

# SENATE BILL REPORT

## SB 5636

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As of February 5, 2022

**Title:** An act relating to secure automatic voter registration.

**Brief Description:** Concerning secure automatic voter registration.

**Sponsors:** Senators Hunt, Kuderer, Nguyen, Saldaña and Wilson, C..

**Brief History:**

**Committee Activity:** State Government & Elections: 1/14/22, 1/26/22 [DPS-TRAN, DNP].

Transportation: 1/31/22, 2/03/22 [DP2S-WM, DNP].

Ways & Means: 2/05/22.

### Brief Summary of Second Substitute Bill

- Requires that the Department of Licensing (DOL) make voter registration, signing up to register, or voter registration updates of eligible applicants automatic with driver license, learner permit, and identicaid transactions unless subsequently declined in writing.
- Requires that DOL develop a system to determine whether each applicant presents sufficient information, including proof of citizenship, to complete a voter registration at the time of the transaction.
- Authorizes the Governor, in consultation with the Secretary of State, to determine whether other state agencies and consenting federal or local agencies may implement automated voter registration and updates.
- Requires that voters be reclassified from inactive to active upon completing an agency transaction where the voter's address is verified.

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## SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** That Substitute Senate Bill No. 5636 be substituted therefor, and the substitute bill do pass and be referred to Committee on Transportation.

Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Hasegawa.

**Minority Report:** Do not pass.

Signed by Senators Wilson, J., Ranking Member; Hawkins.

**Staff:** Samuel Brown (786-7470)

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## SENATE COMMITTEE ON TRANSPORTATION

**Majority Report:** That Second Substitute Senate Bill No. 5636 be substituted therefor, and the second substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Lias, Chair; Saldaña, Vice Chair; Cleveland, Das, Lovelett, Lovick, Nguyen, Nobles, Randall and Wilson, C.

**Minority Report:** Do not pass.

Signed by Senators King, Ranking Member; Fortunato, Hawkins, Holy, Padden, Sheldon and Wilson, J.

**Staff:** Bryon Moore (786-7726)

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Monica Fontaine (786-7341)

**Background:** Registering to Vote. Persons who are age 18 or older and who are United States citizens that have lived in the state, county, and precinct for 30 days immediately preceding an election are entitled to vote. The National Voter Registration Act (NVRA) requires states to provide the opportunity to register to vote for federal elections at various state agencies. To register to vote, an eligible individual must provide their name, residential address, date of birth, a signature attesting the truth of the information provided, and an indication that the individual is a United States citizen.

Automatic Voter Registration. In 2018, the Legislature passed E2SHB 2595, which provides for an automatic voter registration process at two state agencies. At the Department of Licensing (DOL), applicants for new enhanced driver licenses or identicards, or those changing the address on an existing enhanced driver license or identicard, are automatically registered to vote or update an existing registration if the applicant is over 18 years of age and United States citizenship is verified, unless the applicant opts not to register. The Health Benefits Exchange (HBE) transmits the name, address, and date of birth of each consenting applicant who is a citizen and at least 18 years old to the Office of the Secretary of State (SOS) for the purpose of the applicant being registered to vote. At both agencies, the applicant may decline voter registration at the time of the agency

transaction. If the information transmitted is incomplete, the county auditor subsequently mails a verification notice to the applicant, who has 45 days to provide the missing information.

As required by NVRA, applicants for other licenses at DOL are offered an opportunity to register to vote without using the automated voter registration process. The Governor and the SOS may also require other agencies to provide automatic voter registration.

Signing Up to Register to Vote. In 2018, 2SHB 1513 was signed into law, authorizing 16 and 17-year olds to sign up to register to vote in person at designated state agencies, electronically, and by mail. Such "future voters" provide the information needed for voter registration, but their information is not added into the statewide voter registration database until such time as the person is eligible to vote in the next election.

Voter Registration Database Maintenance. Registered voters are divided into active and inactive categories. All registered voters are classified as active, unless assigned inactive status by the county auditor. The county auditor can place a voter on inactive status due to receiving change of address information indicating that the voter has moved out of the county, or if mail from the county auditor is returned as undeliverable without address correction information. An inactive voter returns to active status by notifying the auditor of a change of address, responding to a confirmation notice, or attempting to vote in an election. If a voter remains on inactive status for the passage of two federal general elections, the auditor cancels the voter registration.

Address Confidentiality Program. The Address Confidentiality Program (ACP), administered by the SOS, keeps secret the addresses of certain criminal justice employees and victims of domestic violence, sexual assault, trafficking, or stalking. Program participants may register to vote without creating a public record.

