

# HOUSE BILL REPORT

## HB 2437

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

**Title:** An act relating to increasing voting accessibility and security.

**Brief Description:** Concerning voting accessibility and security.

**Sponsors:** Representatives Kilduff, Leavitt, Gregerson, Santos, Tharinger, Pollet, Wylie and Morgan.

**Brief History:**

**Committee Activity:**

State Government & Tribal Relations: 1/21/20, 1/31/20 [DPS].

**Brief Summary of Substitute Bill**

- Permits voters with disabilities, service voters, and overseas voters to return ballots through an electronic portal that has been approved for use by the Office of the Secretary of State (OSOS), instead of by email or fax.
- Requires the OSOS election review staff to review county election policies, procedures, and practices every two years, instead of five, and to review the county's accessibility for voters with disabilities.
- Requires county auditors and the County Disability Advisory Committee to survey all voting centers for accessibility for voters with disabilities prior to each general election, and to submit reports of potential barriers to the OSOS.
- Requires the OSOS to respond to county auditor reports of potential barriers with recommendations and suggestions to alleviate identified issues.

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### HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Gregerson, Chair; Pellicciotti, Vice Chair; Appleton, Dolan and Hudgins.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Walsh, Ranking Minority Member; Goehner, Assistant Ranking Minority Member; Mosbrucker.

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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 a part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** Without recommendation. Signed by 1 member: Representative Smith.

**Staff:** Jason Zolle (786-7124).

**Background:**

Washington is a vote-by-mail state. County auditors must send each voter a ballot with instructions about how to mark and return the ballot to the auditor either by mail or in a drop box. Voters may also receive a ballot in person at a voting center, which may also be mailed in or deposited in a drop box. Each voting center must have a drop box on site.

Accommodations for Voters with Disabilities.

Voting centers must be located in public buildings or buildings leased by a public entity, and they must be accessible to people with disabilities. However, the Legislature has found that the elimination of polling places during the transition to vote-by-mail may create barriers to voting for voters with disabilities. Accordingly, counties are required to take appropriate steps to mitigate these impacts and permit voters with disabilities to vote independently and privately. The United States (U.S.) Department of Justice has also issued a checklist to help counties comply with disability access requirements under the federal Americans With Disabilities Act (ADA). This checklist includes questions such as:

- Is there at least one designated van accessible space with appropriate signage?
- Is the width of a curb ramp at least 36 inches?
- Do inaccessible entrances have signage directing voters to the accessible entrance?

County auditors must provide notice of the availability of registration and voting aids, assistance to elderly voters and disabled persons, and procedures for voting calculated to reach elderly voters and disabled persons. "Disabled voter" is defined as a registered voter who qualifies for special handicapped parking privileges, is legally blind, or states that he or she is unable to cast a vote due to a disability.

Each county must establish and maintain an advisory committee that includes people with diverse disabilities. The County Disability Advisory Committee (CDAC) must assist election officials in developing a plan to improve the accessibility of elections for voters with disabilities. The plan must be updated annually and should include recommendations for:

- the number of voting centers necessary to ensure sufficient access for people with disabilities;
- the locations of ballot drop boxes, voting centers, and other election-related functions necessary to maximize accessibility for voters with disabilities;
- outreach to voters with disabilities about available accommodations, including in-person disability access voting;
- transportation of voting devices to locations convenient for voters with disabilities; and
- the implementation of the federal Help America Vote Act related to persons with disabilities.

Overseas and Service Voters.

The federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) permits many U.S. service members and U.S. citizens residing outside the country to vote absentee for

federal offices. Washington permits such absentee voting for state offices as well. Overseas and service voters must be given a return envelope that enables them to vote postage free if returned through the U.S. Postal Service, the U.S. Armed Forces Postal Service, or the postal service of a U.S. Foreign Embassy.

Overseas and service voters are also permitted to return their ballots by fax or email. County auditors must provide instructions to these voters on how they may do so.

#### Review of Election Procedures.

The election review staff of the Office of the Secretary of State (OSOS) are required to conduct a review of each county's election-related policies, procedures, and practices at least once every five years, except:

- a review must be scheduled if unofficial returns indicate that a mandatory recount is likely for an election for state legislator, statewide office, or federal office; and
- reviews may be scheduled as often as possible if staffing or budget levels do not permit a five-year review cycle.

Under rules adopted by the OSOS, county auditors may request a review and the OSOS must honor that request whenever practical.

