

HOUSE BILL NO. 172

INTRODUCED BY D. BEDEY

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING BOARDS OF COUNTY COMMISSIONERS TO REQUEST A RANDOM-SAMPLE AUDIT OF VOTE-COUNTING MACHINES AFTER A NONFEDERAL ELECTION; ALLOWING BOARDS OF COUNTY COMMISSIONERS TO REQUEST THE ADDITION OF A COUNTYWIDE RACE TO THE RANDOM-SAMPLE AUDIT OF VOTE-COUNTING MACHINES AFTER A FEDERAL ELECTION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 13-1-101, 13-17-503, AND 13-17-505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Random-sample audit of vote-counting machines optional after nonfederal elections -- rulemaking authority. (1) After unofficial results are available to the public in a nonfederal election, but before the official canvass by the county board of canvassers, the board of county commissioners may request a random-sample audit of vote-counting machines.

(2) The random-sample audit may not include a ballot that a vote-counting machine was unable to process and that was not resolved pursuant to 13-15-206 because the ballot:

- (a) appeared to have at least one overvote;
- (b) appeared to be blank;
- (c) was in a condition that prevented its processing by a vote-counting machine; or
- (d) contained a mark, error, or omission that prevented its processing by a vote-counting machine.

(3) On or before May 1, 2024, the secretary of state shall adopt rules to implement the provisions of this section, including but not limited to rules for:

- (a) the manner in which the random-sample audit of vote-counting machines will be conducted;
- (b) the process to be used for selecting precincts, races, and ballot issues for the random-sample audit; and
- (c) the process to be used to select the ballots that are to be included in the random-sample audit.

1

2 **Section 2.** Section 13-1-101, MCA, is amended to read:

3 **"13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the
4 following definitions apply:

5 (1) "Active elector" means an elector whose name has not been placed on the inactive list due to
6 failure to respond to confirmation notices pursuant to 13-2-220 or 13-19-313.

7 (2) "Active list" means a list of active electors maintained pursuant to 13-2-220.

8 (3) "Anything of value" means any goods that have a certain utility to the recipient that is real and
9 that is ordinarily not given away free but is purchased.

10 (4) "Application for voter registration" means a voter registration form prescribed by the secretary
11 of state that is completed and signed by an elector, is submitted to the election administrator, and contains
12 voter registration information subject to verification as provided by law.

13 (5) "Ballot" means a paper ballot counted manually or a paper ballot counted by a machine, such
14 as an optical scan system or other technology that automatically tabulates votes cast by processing the paper
15 ballots.

16 (6) (a) "Ballot issue" or "issue" means a proposal submitted to the people at an election for their
17 approval or rejection, including but not limited to an initiative, referendum, proposed constitutional amendment,
18 recall question, school levy question, bond issue question, or ballot question.

19 (b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by
20 the proper official that the legal procedure necessary for its qualification and placement on the ballot has been
21 completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the
22 secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

23 (7) "Ballot issue committee" means a political committee specifically organized to support or
24 oppose a ballot issue.

25 (8) "Candidate" means:

26 (a) an individual who has filed a declaration or petition for nomination, acceptance of nomination,
27 or appointment as a candidate for public office as required by law;

28 (b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and

1 retained contributions, made expenditures, or given consent to an individual, organization, political party, or
2 committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure
3 nomination or election to any office at any time, whether or not the office for which the individual will seek
4 nomination or election is known when the:

5 (i) solicitation is made;

6 (ii) contribution is received and retained; or

7 (iii) expenditure is made; or

8 (c) an officeholder who is the subject of a recall election.

9 (9) (a) "Contribution" means:

10 (i) the receipt by a candidate or a political committee of an advance, gift, loan, conveyance,
11 deposit, payment, or distribution of money or anything of value to support or oppose a candidate or a ballot
12 issue;

13 (ii) an expenditure, including an in-kind expenditure, that is made in coordination with a candidate
14 or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution;

15 (iii) the receipt by a political committee of funds transferred from another political committee; or

16 (iv) the payment by a person other than a candidate or political committee of compensation for the
17 personal services of another person that are rendered to a candidate or political committee.

18 (b) The term does not mean:

19 (i) services provided without compensation by individuals volunteering a portion or all of their time
20 on behalf of a candidate or political committee;

21 (ii) meals and lodging provided by individuals in their private residences for a candidate or other
22 individual;

23 (iii) the use of a person's real property for a fundraising reception or other political event; or

24 (iv) the cost of a communication not for distribution to the general public by a religious organization
25 exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held
26 religious beliefs or practices.