**Summary of Bill (Second Substitute):** Voter Registration at the Department of Licensing. Automatic voter registration is offered with applications and transactions for additional types of licenses. For each driver license, identocard, or permit application, renewal, duplication, or replacement where the applicant meets the requirements for voter registration and where the DOL record contains the necessary data to complete a voter registration, including a signature image, DOL must inform the applicant that their record will be used for voter registration, an update to an existing registration, or for eligible applicants who are 16 or 17 years old, to sign them up to register to vote, unless the applicant declines.

DOL must:

- develop an electronic information system to determine, at the time of each driver license transaction, whether the individual is registered to vote or signed up to register to vote in Washington; and
- determine, in consultation with the SOS, if each type of document DOL accepts for a

driver license transaction demonstrates that the individual is a United States citizen.

DOL cannot offer a voter registration opportunity or automatically transmit information about the individual to the SOS if the individual produces documentation indicating that they are not a United States citizen. DOL must offer a non-automatic voter registration opportunity to applicants who have not received an enhanced driver license or identicard and present documentation that does not indicate whether the applicant is a United States citizen.

The question DOL agents ask applicants when offering a voter registration opportunity is modified.

Data Transmission. On at least a daily basis, DOL must transmit to the SOS records of persons engaged in driver license, identicard or permit transactions who:

- are currently registered to vote or signed up to register to vote;
- are not currently registered to vote or signed up to register to vote, but received or renewed an enhanced driver license or identicard, or who presented documentation indicating United States citizenship during other transactions; and
- otherwise requested voter registration.

The records transmitted must include the individual's name, date of birth, gender, driver license number, signature image, date of the transmission, and, if recorded, any language preference other than English.

Other Agencies. The Governor may decide, in consultation with the SOS, whether other state agencies and consenting federal and local agencies that collect, possess, and store information sufficient to constitute a voter registration may implement automatic voter registration and updates through a substantially similar process.

Opt-Out Process. Within 30 days of receipt of voter registration information, the county auditor must send the individual an acknowledgment notice by nonforwardable mail. The notice must contain:

- a statement explaining that the individual has been registered to vote, signed up to register to vote, or that their registration has been updated;
- in certain counties, material regarding how an individual can obtain more information in their preferred language;
- a prepaid, preaddressed form allowing the individual to decline the update or registration, and, if applicable, select a language preference; and
- a notification that the applicant may contact the auditor to unregister to vote at any time.

If the individual returns the notice and declines to register to vote or update a registration, the SOS must remove the individual from the statewide voter registration database, or, if applicable, undo any update to the individual's existing voter registration. If the individual

has already voted in an election, the notice of declination has no effect. DOL may not share information used to certify voters with any agency other than the SOS.

Voter Registration Database Maintenance. County auditors and the SOS must return an inactive voter to active status if the voter indicates during a driver license transaction or other agency transaction that they have not moved.

Address Confidentiality Program Participants. The SOS must develop procedures that substantially meet the requirements of the bill for ACP participants engaging in automatic voter registration transactions at DOL, HBE, or any other agency designated by the Governor.

**EFFECT OF CHANGES MADE BY TRANSPORTATION COMMITTEE (Second Substitute):**

Removes provisions dealing with voter registration at the Health Benefits Exchange.

**EFFECT OF CHANGES MADE BY STATE GOVERNMENT & ELECTIONS COMMITTEE (First Substitute):**

Voter Registration at Other Agencies. The requirement that HCA provide automatic voter registration to Apple Health applicants is removed. HBE may, but is not required to, provide automatic voter registration with a subsequent opportunity to decline, if approved by federal regulators. HBE is not required to transmit the last four digits of an applicant's Social Security number.

Opt-Out Process. The acknowledgment notice must be sent out within 30 days of receipt of voter registration information. Information on obtaining more information in an individual's preferred language must only be part of the acknowledgment notice if the county is covered by section 203 of the federal Voting Rights Act. The acknowledgment notice must notify the applicant that they may contact the auditor to unregister to vote at any time.

Other Provisions. The effective date of the bill is moved to September 1, 2023.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill takes effect on September 1, 2023.

**Staff Summary of Public Testimony on Original Bill (State Government & Elections):**

*The committee recommended a different version of the bill than what was heard.* PRO: This bill upgrades our systems using processes that have been successful in six other states. Colorado doubled the rate of registration for unregistered applicants using these processes and processed 200,000 additional voter registration updates per year. Keeping up with changes in address will give voters ample time to fill ballots out as they arrive at the correct address sooner. This modernizes the system for the modern voter.

This will help brand-new residents, who may use a birth certificate, rather than a utility bill they don't have yet, to obtain a driver license. It will also help those recently released from prison, who may assume they can't register to vote, to see that they're eligible to do so.

This is going to keep our voter rolls cleaner and promote election integrity and security. It will save money by not having undeliverable mail be sent out. It will reduce paperwork, as election officials will have to do less data entry off paper forms, also making it good for the environment.

