
SUBSTITUTE HOUSE BILL 2437

State of Washington

66th Legislature

2020 Regular Session

By House State Government & Tribal Relations (originally sponsored by Representatives Kilduff, Leavitt, Gregerson, Santos, Tharinger, Pollet, Wylie, and Morgan)

1 AN ACT Relating to increasing voting accessibility and security;
2 amending RCW 29A.04.037, 29A.04.220, 29A.04.570, 29A.40.091, and
3 29A.60.235; reenacting and amending RCW 29A.40.110; and adding new
4 sections to chapter 29A.12 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 29A.04.037 and 2011 c 10 s 5 are each amended to
7 read as follows:

8 (~~"Disabled voter"~~) "Voters with disabilities" means any
9 registered voters who (~~qualifies for special parking privileges~~
10 ~~under RCW 46.19.010, or who is defined as blind under RCW 74.18.020,~~
11 ~~or who qualifies to require assistance with voting under RCW~~
12 ~~29A.40.160~~) have a disability as defined in the Washington law
13 against discrimination, RCW 49.60.040.

14 **Sec. 2.** RCW 29A.04.220 and 2011 c 10 s 7 are each amended to
15 read as follows:

16 The county auditor shall provide public notice of the
17 availability of registration and voting aids, assistance to elderly
18 voters and (~~disabled persons~~) voters with disabilities, and
19 procedures for voting calculated to reach elderly voters and

1 ((disabled persons)) voters with disabilities not later than public
2 notice of the closing of registration for a primary or election.

3 **Sec. 3.** RCW 29A.04.570 and 2009 c 415 s 10 are each amended to
4 read as follows:

5 (1)(a) The election review staff of the office of the secretary
6 of state shall conduct a review of election-related policies,
7 procedures, and practices in an affected county or counties:

8 (i) If the unofficial returns of a primary or general election
9 for a position in the state legislature indicate that a mandatory
10 recount is likely for that position; or

11 (ii) If unofficial returns indicate a mandatory recount is likely
12 in a statewide election or an election for federal office.

13 Reviews conducted under (a)(ii) of this subsection shall be
14 performed in as many selected counties as time and staffing permit.
15 Reviews conducted as a result of mandatory recounts shall be
16 performed between the time the unofficial returns are complete and
17 the time the recount is to take place, if possible.

18 (b) In addition to conducting reviews under (a) of this
19 subsection, the election review staff shall also conduct such a
20 review in a county at least once every ~~((five))~~ two years, in
21 conjunction with a county primary or special or general election, at
22 the direction of the secretary of state or at the request of the
23 county auditor. ~~((If staffing or budget levels do not permit a five-
24 year election cycle for reviews, then reviews must be done as often
25 as possible.))~~ If any resident of this state believes that an aspect
26 of a primary or election has been conducted inappropriately in a
27 county, the resident may file a complaint with the secretary of
28 state. The secretary shall consider such complaints in scheduling
29 periodic reviews under this section.

30 (c) Before an election review is conducted in a county, the
31 secretary of state shall provide the county auditor of the affected
32 county and the chair of the state central committee of each major
33 political party with notice that the review is to be conducted. When
34 a periodic review is to be conducted in a county at the direction of
35 the secretary of state under (b) of this subsection, the secretary
36 shall provide the affected county auditor not less than thirty days'
37 notice.

38 (2) Reviews shall be conducted in conformance with rules adopted
39 under RCW 29A.04.630. In performing a review in a county under this

1 chapter, the election review staff shall evaluate the policies and
2 procedures established for conducting the primary or election in the
3 county and the practices of those conducting it, including policies,
4 procedures, and practices related to accessible voting for voters
5 with disabilities. As part of the review, the election review staff
6 shall issue to the county auditor and the members of the county
7 canvassing board a report of its findings and recommendations
8 regarding such policies, procedures, and practices. A review
9 conducted under this chapter shall not include any evaluation,
10 finding, or recommendation regarding the validity of the outcome of a
11 primary or election or the validity of any canvass of returns nor
12 does the election review staff have any jurisdiction to make such an
13 evaluation, finding, or recommendation under this title.

