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**SUBSTITUTE HOUSE BILL 2437**

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**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)

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

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

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

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

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

The county auditor shall provide public notice of the availability of registration and voting aids, assistance to elderly voters and ((~~disabled persons~~)) voters with disabilities, and procedures for voting calculated to reach elderly voters and ((~~disabled persons~~)) voters with disabilities not later than public notice of the closing of registration for a primary or election.

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

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

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

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

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

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

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

(2) Reviews shall be conducted in conformance with rules adopted under RCW 29A.04.630. In performing a review in a county under this chapter, the election review staff shall evaluate the policies and procedures established for conducting the primary or election in the county and the practices of those conducting it, including policies, procedures, and practices related to accessible voting for voters with disabilities. As part of the review, the election review staff shall issue to the county auditor and the members of the county canvassing board a report of its findings and recommendations regarding such policies, procedures, and practices. A review conducted under this chapter shall not include any evaluation, finding, or recommendation regarding the validity of the outcome of a primary or election or the validity of any canvass of returns nor does the election review staff have any jurisdiction to make such an evaluation, finding, or recommendation under this title.

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

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

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

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

(2) If the county auditor determines that there are any potential barriers that could prevent the voting center from being deemed accessible, the county auditor must, within fourteen days of the survey, submit a report to the secretary of state describing the barriers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Include protocols to verify the voter's identity;

(b) Incorporate end-to-end encryption; and

(c) Any other specification provided in rule adopted by the secretary of state.

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

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

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

(a) The number of registered voters;

(b) The number of ballots issued;

(c) The number of ballots received;

(d) The number of ballots counted;

(e) The number of ballots rejected;

(f) The number of provisional ballots issued;

(g) The number of provisional ballots received;

(h) The number of provisional ballots counted;

(i) The number of provisional ballots rejected;

(j) The number of federal write-in ballots received;

(k) The number of federal write-in ballots counted;

(l) The number of federal write-in ballots rejected;

(m) The number of overseas and service ballots and ballots for voters with disabilities issued by mail, email, web site link, or facsimile, or through an electronic portal;

(n) The number of overseas and service ballots and ballots for voters with disabilities received by mail, email, or facsimile, or through an electronic portal;

(o) The number of overseas and service ballots and ballots for voters with disabilities counted by mail, email, or facsimile, or through an electronic portal;

(p) The number of overseas and service ballots and ballots for voters with disabilities rejected by mail, email, or facsimile or through an electronic portal;

(q) ((~~The number of nonoverseas and nonservice ballots sent by email, web site link, or facsimile;~~

~~(r) The number of nonoverseas and nonservice ballots received by email or facsimile;~~

~~(s)~~)) The number of ((~~nonoverseas and nonservice~~)) ballots that were rejected for:

(i) Failing to send an original or hard copy of the ballot by the certification deadline; or

(ii) Any other reason, including the reason for rejection;

((~~(t)~~)) (r) The number of voters credited with voting;

((~~(u)~~)) (s) The number of replacement ballots requested;

((~~(v)~~)) (t) The number of replacement ballots issued;

((~~(w)~~)) (u) The number of replacement ballots received;

((~~(x)~~)) (v) The number of replacement ballots counted;

((~~(y)~~)) (w) The number of replacement ballots rejected; and

((~~(z)~~)) (x) Any other information the auditor or secretary of state deems necessary to reconcile the number of ballots counted with the number of voters credited with voting, and to maintain an audit trail.

(2) The county auditor must make the report available to the public at the auditor's office and must publish the report on the auditor's web site at the time of certification. The county auditor must submit the report to the secretary of state at the time of certification in any form determined by the secretary of state.

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

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

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

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