



SERVING VOTERS WITH DISABILITIES



Montana Secretary of State
sosmt.gov • soselections@mt.gov

Topics

- Polling Place Accessibility
 - Surveys
 - Exemptions
- Voting Assistance in Practice
- Accessible Voting Equipment
- Alternative Means
- Curbside Voting
- Designation of Agent
- Voter Information Pamphlet
- Making Voting Accessible

Polling Place Accessibility

- Montana Code Annotated: *Title 13, Chapter 3, Part 2*
- Montana Administrative Rule: *Chapter 44.3, Subchapter 1*
- **13-3-201. Purpose.** The purpose of this part is to promote the fundamental right to vote by improving access to polling places for individuals with disabilities and elderly individuals.

Polling Place Accessibility - Survey

44.3.105 SURVEY PROCEDURE TO DETERMINE ACCESSIBILITY

- (1) Unless specified otherwise, the election administrator shall conduct an on-site survey in each polling place 45 days prior to utilizing that facility...
- **(2) Election administrators should encourage county commissioners, election judges, members of the election administrator's staff, and a voting accessibility advisory committee to participate in the survey procedure.**
- (3) The survey shall be conducted in such a manner as to represent the actual path of travel an elector would take upon arrival at the polling place on election day...

Polling Place Accessibility – Survey (Cont.)

44.3.105 SURVEY PROCEDURE TO DETERMINE ACCESSIBILITY

- (5) If an existing polling place fails to satisfy the criteria for accessibility and cannot be permanently or temporarily altered in a safe and reasonable manner to satisfy the criteria before the date of the election, it will be designated "inaccessible" and shall not be used unless an exemption is granted by the Secretary of State in accordance with the provisions of ARM [44.3.106](#).
- (6) A copy of all survey forms for polling places shall be forwarded to the Secretary of State 45 days prior to the election for which the survey was conducted.

Polling Place Accessibility - Exemption

44.3.106 EXEMPTION PROCEDURE...

- (2) If potential polling place facilities have been surveyed and no accessible facility is available...the election administrator shall request in writing to the Secretary of State that the existing polling place be exempt from the criteria set forth in these rules.
- (3) A separate request for exemption shall be submitted for each polling place not in compliance. The request shall identify the polling place, how it is not in compliance, the efforts being made to bring it into compliance, and the efforts to locate an alternate site.
- (4) Within 30 days following the receipt of a request for exemption, the Secretary of State may grant a certification of exemption to the election administrator for that polling place. Such exemption, if granted, shall be **valid for a period of three years** from the date of issuance.
- (7) A polling place designated 45 days prior to an election as inaccessible because it is **rural (i.e. polling place expects less than 200 registered electors)** shall be exempt from the on-site survey procedure provided in ARM [44.3.108](#).



Polling Place Exemption Request & Certification of Exemption Form

Polling Place Information: (one form per polling place pursuant to ARM 44.3.106(3))

Polling Place Name _____ County _____

Polling Place Address _____ City _____ Postal Code _____

Exemptions Types: (select only one)

☐ Inaccessible:

- An accessible polling place is not available.

Description of Exemption:

MCA 13-3-212. Exemption if no accessible polling place is reasonably available. (1) If an election administrator desires to designate as a polling place a location that is inaccessible, the election administrator shall make a request in writing to the secretary of state asking that an inaccessible polling place be exempt from the standards for accessibility.

Action Required:

County certifies to Secretary of State that all potential polling places have been surveyed and it is determined that according to **MCA 13-3-212(2)**:

- ☐ (a) an accessible polling place is not available and the county cannot safely or reasonably make a polling place temporarily accessible in the area involved; or
- ☐ (b) the location is a rural polling place and designation of an accessible facility as a polling place will require excessive travel or impose other hardships for the majority of qualified electors in the precinct.

NOTE: According to **ARM 44.3.106(7)** A polling place designated as "rural" 45 days prior to an election shall be exempt from the on-site survey procedure provided in **ARM 44.3.108**.

ARM 44.3.105(7) A request for exemption form, as prescribed by the Secretary of State, and defined in **ARM 44.3.106**, shall be attached to the survey for those polling places designated as "inaccessible".