14 (3) The county auditor or the county canvassing board shall
15 respond to the review report in writing, listing the steps that will
16 be taken to correct any problems listed in the report. Within one
17 year of issuance of the response provided by the county auditor or
18 county canvassing board, the secretary of state shall verify that the
19 county has taken the steps to correct the problems noted in the
20 report.

21 (4) The county auditor of the county in which a review is
22 conducted under this section or a member of the canvassing board of
23 the county may appeal the findings or recommendations of the election
24 review staff regarding the review by filing an appeal with the board
25 created under RCW 29A.04.510.

26 NEW SECTION. **Sec. 4.** A new section is added to chapter 29A.12
27 RCW to read as follows:

28 (1) Between ninety and one hundred twenty days before a November
29 general election, the county auditor must survey all voting centers
30 in the county, and their surrounding environment, to assess whether
31 the voting centers are accessible within the meaning of the Americans
32 with disabilities act checklist for polling places and related
33 regulations adopted by the secretary of state. The surrounding
34 environment of a voting center includes routes between the voting
35 center entrance and nearby public transportation stops.

36 (2) If the county auditor determines that there are any potential
37 barriers that could prevent the voting center from being deemed
38 accessible, the county auditor must, within fourteen days of the

1 survey, submit a report to the secretary of state describing the
2 barriers.

3 (3) The county auditor must actively involve the county
4 disability advisory committee described in RCW 29A.04.223 when
5 surveying voting centers, determining whether potential barriers
6 exist, and drafting a report to the secretary of state.

7 (4) Within fourteen days of the submission of a report under
8 subsection (2) of this section, the secretary of state must provide a
9 letter to the county auditor with suggestions and recommendations for
10 ways that the county can ensure that the voting centers highlighted
11 in the report are accessible.

12 (5) The following facts or documents are not admissible in a
13 civil or administrative proceeding when used to establish liability
14 for a violation of state or federal law or to prove knowledge or lack
15 thereof of such a violation:

16 (a) A report submitted by the county auditor under this section,
17 and the fact that a potential barrier was included in a report;

18 (b) The fact that a report was not submitted under this section,
19 or the fact that a potential barrier was not included in a report;

20 (c) A letter written by the secretary of state in response to a
21 report submitted under this section, and the suggestions or
22 recommendations made therein;

23 (d) Testimony by a person involved in the county auditor survey
24 under this section about the person's observations, statements,
25 deliberations, thoughts, analyses, or impressions relating to the
26 survey;

27 (e) Testimony by a person involved in the drafting of, or the
28 choice to draft or not to draft, a report under this section about
29 the person's observations, statements, deliberations, thoughts,
30 analyses, or impressions relating to the draft or the choice made;
31 and

32 (f) Testimony by a person involved in the drafting of a letter
33 under this section about the person's observations, statements,
34 deliberations, thoughts, analyses, or impressions relating to the
35 letter.

36 (6)(a) Any document that exists before its use or consideration
37 in conjunction with a survey, letter, or report under this section,
38 or that is created independently of the survey or drafting process,
39 is not inadmissible merely because it is reviewed or used during the
40 survey or drafting process.

1 (b) This section does not restrict a person from providing
2 testimony regarding the person's knowledge of a barrier to voting
3 when that knowledge was developed independently from the survey or
4 drafting process.

5 **Sec. 5.** RCW 29A.40.091 and 2019 c 161 s 3 are each amended to
6 read as follows:

7 (1) The county auditor shall send each voter a ballot, a security
8 envelope in which to conceal the ballot after voting, a larger
9 envelope in which to return the security envelope, a declaration that
10 the voter must sign, and instructions on how to obtain information
11 about the election, how to mark the ballot, and how to return the
12 ballot to the county auditor.

13 (2) The voter must swear under penalty of perjury that he or she
14 meets the qualifications to vote, and has not voted in any other
15 jurisdiction at this election. The declaration must clearly inform
16 the voter that it is illegal to vote if he or she is not a United
17 States citizen; it is illegal to vote if he or she has been convicted
18 of a felony and has not had his or her voting rights restored; and it
19 is illegal to cast a ballot or sign a ballot declaration on behalf of
20 another voter. The ballot materials must provide space for the voter
21 to sign the declaration, indicate the date on which the ballot was
22 voted, and include a telephone number.

