

SENATE BILL NO. 494

INTRODUCED BY T. MANZELLA

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ELECTION LAWS; REQUIRING A TEST OF THE ELECTION MANAGEMENT A NEW VOTING SYSTEM TO VERIFY SYSTEM FUNCTIONALITY; REQUIRING ELECTION ADMINISTRATORS TO PRINT, EXAMINE, AND RETAIN VOTING SYSTEM AUDIT LOGS AND RECORDS OF VOTES CAST THAT AUDIT LOGS OR CAST VOTE RECORDS BE RETAINED AS A PUBLIC RECORD; AND AMENDING SECTIONS SECTION 13-1-303 AND 13-15-206, MCA."

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

**NEW SECTION. Section 1. Test of election management system required.** The election administrator shall conduct a test of the election management system when a new voting system is acquired and after an event that could alter the voting system, including system upgrades, SOFTWARE PATCHES, FIXES, AND DOWNLOADS or in a situation in which the election management system hardware leaves the custody and control of the election administrator. This end-to-end functionality analysis must verify that the complete voting system is functioning correctly.

**Section 2.** Section 13-1-303, MCA, is amended to read:

**"13-1-303. Disposition of ballots and other election materials.** (1) (a) Except for a federal election and as provided in 13-15-301(2), the voted ballots, detached stubs, unvoted ballots, and unused ballots from an election must be kept in the unopened packages received from the election judges for a period of 12 months. The packages may be opened only when an order for opening is given by the proper official either for a recount procedure or to process provisional ballots.

(b) The voted ballots, detached stubs, unvoted ballots, and unused ballots from a federal election must be retained in the unopened packages received from the election judges for a period of 22 months. The packages may be opened only as provided in subsection (1)(a) or for a postelection random-sample audit of vote-counting machines.

(c) ~~The audit logs and records of votes cast of a voting system provided under 13-15-206 must be retained by the election administrator for a period of 22 months. COUNTIES THAT PERFORM TABULATION USING A VOTE-COUNTING MACHINE PURSUANT TO 13-15-101(B) THAT IS CAPABLE OF PRODUCING AN AUDIT LOG OR CAST VOTE RECORD SHALL RETAIN IN PERPETUITY A COPY AS A PUBLIC RECORD PURSUANT TO TITLE 2, CHAPTER 6.~~

(d) An election administrator may dispose of the ballots as provided in subsection (2) if after the time periods provided for in this subsection (1), there is no:

- (i) contest begun;
- (ii) recount pending; or
- (iii) appeal of a decision relating to a contest, a recount, or a postelection random-sample audit.

(2) Each election administrator shall prepare a plan for retention and destruction of election records in the county according to the retention schedules established by the local government records committee provided for in 2-6-1201."

**Section 3.** Section 13-15-206, MCA, is amended to read:

**~~"13-15-206. Counting votes -- uniformity -- rulemaking -- definitions.~~** (1) When conducting vote counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and determine the validity of each vote in a uniform manner as provided in this section.

(2) ~~— A manual count or recount of votes must be conducted as follows:~~

(a) ~~— One election judge on the board shall read the ballot while the two other judges on the board shall each record on an official tally sheet the number of valid votes cast for each individual or ballot issue. Write-in votes must be counted in accordance with subsection (5) and rules adopted pursuant to subsection (7). If a vote has not been cast according to instructions, the vote must be considered questionable and the entire ballot must be set aside and votes on the ballot must be handled as provided in subsection (4).~~

(b) ~~(i) After the vote count is complete, the tally sheets of the two judges recording the votes must be compared.~~

~~(ii) — If the two tallies match, the judges shall record in the official results records:~~

~~(A) — the names of all individuals who received votes;~~

~~(B) — the offices for which individuals received votes;~~

(C) — the total votes received by each individual as shown by the tally sheets; and

(D) — the total votes received for or against each ballot issue, if any.

(iii) — If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the two tallies match.

(3) — (a) When a voting system is counting votes:

(i) — if a vote is recognized and counted by the system, it is a valid vote;

(ii) — if a vote is not recognized and counted by the system, it is not a valid vote; and

(iii) — write-in votes must be counted in accordance with rules adopted pursuant to subsection (7).

(b) — If the voting system cannot process the ballot because of the ballot's condition or if the voting system registers an unmarked ballot or an overvote, which must be considered a questionable vote, the entire ballot must be set aside and the votes on the ballot must be counted as provided in subsection (4).

(c) — The election administrator shall print and examine the voting system audit logs and records of votes cast prior to beginning and after completing the vote count to confirm the data and identify any potential inconsistencies or anomalies. The audit logs and records of votes cast must be retained by the election administrator for at least 22 months.

(c)(d) — If an election administrator or counting board has reason to believe that a voting system is not functioning correctly, the election administrator shall follow the procedures prescribed in 13-15-209.

(d)(e) — After all valid votes have been counted and totaled, the judges shall record in the official results records the information specified in subsection (2)(b)(ii).

(4) — (a) (i) Before being counted, each questionable vote on a ballot set aside under subsection (2)(a) or (3)(b) must be reviewed by the counting board. The counting board shall evaluate each questionable vote according to rules adopted by the secretary of state.

(ii) — If a majority of the counting board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.

(iii) — If a majority of the counting board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

(b) — If a ballot was set aside under subsection (3)(b) because it could not be processed by the voting system due to the ballot's condition, the counting board shall transfer all valid votes to a new ballot that

can be processed by the voting system.

(5) — A write-in vote may be counted only if:

(a) — the write-in vote identifies an individual by a designation filed pursuant to 13-10-211 (1)(a); and

(b) — the oval, box, or other designated voting area on the ballot is marked.

(6) — A vote is not valid and may not be counted if the elector's choice cannot be determined as provided in this section.

(7) — The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each type of ballot and for each type of voting system used in the state. The rules must provide a sufficient guarantee that all votes are treated equally among jurisdictions using similar ballot types and voting systems.

(8) — Local election administrators shall adopt policies to govern local processes that are consistent with the provisions of this title and that provide for:

(a) — the security of the counting process against fraud;

(b) — the place and time and public notice of each count or recount;

(c) — public observance of each count or recount, including observance by representatives authorized under 13-16-411;

(d) — the recording of objections to determinations on the validity of an individual vote or to the entire counting process; and

(e) — the keeping of a public record of count or recount proceedings.

(9) — For purposes of this section, "overvote" means an elector's vote that has been interpreted by the voting system as an elector casting more votes than allowable for a particular office or ballot issue."

**NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 13, chapter 17, part 1, and the provisions of Title 13, chapter 17, part 1, apply to [section 1].

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