

1 SENATE BILL NO. 494

2 INTRODUCED BY T. MANZELLA

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ELECTION LAWS; REQUIRING A TEST  
5 OF ~~THE ELECTION MANAGEMENT~~ A NEW VOTING SYSTEM TO VERIFY SYSTEM FUNCTIONALITY;  
6 REQUIRING ~~ELECTION ADMINISTRATORS TO PRINT, EXAMINE, AND RETAIN VOTING SYSTEM AUDIT~~  
7 ~~LOGS AND RECORDS OF VOTES CAST~~ THAT AUDIT LOGS OR CAST VOTE RECORDS BE RETAINED  
8 AS A PUBLIC RECORD; AND AMENDING ~~SECTIONS SECTION~~ SECTION 13-1-303 ~~AND 13-15-206~~, MCA."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11  
12 NEW SECTION. Section 1. Test of election management system required. The election  
13 administrator shall conduct a test ~~of the election management system~~ when a new voting system is acquired  
14 and after an event that could alter the voting system, including system upgrades, software patches, fixes, and  
15 downloads or in a situation in which the election management system hardware leaves the custody and control  
16 of the election administrator. This end-to-end functionality analysis must verify that the complete voting system  
17 is functioning correctly.

18  
19 **Section 2.** Section 13-1-303, MCA, is amended to read:

20 **"13-1-303. Disposition of ballots and other election materials.** (1) (a) Except for a federal election  
21 and as provided in 13-15-301(2), the voted ballots, detached stubs, unvoted ballots, and unused ballots from an  
22 election must be kept in the unopened packages received from the election judges for a period of 12 months.  
23 The packages may be opened only when an order for opening is given by the proper official either for a recount  
24 procedure or to process provisional ballots.

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

1 (c) ~~The audit logs and records of votes cast of a voting system provided under 13-15-206 must be~~  
2 ~~retained by the election administrator for a period of 22 months. Counties that perform tabulation using a vote-~~  
3 ~~counting machine pursuant to 13-15-101(b) that is capable of producing an audit log or cast vote record shall~~  
4 ~~retain in perpetuity a copy as a public record pursuant to Title 2, chapter 6.~~

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

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

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

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

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

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

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

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

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

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

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

- 1           ~~(C) — the total votes received by each individual as shown by the tally sheets; and~~
- 2           ~~(D) — the total votes received for or against each ballot issue, if any.~~
- 3           ~~(iii) — If the tallies do not match, the count must be conducted again as provided in this subsection (2)~~
- 4 ~~until the two tallies match.~~
- 5           ~~(3) — (a) When a voting system is counting votes:~~
- 6           ~~(i) — if a vote is recognized and counted by the system, it is a valid vote;~~
- 7           ~~(ii) — if a vote is not recognized and counted by the system, it is not a valid vote; and~~
- 8           ~~(iii) — write-in votes must be counted in accordance with rules adopted pursuant to subsection (7).~~
- 9           ~~(b) — If the voting system cannot process the ballot because of the ballot's condition or if the voting~~
- 10 ~~system registers an unmarked ballot or an overvote, which must be considered a questionable vote, the entire~~
- 11 ~~ballot must be set aside and the votes on the ballot must be counted as provided in subsection (4).~~
- 12           ~~(c) — The election administrator shall print and examine the voting system audit logs and records of~~
- 13 ~~votes cast prior to beginning and after completing the vote count to confirm the data and identify any potential~~
- 14 ~~inconsistencies or anomalies. The audit logs and records of votes cast must be retained by the election~~
- 15 ~~administrator for at least 22 months.~~
- 16           ~~(c)(d) — If an election administrator or counting board has reason to believe that a voting system is not~~
- 17 ~~functioning correctly, the election administrator shall follow the procedures prescribed in 13-15-209.~~
- 18           ~~(d)(e) — After all valid votes have been counted and totaled, the judges shall record in the official results~~
- 19 ~~records the information specified in subsection (2)(b)(ii).~~
- 20           ~~(4) — (a) (i) Before being counted, each questionable vote on a ballot set aside under subsection~~
- 21 ~~(2)(a) or (3)(b) must be reviewed by the counting board. The counting board shall evaluate each questionable~~
- 22 ~~vote according to rules adopted by the secretary of state.~~
- 23           ~~(ii) — If a majority of the counting board members agree that under the rules the voter's intent can be~~
- 24 ~~clearly determined, the vote is valid and must be counted according to the voter's intent.~~
- 25           ~~(iii) — If a majority of the counting board members do not agree that the voter's intent can be clearly~~
- 26 ~~determined under the rules, the vote is not valid and may not be counted.~~
- 27           ~~(b) — If a ballot was set aside under subsection (3)(b) because it could not be processed by the~~
- 28 ~~voting system due to the ballot's condition, the counting board shall transfer all valid votes to a new ballot that~~

1 ~~can be processed by the voting system.~~

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

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

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

5 ~~(6) — A vote is not valid and may not be counted if the elector's choice cannot be determined as~~

6 ~~provided in this section.~~

7 ~~(7) — The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each~~

8 ~~type of ballot and for each type of voting system used in the state. The rules must provide a sufficient guarantee~~

9 ~~that all votes are treated equally among jurisdictions using similar ballot types and voting systems.~~

10 ~~(8) — Local election administrators shall adopt policies to govern local processes that are consistent~~

11 ~~with the provisions of this title and that provide for:~~

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

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

14 ~~(c) — public observance of each count or recount, including observance by representatives~~

15 ~~authorized under 13-16-411;~~

16 ~~(d) — the recording of objections to determinations on the validity of an individual vote or to the entire~~

17 ~~counting process; and~~

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

19 ~~(9) — For purposes of this section, "overvote" means an elector's vote that has been interpreted by~~

20 ~~the voting system as an elector casting more votes than allowable for a particular office or ballot issue."~~

21

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

24

- END -