged person shall be permitted~~
34 ~~to vote a ballot which shall be placed in a sealed envelope separate~~
35 ~~from other voted ballots. In precincts where voting machines are used,~~
36 ~~any person whose right to vote is challenged under RCW 29A.08.810 or~~
37 ~~29A.08.830(2) shall be furnished a paper ballot, which shall be placed~~

1 in a sealed envelope after being marked. Included with the challenged
2 ballot shall be (1) an affidavit filed under RCW 29A.08.830 challenging
3 the person's right to vote or (2) an affidavit signed by the precinct
4 election officer and any third party involved in the officer's
5 challenge and stating the reasons the voter is being challenged. The
6 sealed ballots of challenged voters shall be transmitted at the close
7 of the election to the canvassing board or other authority charged by
8 law with canvassing the returns of the particular primary or election.
9 The county auditor shall notify the challenger and the challenged
10 voter, by certified mail, of the time and place at which the county
11 canvassing board will meet to rule on challenged ballots. If the
12 challenge is made by a precinct election officer under RCW 29A.08.810,
13 the officer must appear in person before the board unless he or she has
14 received written authorization from the canvassing board to submit an
15 affidavit supporting the challenge. If the challenging officer has
16 based his or her challenge upon evidence provided by a third party,
17 that third party must appear with the challenging officer before the
18 canvassing board, unless he or she has received written authorization
19 from the canvassing board to submit an affidavit supporting the
20 challenge. If the challenge is filed under RCW 29A.08.830, the
21 challenger must either appear in person before the board or submit an
22 affidavit supporting the challenge. The challenging party must prove
23 to the canvassing board by clear and convincing evidence that the
24 challenged voter's registration is improper. If the challenging party
25 fails to meet this burden, the challenged ballot shall be accepted as
26 valid and counted. The canvassing board shall give the challenged
27 voter the opportunity to present testimony, either in person or by
28 affidavit, and evidence to the canvassing board before making their
29 determination. All challenged ballots must be determined no later than
30 the time of canvassing for the particular primary or election. The
31 decision of the canvassing board or other authority charged by law with
32 canvassing the returns shall be final. Challenges of absentee ballots
33 shall be determined according to RCW 29A.40.140.)) (1) Challenges
34 initiated by a registered voter against a voter who registered to vote
35 less than sixty days before the election, or who changed residence less
36 than sixty days before the election without transferring his or her
37 registration, must be filed not later than ten days before any primary
38 or election, general or special, or within ten days of the voter being

1 added to the voter registration data base, whichever is later, at the
2 office of the appropriate county auditor. Challenges initiated by a
3 registered voter against any other voter must be filed not later than
4 forty-five days before the election. Challenges initiated by the
5 office of the county prosecuting attorney must be filed in the same
6 manner as challenges initiated by a registered voter.

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

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

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

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

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

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

28 ~~The notification shall be mailed to the address at which the~~
29 ~~challenged voter is registered, any address provided by the challenger~~
30 ~~under RCW 29A.08.830, and to any other address at which the individual~~
31 ~~whose registration is being challenged is alleged to reside or at which~~
32 ~~the county auditor would reasonably expect that individual to receive~~
33 ~~notice of the challenge of his or her voter registration. Included in~~
34 ~~the notification shall be a request that the challenged voter appear at~~
35 ~~a hearing to be held within ten days of the mailing of the request, at~~
36 ~~the place, day, and hour stated, in order to determine the validity of~~
37 ~~his or her registration. The challenger shall be provided with a copy~~

1 of this notification and request. If either the challenger or the
2 challenged voter is unable to appear in person, he or she may file a
3 reply by means of an affidavit stating under oath the reasons he or she
4 believes the registration to be invalid or valid.

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

8 The county auditor shall hold a hearing at which time both parties
9 may present their facts and arguments. After reviewing the facts and
10 arguments, including any evidence submitted by either side, the county
11 auditor shall rule as to the validity or invalidity of the challenged
12 registration. His or her ruling is final subject only to a petition
13 for judicial review by the superior court under chapter 34.05 RCW. If
14 either party, or both parties, fail to appear at the meeting or fail to
15 file an affidavit, the county auditor shall determine the status of the
16 registration based on his or her evaluation of the available facts.))

17 (1) If the challenge is not in proper form or the factual basis for the
18 challenge does not meet the legal grounds for a challenge, the county
19 auditor may dismiss the challenge and notify the challenger of the
20 reasons for the dismissal. A challenge is not in proper form if it is
21 incomplete on its face or does not substantially comply with the form
22 issued by the secretary of state.

23 (2) If the challenge is in proper form and the factual basis meets
24 the legal grounds for a challenge, the county auditor must notify the
25 challenged voter and provide a copy of the affidavit. The county
26 auditor shall also provide to any person, upon request, a copy of all
27 materials provided to the challenged voter. If the challenge is to the
28 residential address provided by the voter, the challenged voter must be
29 provided notice of the exceptions allowed in RCW 29A.08.112 and
30 29A.04.151, and Article VI, section 4 of the state Constitution. A
31 challenged voter may transfer or reregister until the day before the
32 election. The county auditor must schedule a hearing and notify the
33 challenger and the challenged voter of the time and place for the
34 hearing.

35 (3) All notice must be by certified mail to the address provided in
36 the voter registration record, and any other addresses at which the
37 challenged voter is alleged to reside or the county auditor reasonably

1 expects the voter to receive notice. The challenger and challenged
2 voter may either appear in person or submit testimony by affidavit.

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

13 (5) If the challenge is based on an allegation under RCW
14 29A.08.810(1) (a), (b), (d), or (e) and the canvassing board sustains
15 the challenge, the challenged ballot shall not be counted. If the
16 challenge is based on an allegation under RCW 29A.08.810(1)(c) and the
17 canvassing board sustains the challenge, the board shall permit the
18 voter to correct his or her voter registration and any races and ballot
19 measures on the challenged ballot that the voter would have been
20 qualified to vote for had the registration been correct shall be
21 counted.

22 (6) If the challenger fails to prove by clear and convincing
23 evidence that the registration is improper, the challenge must be
24 dismissed and the pending challenged ballot must be accepted as valid.
25 Challenged ballots must be resolved before certification of the
26 election. The decision of the county auditor or canvassing board is
27 final subject only to judicial review by the superior court under
28 chapter 34.05 RCW.

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

31 The secretary of state ((as chief elections officer shall cause
32 appropriate forms to be designed to carry out the provisions of RCW
33 29A.08.830 and 29A.08.840. The county auditors and registration
34 assistants shall have such forms available. Further, a reasonable
35 supply of such forms shall be at each polling place on the day of a
36 primary or election, general or special)) must provide forms for voter
37 registration challenges, and the county auditor must make such forms

1 available. A challenge is not required to be submitted on the provided
2 voter challenge form, but may be prepared using an official electronic
3 voter challenge form template provided by the auditor or secretary of
4 state that has been printed and signed by the challenger for
5 submission.

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

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

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

--- END ---