Length of Exemption: 3 years

ARM 44.3.106(4) Within 30 days following the receipt of a request for exemption, the Secretary of State may grant a certification of exemption to the election administrator for that polling place. Such exemption, if granted, shall be valid for a period of three years from the date of issuance.

RURAL

- The polling place expects to serve less than 200 registered electors.

☐ **Emergency:**

- Accessible polling place becomes unavailable within 10 days prior to election.

Description and Action Required for Exemption:

MCA 13-3-211. Emergency exemption. (1) The secretary of state shall exempt a polling place from the requirements of this part if an emergency occurs within 10 days prior to an election. An emergency is considered to exist if a polling place becomes unavailable by reason of loss of lease, fire, snow, or natural disaster.

(2) If an emergency occurs, the election administrator in the county shall designate a new polling place in accordance with the procedure provided in [13-3-105](#). The new polling place must be considered temporary and must be exempt from the survey procedures established under [13-3-206](#). However, such polling place may not be used in a subsequent election unless it is surveyed as required in [13-3-206](#).

Length of Exemption: Single election.

Remedy (not for 'rural' polling places)

Pursuant to ARM 44.3.106(3) ...The request shall identify the polling place, how it is not in compliance, the efforts being made to bring it into compliance, and the efforts to locate an alternate site. _____

County Certification

County Election Administrator _____
(Signature) (Date)

Exemption Period (For Office of the Secretary of State Use Only)

Approved by: _____
(Secretary of State or Deputy) (Date of Approval/Signature) (Date of Exemption Expiration)

Additional Information:

Send Completed form and Attachments to:
Office of the Secretary of State
Elections and Government Services Division
PO Box 202801
Helena, MT 59620-2801

Additional References:
- Complaints: ARM 44.3.106(8) and ARM 44.3.114
- Alternative Methods for Casting a Ballot: ARM 44.3.110

Revised 4.2010

Voting Assistance in Practice

13-13-119, MCA **Aid to disabled elector.**

- (1) When a disabled elector enters a polling place, an election judge shall ask the elector if the elector wants assistance.
- (2) An election judge or an individual chosen by the disabled elector as specified in subsection (5) may aid an elector who, because of physical disability or inability to read or write, needs assistance in marking the elector's ballot.
- (3) The election judges shall require a declaration of disability by the elector. The declaration must be made under oath, which must be administered by an election judge.
- (4) The elector may be assisted by two judges who represent different parties. If election judges who represent different political parties are not available, the chief election judge shall appoint two election judges to assist the elector. The judges shall certify on the precinct register opposite the disabled elector's name that the ballot was marked with their assistance. The judges may not reveal information regarding the ballot.

Voting Assistance in Practice (Cont.)

- (5) Instead of assistance as provided in subsection (4), the elector may request the assistance of any individual the elector designates to the judges to aid the elector in the marking of the elector's ballot. An individual designated to assist the elector shall sign the individual's name on the precinct register beside the name of the elector assisted. The individual chosen may not be the elector's employer, an agent of the elector's employer, or an officer or agent of the elector's union.
- (6) No elector other than the elector who requires assistance may divulge to anyone within the polling place the name of any candidate for whom the elector intends to vote or may ask or receive the assistance of any individual within the polling place in the preparation of the elector's ballot.

Accessible Voting Equipment

ES&S AutoMARK



AutoMARK Requirements

- Help America Vote Act (HAVA) mandated that all polling places be equipped with a Voter Assist Terminal.
 - Provides the same opportunity for access and participation in the voting process.
- Ensure that the AutoMARK is set up in an area that has clear and easy access.
 - Nothing protruding more than 4 inches from the walls.
- Table dimensions: at least 30 inches x 19 inches.
 - Clear knee space of at least 27 inches.
 - Table top between 28 and 34 inches above the floor.
- Use screens so that voting can be done in private.
 - Ensure the screen is not visible to the public.

Alternative Means

- **44.3.110** **ALTERNATIVE MEANS FOR CASTING BALLOT**
 - (1) The election administrator shall provide an alternative method of voting for those electors who are unable, because of disability or age, to access their regular polling place. Those methods are limited to the following:
 - (a) the practice, commonly referred to as “**curbside voting**”...
 - (b) **absentee balloting**, as provided by [13-13-222](#) and [13-13-246](#), MCA; and
 - (c) **prearranged assignment to an accessible polling place** within the county...
 - (2) For the purposes of this rule, the ballot shall be processed and counted in the same manner as an absentee ballot.

