

# SENATE BILL REPORT

## ESB 5856

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As Passed Senate, January 31, 2024

**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 & Elections: 1/09/24, 1/12/24 [DP, w/oRec].

**Floor Activity:** Passed Senate: 1/31/24, 48-0.

### Brief Summary of Engrossed Bill

- Establishes voter registration in another state as a separate basis for a voter eligibility challenge.
- Requires voter eligibility challenges based on residence to utilize a form provided by the Secretary of State.
- Specifies that inactive voters are not subject to a voter eligibility challenge.
- Authorizes a county auditor's designee to preside over a voter eligibility challenge.
- Requires the county auditor to attempt to resolve a voter eligibility challenge prior to a hearing.
- Establishes a ten-day timeline for a county auditor to determine if a voter eligibility challenge is in proper form and has a legal and factual basis.

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## SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

**Majority Report:** Do pass.

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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.*

Signed by Senators Hunt, Chair; Valdez, Vice Chair; Wilson, J., Ranking Member; Hasegawa and Kuderer.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Dozier and Fortunato.

**Staff:** Greg Vogel (786-7413)

**Background:** A county prosecuting attorney or any registered voter may submit a challenge to any registered voter's ability to vote or failure to meet the legal qualifications to be registered to vote. If the challenge is made because the challenged voter allegedly does not live at the address at which they are registered, the challenger must provide the challenged voter's actual residence or:

- send a letter, with return service requested, to the residential and mailing addresses provided;
- search local telephone directories and property records to determine if the challenged voter resides elsewhere in the county;
- search the state voter registration database to determine if the challenged voter is registered at another address; and
- search the voter registration database of another state to determine if the voter is registered to vote in any other state.

Challenges to a voter's eligibility must generally be filed within 45 days before an election. The exception is if the challenged voter is alleged to have registered to vote or changed residences less than 60 days before the election, in which case the challenge may be filed up to ten days before any subsequent election, or ten days after the voter is added to the voter rolls, whichever is later.

**Summary of Engrossed Bill:** A challenge to a person's right to vote may be based on personal knowledge by a challenger having searched the current official voter registration database of another state and determining the challenged voter is registered to vote in another state more recently than the voter's Washington State registration.

If a challenge is made because the challenged voter allegedly does not live at the address at which they are registered, the challenger must either provide the challenged voter's actual residence or submit evidence that the challenger exercised due diligence to verify the challenged voter does not reside at the address provided.

As part of the due diligence claim, the challenger must, at minimum, provide evidence that the challenger personally:

- sent a certified letter with return service requested to the challenged voter's residential address provided, and to the challenged voter's mailing address, if provided, using a form provided by the Office of the Secretary of State outlining the reason for the challenge;

- searched county property records to determine whether the challenged voter owns any property in the county; and
- searched the statewide voter registration database to determine if the voter is registered at any other address in the state.

Voters whose registration has been made inactive do not receive ballots and are not subject to voter eligibility challenges.

Any form created for outlining the reason for the challenge must include the following warning: "THIS IS NOT A GOVERNMENT DOCUMENT AND ANY CLAIM CONTAINED WITHIN HAS NOT BEEN SUBSTANTIATED. YOU ARE NOT REQUIRED TO RESPOND TO MAINTAIN YOUR CURRENT VOTER REGISTRATION."

The county auditor or auditor's designee may preside over a voter eligibility challenge hearing.

The county auditor may dismiss a challenge if the challenged voter's registration is inactive, or if the voter is otherwise qualified to vote and lacks a traditional residential address or is away from their residence while employed in the civil or military service of the state or the United States; engaged in the navigation of the waters of the state or the United States or the high seas; a student at any institution of learning; or confined in any public prison.

Prior to any challenge hearing, the county auditor must attempt to resolve the question through one or more of the following methods:

- contacting the challenged voter in order to update the voter's residence address, confirm the voter no longer considers themselves a resident for voting purposes and obtaining a signed registration cancellation, or learn whether the voter is residing at a temporary address with the intent to return to the registered address;
- search the statewide voter registration database to determine if the voter is registered at any other address within the state, and resolve the error;
- determine if the voter is currently qualified due to having an excused reason for being absent from their registered address or as a voter that lacks a traditional residential address; or
- if the challenger provides an out-of-state address for the challenged voter, search the current official voter registration database for the jurisdiction of the address provided, or contact the election official's office in that jurisdiction and determine if the challenged voter has registered to vote in that jurisdiction more recently than the voter's Washington State registration.

If the county auditor is successful in resolving the challenge through any of these methods, the auditor must dismiss the challenge and notify the challenger of the dismissal.

For challenges that have not been dismissed for administrative reasons and that cannot be

resolved by the county auditor, the auditor must, within ten business days of receipt, publish on the auditor's website the affidavit of the challenge.

A county auditor must determine within ten business days of receipt of a challenge whether the challenge is in proper form and the factual basis meets the legal grounds for a challenge. If the challenge is not in proper form or lacks a factual basis for a challenge, the auditor may dismiss the challenge and, when permitted, must notify the challenger the reasons for the dismissal.

A challenge is not in proper form if it is incomplete on its face or does not substantially comply with the form issued by the Secretary of State.

If the challenge is in proper form and has a factual and legal basis for a challenge, and the challenge has not been dismissed for administrative reasons, or resolved by the voter updating information, the county auditor must notify the challenged voter by certified mail at the mailing address and residential address provided in their voter registration record.

If the notice is returned as undeliverable, the auditor must move the challenged voter to an inactive status and send a confirmation notice to the registered address.

Materials provided to the challenged voter are not exempt from copying or inspection, except if the voter is qualified due to an excused reason for being absent from their registered address or due to the voter lacking a traditional residential address.

Any notice must be by certified mail with return requested to the address provided in the voter registration record for residence and for mailing, and any other addresses at which the challenged voter is alleged to reside or the county auditor reasonably expects the voter to receive notice.

If a challenge is based on an allegation that the challenged voter resides at a different address than the residential address provided, and the auditor, auditor's designee, or canvassing board sustains the challenge prior to certification of the election, the voter must be permitted to correct their address and the voter's ballot must be counted if the challenge is resolved.

If the challenge is based on a failure to meet the other legal qualifications to vote, and the auditor, auditor's designee, or canvassing board sustains the challenge, the voter registration must be cancelled and any challenged ballot may not be counted.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill streamlines the voter registration challenge for all. It allows auditors to delegate authority on the hearing process so the process does not get bottlenecked. The bill promotes a fair and transparent approach and creates greater efficiencies in the electoral process while simultaneously upholding the rights of voters.

CON: The voter challenge statute was just amended last session. More time should be given to let the changes take effect.

**Persons Testifying:** PRO: Senator Sam Hunt, Prime Sponsor; Cindy Madigan, League of Women Voters of Washington; Mary Hall, Washington State Association of County Auditors (WSACA).

CON: LORILEE GATES; eric pratt; Suzanne Rohner; Val Mullen.

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