



Washington State Conservation Commission

Conservation District Elections

Issue Advisory 03-19

The Washington Fair Chance Act of 2018 and Conservation District Elections

Date: January 10, 2019

Re: The effect of the Washington Fair Chance Act of 2018 (RCW Chapter 49.94) on conservation district elections

Question:

What effect does the Washington Fair Chance Act of 2018 have on conservation district elections?

Short Answer:

None at this time.

Background:

During the 2018 legislative session, the Washington State Legislature passed SSHB 1298, the Washington Fair Chance Act of 2018 (WFCA). It was signed by Governor Inslee and became effective on June 6, 2018.

WFCA prohibits inquiries regarding applicants' conviction histories until the employer has determined if an applicant is "otherwise qualified."

Under the WFCA, employers are prohibited from:

- Advertising job openings in a manner that excludes people with arrest or conviction records from applying, such as using advertisements that state “no felons,” “no criminal background,” or that otherwise convey similar messages.
- Asking any question orally or on a written employment application or another hiring document about an applicant’s arrest or conviction record, until after the employer has initially determined that the applicant is qualified for the position. This prohibition includes information obtained through a standard criminal background check, or otherwise obtaining information about criminal arrests or convictions.
- Having a policy or practice of automatically disqualifying or categorically eliminating applicants based on their prior criminal arrest or conviction. Before any decision is made about the relevance of a criminal conviction or arrest, employers must decide if the applicant is otherwise qualified, meaning that an applicant meets the basic standards as set out in the job description or ad.
- Outright rejecting or disqualifying an applicant if they do not disclose a criminal record before the employer has initially decided if the applicant is qualified for the position.¹

As the Municipal Research and Services Center (MRSC) indicates,

The WFCRA does not provide for a private cause of action. Instead, the Washington State Attorney General’s Office has the authority to investigate possible violations and assess fines, including penalties, costs, and attorneys’ fees. The maximum penalties are as follows: a notice of violation for the first violation; a fine of \$750 for the second violation; and a fine of \$1,000 for each subsequent violation.²

Analysis:

RCW 49.94 prohibits employers from obtaining “information about an applicant’s criminal record until after the employer initially determines that the applicant is otherwise qualified for the position.”³

To be qualified to serve as a conservation district supervisor, the applicant must be a qualified district elector. A qualified district elector “means a registered voter in the

¹ <http://mrsc.org/Home/Stay-Informed/MRSC-Insight/May-2018/New-Limits-on-Use-of-Criminal-Background-Checks.aspx>

² *Id.*

³ RCW 49.94.010 (1)

county where the district is located and who resides within the conservation district boundary.”⁴

A registered voter means much more than not being convicted of a felony. It means that the applicant must be a citizen of the United States, a legal resident of Washington State, at least 18 years old by Election Day, not disqualified from voting due to a court order; and not under the Department of Corrections supervision for a Washington felony conviction.⁵

The Washington State Secretary of State’s Office provides further information with regard to felons and voting rights.⁶ According to the Washington Secretary of State’s Office web page for voter registration,

- If you were convicted of a felony in a Washington State court, your right to vote is restored unless you are currently under the authority of DOC (in prison or on community custody). If you have questions about whether you are on community custody, call DOC at (800) 430-9674.*
- If you were convicted of a felony in another state or in federal court, your right to vote is restored as long as you are not currently incarcerated for that felony.*
- Once your right to vote is restored, you must re-register in order to receive a ballot. You can re-register online with [MyVote](#), [by mail](#), or [in person](#).⁷*

A person with a felony in their background should follow the directions of the Washington State Secretary of State with regard to registering to vote. Once that person becomes a registered voter, they are eligible to serve as an elected conservation district supervisor – provided they also reside within the boundaries of the district in which they want to serve.

However, conservation district supervisors serve as volunteers and are not compensated for their service. As such, they fall under the section that exempts them from the provisions of RCW Chapter 49.94.⁸

For More Information:

Please see [this article at the Municipal Research and Services Center \(MRSC\)](#) or this one from the [Washington State Office of the Attorney General](#).

⁴ WAC 135-110-110

⁵ RCW 29A.08.010, RCW 11.88.010 (5), RCW 29A.08.520

⁶ See generally <https://www.sos.wa.gov/elections/voter-eligibility.aspx>; see also RCW 29A.08.520

⁷ *Id.*

⁸ RCW 49.94.010 (4) (d)