

HOUSE BILL REPORT

ESB 5856

As Reported by House Committee On:
State Government & Tribal Relations

Title: An act relating to voter registration challenges.

Brief Description: Concerning voter registration challenges.

Sponsors: Senators Hunt, Kuderer, Nobles, Valdez and Wilson, C..

Brief History:

Committee Activity:

State Government & Tribal Relations: 2/16/24, 2/21/24 [DPA].

Brief Summary of Engrossed Bill
(As Amended by Committee)

- Permits a person to challenge a voter's registration for not living at the address provided if the voter has registered to vote in another state more recently than in Washington.
- Removes the requirement that a person who challenges a voter's registration for residing at a different address must search telephone directories or voter registration databases of other states, and specifies that the certified letter a challenger is required to send must be on a form provided by the Office of the Secretary of State.
- Specifies procedures for county auditors to follow to attempt to resolve a voter challenge related to a voter's residency prior to a hearing.
- Permits the county auditor to designate someone to preside over a voter challenge hearing.
- Specifies that a filing officer may not submit the name of an unqualified candidate for placement on the ballot, and provides procedures to conduct elections if a candidate on the ballot is unqualified.

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.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: Do pass as amended. Signed by 5 members: Representatives Ramos, Chair; Stearns, Vice Chair; Cheney, Ranking Minority Member; Gregerson and Mena.

Minority Report: Without recommendation. Signed by 2 members: Representatives Christian, Assistant Ranking Minority Member; Low.

Staff: Jason Zolle (786-7124).

Background:

Challenges to a Voter's Registration.

A registered voter or a county prosecuting attorney may challenge a voter's registration for failure to meet the legal qualifications to vote, such as not being a citizen of the United States, having been convicted of a felony without having their civil rights restored, or not living at the residential address provided. If the challenge is because the voter does not live at the address provided, the challenger must provide the challenged voter's actual residence or submit evidence that the challenger exercised due diligence to verify that the address is incorrect. In the latter case, the challenger must personally send a letter with return service requested to the voter's address, search local telephone directories and property records, and search voter registration databases to determine whether the voter is registered at another address in the state or in another state.

Challenges to a voter's eligibility must be filed no later than 45 days before an election, unless the voter registered to vote or changed addresses fewer than 60 days before the election. Depending on the timing of the challenge, the county canvassing board or the county auditor presides over a hearing on the challenge. The procedures for challenges are provided in statute.

Inactive Voters.

The county auditor must place a voter on inactive status if:

- the county auditor receives change of address information from the postal service or a state agency designated to provide voter registration services that indicates that the voter has moved from one county to another or out of state; or
- a document mailed by the county auditor to the voter is returned as undeliverable without address correction.

An eligible voter whose registration has been made inactive or cancelled must be allowed to register to vote at their current residential address. A county auditor must cancel an inactive voter registration when receiving information that the person has moved out of state or died.

Candidate Filing and Qualifications.

A person who wishes to run for office must file a declaration of candidacy with a filing

officer during a week-long period beginning the first Monday in May. The filing officer for statewide offices, federal offices, the state legislature, courts of appeals, and superior courts is the Secretary of State. The filing officer for other offices is the county auditor.

At the time of filing, a person filing a declaration of candidacy must be a registered voter who possesses the qualifications specified by law for that office. This includes a restriction that a candidate must be properly registered to vote in the geographic area represented by the office (with limited exceptions for certain judges). Filing officers must review the declarations of candidacy for compliance.

Summary of Amended Bill:

Changes to Voter Registration Challenges.

A person may challenge a voter's registration for not living at the address provided if the voter has registered to vote in another state more recently than in Washington.

A person who challenges a voter's registration for residing at a different address than provided is no longer required to search telephone directories or voter registration databases of other states. The certified letter a challenger is required to send must be on a form provided by the Office of the Secretary of State (OSOS) that contains a disclaimer that the letter was not sent by the government and a person is not required to respond to the letter.

Challenges to a voter's registration must be submitted to the county auditor using a form provided by the OSOS that outlines the reason for the challenge.