Curbside Voting

- **13-13-118. Taking ballot to disabled elector.** (1) The chief election judge may appoint two election judges who represent different political parties to take a ballot to an elector able to come to the premises where a polling place is located but unable to enter the polling place because of a disability. If election judges who represent different political parties are not available, the chief election judge shall appoint two election judges to assist the elector. The elector may request assistance in marking the ballot as provided in [13-13-119](#).

(2) The judges shall have the elector sign an oath form stating that the elector is entitled to vote and shall write in the precinct register by the elector's name "voted on the premises by oath" and sign their names.

(3) When the ballot or ballots are marked and folded, the judges shall immediately take them into the polling place and give them to the judge at the ballot box...



Oath of Elector Unable to Enter Polling Place and Oath of Elector Needing Assistance Within Polling Place

OATH TO BE FILED WITH COUNTY ELECTION ADMINISTRATOR

OATH OF ELECTOR UNABLE TO ENTER POLLING PLACE

Instructions to judges: If the elector is unable to enter the polling place, ask the elector to sign the oath below. Write in the precinct register by the elector's name "voted on the premises by oath" and sign your names below. When the ballot or ballots are marked and folded, immediately take them into the polling place and give them to the judge at the ballot box.

I affirm that I am **physically unable to enter the polling place** and that I am entitled to vote at Precinct No. _____, and will vote as per 13-13-118, MCA (taking ballot to disabled elector).

Signature of Elector

Subscribed and sworn to before me this _____ day of _____, 20____.

Election Judge Signature

Election Judge Signature

The judge receiving the voted ballots shall distinctly announce that the judge has "a ballot offered by (name), an elector physically unable to enter the room. Does anyone object to the reception of the ballot?" If no objection is heard, the ballot box judge shall remove the stub and place the ballot and stub in the proper boxes. Any challenge to the elector's right to vote shall be resolved as provided in Title 13, chapter 13, part 3.

OATH OF ELECTOR NEEDING ASSISTANCE WITHIN POLLING PLACE

Instructions to judges: When an elector with a disability enters a polling place, ask the elector if the elector wants assistance. An election judge or an individual chosen by the elector may aid an elector who, because of physical disability or inability to read or write, needs assistance in marking the elector's ballot. The elector may be assisted by two judges who represent different parties. The judges shall certify on the precinct register opposite the disabled elector's name that the ballot was marked with their assistance. The judges may not reveal information regarding the ballot.

I affirm that I am an elector with a disability who needs assistance in voting and that I am entitled to vote at Precinct No. _____, and will vote as per 13-13-119, MCA (aid to disabled elector).

Signature of Elector

Subscribed and sworn to before me this _____ day of _____, 20____.

Election Judge Signature

Election Judge Signature

NOTE: Instead of assistance as provided above, the elector may request the assistance of any individual the elector designates to the judges to aid the elector in the marking of the elector's ballot. An individual designated to assist the elector shall sign the individual's name on the precinct register beside the name of the elector assisted. The individual chosen may not be the elector's employer, an agent of the elector's employer, or an officer or agent of the elector's union. No elector other than the elector who requires assistance may divulge to anyone within the polling place the name of any candidate for whom the elector intends to vote or may ask or receive the assistance of any individual within the polling place in the preparation of the elector's ballot.

December 2009

Designation of Agent

ARM 44.3.115

- (1) Consistent with [13-1-116](#), MCA, an elector with a disability who is unable to provide a signature may apply to the election administrator to have another person designated as an agent for purposes of providing a signature or identifying mark required pursuant to Title 13, MCA, and for delivering the disabled elector's absentee ballot application to the county election administrator, as provided in [13-13-213](#), MCA.
- (2) An application for designation of an agent by an elector under this section:
 - (a) must be made on a form prescribed by the Secretary of State which shall state the authorization of the elector, the purpose of the agency, and shall require that **the authorization be witnessed by two disinterested witnesses** and signed by the designated agent;
 - (b) may be obtained from local election officials, from the office of the Secretary of State, and from any other entity that provides the form; and
 - (c) must be completed in its entirety.
- (3) An agent chosen under this rule must not be the elector's employer, an agent of the individual's employer, or an officer or agent of the voter's union.
- (4) **An election official must ask if the person being designated an agent is the voter's employer or employer's agent or officer or agent of the voter's union.** If the proposed agent is one of those individuals, the voter must choose another person to be the elector's agent.
- (5) An agent must be chosen by the individual with a disability.