23 (3) For overseas and service voters, the signed declaration
24 constitutes the equivalent of a voter registration. Return envelopes
25 for overseas and service voters must enable the ballot to be returned
26 postage free if mailed through the United States postal service,
27 United States armed forces postal service, or the postal service of a
28 United States foreign embassy under 39 U.S.C. 3406.

29 (4) The voter must be instructed to either return the ballot to
30 the county auditor no later than 8:00 p.m. the day of the election or
31 primary, or mail the ballot to the county auditor with a postmark no
32 later than the day of the election or primary. Return envelopes for
33 all election ballots must include prepaid postage. Service ~~((and))~~
34 voters, overseas voters, and voters with disabilities must be
35 provided with instructions and a privacy sheet for returning the
36 ballot and signed declaration ~~((by fax or email))~~ through an
37 electronic portal meeting the requirements of section 7 of this act,
38 if such a portal has been approved for use under that section, or by
39 fax or email if no portal has been approved for use in the voter's

1 county. A voted ballot and signed declaration returned by fax or
2 email or using an electronic portal must be received by 8:00 p.m. on
3 the day of the election or primary.

4 (5) The county auditor's name may not appear on the security
5 envelope, the return envelope, or on any voting instructions or
6 materials included with the ballot if he or she is a candidate for
7 office during the same year.

8 (6) For purposes of this section, "prepaid postage" means any
9 method of return postage paid by the county or state.

10 **Sec. 6.** RCW 29A.40.110 and 2011 c 349 s 18, 2011 c 348 s 4, and
11 2011 c 10 s 41 are each reenacted and amended to read as follows:

12 (1) The opening and subsequent processing of return envelopes for
13 any primary or election may begin upon receipt. The tabulation of
14 absentee ballots must not commence until after 8:00 p.m. on the day
15 of the primary or election.

16 (2) All received return envelopes must be placed in secure
17 locations from the time of delivery to the county auditor until their
18 subsequent opening. After opening the return envelopes, the county
19 canvassing board shall place all of the ballots in secure storage
20 until processing. Ballots may be taken from the inner envelopes and
21 all the normal procedural steps may be performed to prepare these
22 ballots for tabulation.

23 (3) The canvassing board, or its designated representatives,
24 shall examine the postmark on the return envelope and signature on
25 the declaration before processing the ballot. The ballot must either
26 be received no later than 8:00 p.m. on the day of the primary or
27 election, or must be postmarked no later than the day of the primary
28 or election. All personnel assigned to verify signatures must receive
29 training on statewide standards for signature verification. Personnel
30 shall verify that the voter's signature on the ballot declaration is
31 the same as the signature of that voter in the registration files of
32 the county. Verification may be conducted by an automated
33 verification system approved by the secretary of state. A variation
34 between the signature of the voter on the ballot declaration and the
35 signature of that voter in the registration files due to the
36 substitution of initials or the use of common nicknames is permitted
37 so long as the surname and handwriting are clearly the same.

38 (4) If the postmark is missing or illegible, the date on the
39 ballot declaration to which the voter has attested determines the

1 validity, as to the time of voting, for that ballot. For overseas
2 voters and service voters, the date on the declaration to which the
3 voter has attested determines the validity, as to the time of voting,
4 for that ballot. Any overseas voter (~~(or)~~), service voter, or voter
5 with disabilities may return the signed declaration and voted ballot
6 ((by fax or email)) through an electronic portal meeting the
7 requirements of section 7 of this act, if such a portal has been
8 approved for use under that section, or by fax or email if no portal
9 has been approved for use in the voter's county, by 8:00 p.m. on the
10 day of the primary or election, and the county auditor must use
11 established procedures to maintain the secrecy of the ballot.

12 NEW SECTION. **Sec. 7.** A new section is added to chapter 29A.12
13 RCW to read as follows:

14 (1) To be approved for use in an election, an electronic portal
15 for sending and receiving ballots electronically must meet the
16 following specifications:

- 17 (a) Include protocols to verify the voter's identity;
18 (b) Incorporate end-to-end encryption; and
19 (c) Any other specification provided in rule adopted by the
20 secretary of state.