A person cannot challenge the registration of an inactive voter.

Prior to a hearing on a registration challenge based on a voter not living at the address provided, county auditors must attempt to determine the validity of a challenge by contacting a challenged voter to update the voter's address, determine whether the voter is no longer a resident, or learn whether the voter intends to return to their registered address. County auditors must also search the statewide voter registration database to determine if the voter is registered at any other address in the state, as well as search Department of Licensing records to see if the voter has addresses listed for a driver's license, identification card, or vehicle registration. County auditors must also determine whether a challenged voter's address is permissible per the definition of residence or the provisions regarding voters without traditional residential addresses. If a challenger provides an out-of-state address for a challenged voter, the county auditor must search that state's voter registration database or contact election officials to determine if that registration is more recent than in Washington. County auditors shall dismiss challenges if successful in resolving the challenge under these procedures.

County auditors must publish challenge affidavits online within 10 business days if the

challenge cannot be resolved. Challenged voters must be notified by the county auditor via certified mail at their address of registration. If the mail is returned as undeliverable, the county auditor shall place the voter on inactive status. Materials provided to a challenged voter whose registered address is permissible per the definition of residence or the provisions regarding voters without traditional residential addresses are exempt from disclosure under the Public Records Act.

Changes Regarding Candidate Qualifications.

Filing officers may not submit the name of a candidate for placement on the ballot if the candidate is not properly registered to vote in the geographic area represented by the office or does not possess the qualifications specified by law for that office. If the filing officer discovers the incorrect registration or the lack of qualifications after the primary, then the candidate who received the third highest number of votes shall replace the unqualified candidate on the general election ballot. However, if general election ballots have already been ordered by the county auditor, the unqualified candidate remains on the ballot but votes for them may not be counted. If the unqualified candidate is the only candidate to have filed for office, a void in candidacy for the office exists.

Amended Bill Compared to Engrossed Bill:

The amended bill provides that a challenger's assertion that a voter is registered to vote in another state more recently than Washington is a type of challenge based on a voter not living at their registered address, rather than a separate basis to challenge a voter's registration. It clarifies that the form sent to a challenged voter by a challenger is a different form than the challenge form submitted to a county auditor, and that the disclaimer is required only on the former. Provisions relating to the county auditor's pre-hearing investigation are reworded to remove an implication that challenges are presumptively valid, and the amended bill specifies that this investigation occurs only when the challenge is based on a voter not living at their registered address. County auditors must also contact the Department of Licensing to determine the address provided on the voter's driver's license, identification card, and vehicle registrations, if any. Language is clarified regarding the effect of two statutes, one defining "residence" and one relating to voters without traditional addresses, on the validity of a voter's registration and on the application of the new Public Records Act exemption created by the bill. Finally, the amended bill provides that a filing officer may not submit the name of a candidate for office for inclusion on the ballot unless that candidate is properly registered to vote in the geographic area represented by the office and possesses the qualification to hold that office at the time that the declaration of candidacy is filed, and a procedure is provided to conduct elections if a candidate on the ballot is unqualified.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The changes to the voter challenge process in this bill help to streamline the process. Challenges are important and there have been high-profile challenges in the past, but it is cumbersome when people bring dozens of challenges at a time. Challenges can be time-consuming and expensive for staff. It is concerning when military and overseas voters receive documents that appear to be from the government telling them that their registration is illegal. The bill provides a process for auditors to resolve challenges before the hearing, and it allows them to delegate authority to prosecutors' deputies. That makes it easier for both auditors' offices and challengers.

(Opposed) The primary effect of this bill is to remove auditor discretion about how to run voter challenges. Auditors are elected officials who are trusted to fulfill their role, but this bill renders them colonial outposts. Also, there is no justification to prohibit challenges against inactive voters; underage "future voters" also do not receive ballots but can still be challenged. This is the definition of an arbitrary bill.

Persons Testifying: (In support) Sandy Perkins; and Mary Hall, Washington State Association of County Auditors.

(Opposed) Lorilee Gates.

Persons Signed In To Testify But Not Testifying: None.