Application for Designation of Agent by an Individual with a Disability

An elector who is unable to provide a signature may apply to the election administrator to have another person designated as an agent for purposes of providing a signature or identifying mark required and for delivering the disabled elector's absentee ballot application to the county election administrator, and for providing any other assistance to the elector throughout the registration and voting process. The use of an agent is a reasonable accommodation under the provisions of 49-2-101(19)(b).

FORM MUST BE COMPLETED AND RETURNED TO THE COUNTY ELECTION OFFICE

Whenever my signature is required, I _____, an individual with a disability, hereby
(please print name of elector)

designate _____ to act as my agent for the purpose of signing election documents and for providing any
(please print name of agent)

other assistance to me throughout the registration and voting process.

By signing or providing an identifying mark (if possible) below I am authorizing the person named above to act as my designated agent for providing a signature or identifying mark required pursuant to this title and for providing any other assistance to me throughout the registration and voting process. I understand that this Agent Designation is valid until I notify the election administrator that it is rescinded.

Elector's Signature or Identifying Mark (if possible)

Date

SIGNATURES OF WITNESSES

- This designation is not valid unless witnessed by two disinterested persons.

Signature of 1st Witness

Date

Signature of 2nd Witness

Date

ADDITIONAL INFORMATION

- A voter may rescind this agency at any time by notifying the election administrator.
- An agent must not be the elector's employer, an agent of the individual's employer, or an officer or agent of the voter's union.
- An election official must ask if the person being designated an agent is the voter's employer or employer's agent or officer or agent of the voter's union. If the proposed agent is one of those individuals, the voter must choose another person to be the voter's agent.
- An agent can be chosen only by the individual with a disability.
- If an agent, election administrator, or election judge signs or marks a document for an elector, the agent, election administrator, or election judge shall initial the signature or mark.

SIGNATURE OF DESIGNATED AGENT

I, the agent for the above-named elector, shall retain a copy of this application and shall file this original application with the election administrator upon completion.

I understand that I must perform my duty as an agent for the benefit of the elector and that the elector has a right to be free of interference and coercion throughout the election process.

I understand that if I act in a manner that in any way interferes with the elector's ability to complete or cast the ballot, or coerce the elector in any manner, I will be in violation of the provisions of Title 13, Chapter 35, Part 2 of the Montana Code Annotated and subject to fine or penalty.

Signature of Designated Agent

for _____
Printed Name of Individual with a Disability

Date

Updated December 9, 2015

Voter Information Pamphlet

- Contact SOS for accessible VIPs
 - Online
 - Braille
 - Audio version (CD)
 - Audio version (online)
 - Large print version

Making Voting Accessible

- The Americans with Disabilities Act (ADA) and Help America Vote Act (HAVA) require that all Americans have the same opportunity to participate in the voting process, privately and independently.
- A disability is a condition (such as an illness or an injury) that damages or limits a person's physical or mental abilities.
 - Many disabilities are visible, but many are not.
 - 37.6 million adults have trouble hearing.
 - 20.6 million have trouble seeing.
 - 17.2 million have trouble walking.
 - 75.4 million have trouble with at least one basic action.
- From 1998 to 2008, the number of elderly voters in the US doubled and it continues to rise.

Making Voting Accessible

- Make sure outreach activities reach all voters, including those with disabilities. Use plain language in all outreach materials.
- Partner with local organizations that serve people with disabilities. Get their help distributing material and collecting feedback about their election day needs.
- Provide election day services at assisted-living and long-term care facilities.
- Make accessibility a key component of your office's strategy for managing the voting process.
- Ask area organizations that serve people with disabilities to identify accessible buildings.
- Train greeters at the entrance to each polling place to provide assistance to voters with disabilities.

Making Voting Accessible

- Make sure chairs are available at each polling place for voters who are unable to stand for long periods of time.
- Recruit and train poll workers with disabilities.
- Recruit poll workers from local groups that serve people with disabilities.
- Stay informed about innovations that provide better accessibility to voters with disabilities.
- Keep current on new solutions for making the voting process more accessible for voters.