21 (2) An electronic portal may not be used in an election until the
22 secretary of state has verified that the portal meets the above
23 specifications and has, in writing, approved the portal for use.

24 **Sec. 8.** RCW 29A.60.235 and 2018 c 218 s 9 are each amended to
25 read as follows:

26 (1) The county auditor shall prepare at the time of certification
27 an election reconciliation report that discloses the following
28 information:

- 29 (a) The number of registered voters;
30 (b) The number of ballots issued;
31 (c) The number of ballots received;
32 (d) The number of ballots counted;
33 (e) The number of ballots rejected;
34 (f) The number of provisional ballots issued;
35 (g) The number of provisional ballots received;
36 (h) The number of provisional ballots counted;
37 (i) The number of provisional ballots rejected;
38 (j) The number of federal write-in ballots received;

- 1 (k) The number of federal write-in ballots counted;
- 2 (l) The number of federal write-in ballots rejected;
- 3 (m) The number of overseas and service ballots and ballots for
4 voters with disabilities issued by mail, email, web site link, or
5 facsimile, or through an electronic portal;
- 6 (n) The number of overseas and service ballots and ballots for
7 voters with disabilities received by mail, email, or facsimile, or
8 through an electronic portal;
- 9 (o) The number of overseas and service ballots and ballots for
10 voters with disabilities counted by mail, email, or facsimile, or
11 through an electronic portal;
- 12 (p) The number of overseas and service ballots and ballots for
13 voters with disabilities rejected by mail, email, or facsimile or
14 through an electronic portal;
- 15 ~~(q) ((The number of nonoverseas and nonservice ballots sent by~~
16 ~~email, web site link, or facsimile;~~
- 17 ~~(r) The number of nonoverseas and nonservice ballots received by~~
18 ~~email or facsimile;~~
- 19 ~~(s))~~ The number of ~~((nonoverseas and nonservice))~~ ballots that
20 were rejected for:
- 21 (i) Failing to send an original or hard copy of the ballot by the
22 certification deadline; or
- 23 (ii) Any other reason, including the reason for rejection;
- 24 ~~((t))~~ (r) The number of voters credited with voting;
- 25 ~~((u))~~ (s) The number of replacement ballots requested;
- 26 ~~((v))~~ (t) The number of replacement ballots issued;
- 27 ~~((w))~~ (u) The number of replacement ballots received;
- 28 ~~((x))~~ (v) The number of replacement ballots counted;
- 29 ~~((y))~~ (w) The number of replacement ballots rejected; and
- 30 ~~((z))~~ (x) Any other information the auditor or secretary of
31 state deems necessary to reconcile the number of ballots counted with
32 the number of voters credited with voting, and to maintain an audit
33 trail.
- 34 (2) The county auditor must make the report available to the
35 public at the auditor's office and must publish the report on the
36 auditor's web site at the time of certification. The county auditor
37 must submit the report to the secretary of state at the time of
38 certification in any form determined by the secretary of state.
- 39 (3) (a) The secretary of state must collect the reconciliation
40 reports from each county auditor and prepare a statewide

1 reconciliation report for each state primary and general election.
2 The report may be produced in a form determined by the secretary that
3 includes the information as described in this subsection (3). The
4 report must be prepared and published on the secretary of state's web
5 site within two months after the last county's election results have
6 been certified.

7 (b) The state report must include a comparison among counties on
8 rates of votes received, counted, and rejected, including
9 provisional, write-in, overseas ballots, and ballots transmitted
10 electronically. The comparison information may be in the form of
11 rankings, percentages, or other relevant quantifiable data that can
12 be used to measure performance and trends.

13 (c) The state report must also include an analysis of the data
14 that can be used to develop a better understanding of election
15 administration and policy. The analysis must combine data, as
16 available, over multiple years to provide broader comparisons and
17 trends regarding voter registration and turnout and ballot counting.
18 The analysis must incorporate national election statistics to the
19 extent such information is available.

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