As part of its review, the election review staff must issue a report with findings and recommendations regarding the county's policies, procedures, and practices. County auditors or canvassing boards must respond to the review in writing and list the steps that will be taken to correct any problems noted in the report. Within a year of that response, the OSOS must verify that the county has taken steps to correct the problems noted in the report. A county auditor may also appeal the findings or recommendations to the Election Administration and Certification Board. The OSOS has issued a rule for the standards to evaluate appeals.

When the county auditor certifies an election, the auditor must prepare an election reconciliation report that contains information about voter turnout and the number of provisional ballots, replacement ballots, and rejected ballots, along with the reason for the rejection. The report must separately tally the number of overseas and service ballots issued, received, and counted by email or fax. The OSOS must collect the counties' reconciliation reports and prepare a statewide reconciliation report that includes a comparison among counties of the rates of votes received, counted, and rejected that includes ballots transmitted electronically.

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#### **Summary of Substitute Bill:**

##### Electronic Voting.

Voters with disabilities, service voters, and overseas voters may return ballots through an electronic portal that has been approved for use by the OSOS. To be approved, a portal must include:

- protocols to verify the voter's identity;
- end-to-end encryption; and
- any other specification provided in rules adopted by the OSOS.

If an electronic portal is available for use in the voter's county, service and overseas voters may no longer return ballots by email or fax.

Review of Election Procedures for Accessibility.

The OSOS election review staff must conduct a review of each county at least once every two years, rather than five, and the exception for low staffing or budget levels is removed. That review must include assessment of the county's policies, procedures, and practices related to accessible voting for voters with disabilities.

Between 90 and 120 days before a November general election, the county auditor must survey all county voting centers and their surrounding environment to assess whether the voting centers are accessible within the meaning of the ADA Checklist for Polling Places. The surrounding environment includes routes between the voting center entrance and nearby public transportation stops. The auditor must actively engage the CDAC when conducting this survey.

If the county auditor, in consultation with the CDAC, determines that there are any potential barriers that could prevent the voting center from being deemed accessible, the auditor must submit a report to the OSOS within 14 days. The OSOS must respond within 14 days with suggestions and recommendations for ways that the county can ensure that the voting centers noted in the report are accessible.

These reports and the facts related to barriers in the report, or the lack of a report or barriers noted in a report, and the OSOS letter and the facts related to barriers in the letter 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. Certain testimony related to the survey and the drafting of these documents is also inadmissible.

Definitions.

"Disabled voter" is changed to "Voters with disabilities" and is defined as registered voters who have a disability as defined in the Washington Law Against Discrimination.

**Substitute Bill Compared to Original Bill:**

The substitute bill reinstates the option for service and overseas voters to vote by email or fax if no electronic portal has been approved for use in their county, and it extends the email or fax option to voters with disabilities.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute 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) This bill was inspired by a constituent who documented challenges in voting in a motorized wheelchair when having to get from a bus stop to a voting center by traveling along a road with no ADA compliant sidewalks or ramps. Everyone has the right to vote freely and privately with a secret vote, so accessible voting machines are necessary. Challenges like these prompted the look into election laws for accessibility and also laws related to voter security. This bill strengthens the OSOS review of elections and helps ensure that voting centers are ADA compliant as well. Involving the CDACs is smart because they advise the city and town councils about streets and transportation, issues outside of the domain of the county auditor. The creation of an online portal is to keep options available for service voters and to eventually replace email or fax return of ballots. There are questions about whether an electronic portal is possible at this point.

(Opposed) None.

(Other) Many parts of this bill are appreciated, such as the update in statute to language surrounding voters with disabilities and the increase in reviews by the OSOS. Voters with disabilities can already use whatever device or system they have to view and mark a ballot they download from VoteWA. The OSOS is concerned about certifying electronic portal systems, as there is no system that has been certified at the national level. The state must get rid of email and fax options to return ballots, too. All internet voting schemes, even with end-to-end encryption, are vulnerable to attack.

**Persons Testifying:** (In support) Representative Kilduff, prime sponsor; Julie Anderson, Washington State Association of County Auditors; Blake Geyen; Elizabeth Gordon, Governor's Committee on Disability Issues and Employment; and David Lord, Disability Rights Washington.

(Other) Kim Wyman, The Office of the Secretary of State; and Kirstin Mueller, League of Women Voters of Washington.

**Persons Signed In To Testify But Not Testifying:** None.