The bill will protect non-citizens, including persons who use a green card to obtain a driver license, by ensuring that they are not offered registration opportunities. The bill eliminates the possibility of innocent mistakes which could lead to immigration status consequences.

The Secretary of State is concerned that there may be conflicts with NVRA, as the decision to participate is moved from the voter to the licensing agent, and would prefer a delayed effective date to implement the bill. Auditors would like more time to send out the acknowledgment notices.

CON: When I moved here, I didn't have any problems registering to vote, so I don't see why this is important. There are people who don't want to register to vote due to concerns about getting called in for jury service. The bill doesn't give people a chance to opt out of registration when getting a driver license.

Voter rolls are already not accurate, and this will make it more expensive to clean up the voter rolls. This will lead to fraud and ballot harvesting. This doesn't take into account people who have temporary addresses. There are worries about the security of the database once it's open to DOL.

**Persons Testifying (State Government & Elections):** PRO: Cindy Madigan, League of Women Voters of Washington; Cindy Black, Fix Democracy First; Brian Hatfield, Office of Secretary of State; Jazmine Smith, The Washington Bus; Alisa Lee, Washington Voting Justice Coalition; Kathy Sakahara, Northwest Progressive Institute; Alex Tischenko, Center for Secure and Modern Elections; Mary Hall, Thurston County Auditor.

CON: Val Mullen, Citizen; Peggy Shashy; Sharon Hanek.

**Persons Signed In To Testify But Not Testifying (State Government & Elections):** No

one.

**Staff Summary of Public Testimony on First Substitute (Transportation):** *The committee recommended a different version of the bill than what was heard.* PRO: We have a safe and secure election system and this is about allowing additional voices to participate in our democracy. Many people are not registered to vote and this will provide greater access to that opportunity. The provisions of the bill provide integrity and improve access for eligible citizens. It also streamline voter registration updates to ensure the voter rolls are based on the most current information. It has safeguards in place that prevents ineligible voters from signing up to vote. Similar changes have been made in other states with much success. This will save on un-deliverable ballot costs by making sure they are sent to the current address of the voter. Voter registration in other states has greatly increased as a result of the implementation of similar changes.

CON: The Health Benefit Exchange and Department of Licensing should not be part of the voter registration system. There is inadequate training for the new responsibilities assigned under the bill to agency staff. There is not enough accountability and oversight to make sure all the needed documentation is provided as part of the voter registration process. By expanding the agencies that have access to voter rolls, this will make the information less secure. The automatic registration provisions will undermine the integrity of the election system. The system is already working. The delegation to the Governor for making the decision on expanding to other agencies does not provide the appropriate checks and balances. The legislation will ultimately add to voter distrust.

OTHER: The Secretary of State is concerned that there may be conflicts with the 1993 voter registration act and we would like to work through those issues.

**Persons Testifying (Transportation):** PRO: Senator Sam Hunt, Prime Sponsor; Alex Tischenko, Center for Secure and Modern Elections; Cindy Madigan, League of Women Voters Washington; Alisa Lee, Washington Voting Justice Coalition.

CON: Anne Lennon; Peggy Shashy; Val Mullen, voter; George Forman; Tamborine Borrelli, WEiCU; Julie Doumit; Kory Slaatthaug.

OTHER: Brian Hatfield, Office of Secretary of State; Beau Perschbacher, WA Dept. of Licensing.

**Persons Signed In To Testify But Not Testifying (Transportation):** No one.

**Staff Summary of Public Testimony on Second Substitute (Ways & Means):** PRO: This bill would upgrade our system to improve the overall cost of voter registration and accuracy while minimizing the cost of paper forms.

CON: There have been several data breaches at government agencies. Concern over costs of fixing vulnerability to system and ensuring PII is not made public in a data breach, and



costs should not be borne by people of Washington. This bill has a high cost in the fiscal note, and it could be even higher if implemented. Prepaid forms have to be returned when people are opting out and requires use of first class postage, the cost of translation is expensive, and this is a change to our system that is not needed. Voting registration should not be mandatory, costs are unnecessarily high, and the Governor shouldn't have the ability to include any additional agencies to the voter registration process. Local governments don't have the resources to meet updated requirements, which may include updated systems to protect PII; costs share for local governments is unclear.

OTHER: Likes that the bill would allow the state to better keep up with people as they change addresses, but there are concerns about compliance with NVRA.

**Persons Testifying (Ways & Means):** PRO: Senator Sam Hunt, Prime Sponsor; Alex Tischenko, Center for Secure & Modern Elections.

CON: Peggy Shashy; Sharon Hanek; Val Mullen, voter; Robin Jones; Reni Storm.

OTHER: Brian Hatfield, Office of the Secretary of State.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.