27 (c) This definition does not apply to Title 13, chapter 37, part 6.

28 (10) "Coordinated", including any variations of the term, means made in cooperation with, in

1 consultation with, at the request of, or with the express prior consent of a candidate or political committee or an
2 agent of a candidate or political committee.

3 (11) "De minimis act" means an action, contribution, or expenditure that is so small that it does not
4 trigger registration, reporting, disclaimer, or disclosure obligations under Title 13, chapter 35 or 37, or warrant
5 enforcement as a campaign practices violation under Title 13, chapter 37.

6 (12) "Disability" means a temporary or permanent mental or physical impairment such as:

7 (a) impaired vision;

8 (b) impaired hearing;

9 (c) impaired mobility. Individuals having impaired mobility include those who require use of a
10 wheelchair and those who are ambulatory but are physically impaired because of age, disability, or disease.

11 (d) impaired mental or physical functioning that makes it difficult for the person to participate in the
12 process of voting.

13 (13) "Election" means a general, special, or primary election held pursuant to the requirements of
14 state law, regardless of the time or purpose.

15 (14) (a) "Election administrator" means, except as provided in subsection (14)(b), the county clerk
16 and recorder or the individual designated by a county governing body to be responsible for all election
17 administration duties, except that with regard to school elections not administered by the county, the term
18 means the school district clerk.

19 (b) As used in chapter 2 regarding voter registration, the term means the county clerk and recorder
20 or the individual designated by a county governing body to be responsible for all election administration duties
21 even if the school election is administered by the school district clerk.

22 (15) (a) "Election communication" means the following forms of communication to support or
23 oppose a candidate or ballot issue:

24 (i) a paid advertisement broadcast over radio, television, cable, or satellite;

25 (ii) paid placement of content on the internet or other electronic communication network;

26 (iii) a paid advertisement published in a newspaper or periodical or on a billboard;

27 (iv) a mailing; or

28 (v) printed materials.

1 (b) The term does not mean:

2 (i) an activity or communication for the purpose of encouraging individuals to register to vote or to
3 vote, if that activity or communication does not mention or depict a clearly identified candidate or ballot issue;

4 (ii) a communication that does not support or oppose a candidate or ballot issue;

5 (iii) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any
6 broadcasting station, newspaper, magazine, internet website, or other periodical publication of general
7 circulation;

8 (iv) a communication by any membership organization or corporation to its members, stockholders,
9 or employees;

10 (v) a communication not for distribution to the general public by a religious organization exempt
11 from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious
12 beliefs or practices; or

13 (vi) a communication that the commissioner determines by rule is not an election communication.

14 (16) "Election judge" means a person who is appointed pursuant to Title 13, chapter 4, part 1, to
15 perform duties as specified by law.

16 (17) (a) "Electioneering communication" means a paid communication that is publicly distributed by
17 radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other
18 distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does
19 not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the
20 district voting on the candidate or ballot issue, and that:

21 (i) refers to one or more clearly identified candidates in that election;

22 (ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that
23 election; or

24 (iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.

25 (b) The term does not mean:

26 (i) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any
27 broadcasting station, newspaper, magazine, internet website, or other periodical publication of general
28 circulation unless the facilities are owned or controlled by a candidate or political committee;

(ii) a communication by any membership organization or corporation to its members, stockholders, or employees;

(iii) a commercial communication that depicts a candidate's name, image, likeness, or voice only in the candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy;

(iv) a communication that constitutes a candidate debate or forum or that solely promotes a candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum;

(v) a communication not for distribution to the general public by a religious organization exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious beliefs or practices; or

(vi) a communication that the commissioner determines by rule is not an electioneering communication.

(18) "Elector" means an individual qualified to vote under state law.

(19) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value:

(i) made by a candidate or political committee to support or oppose a candidate or a ballot issue;

(ii) made by a candidate while the candidate is engaging in campaign activity to pay child-care expenses as provided in 13-37-220; or

(iii) used or intended for use in making independent expenditures or in producing electioneering communications.

(b) The term does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (9);

(ii) except as provided in subsection (19)(a)(ii), payments by a candidate for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iv) the cost of any communication by any membership organization or corporation to its members

1 or stockholders or employees;

2 (v) the use of a person's real property for a fundraising reception or other political event; or

3 (vi) the cost of a communication not for distribution to the general public by a religious organization
4 exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held
5 religious beliefs or practices.

6 (c) This definition does not apply to Title 13, chapter 37, part 6.

7 (20) "Federal election" means an election in even-numbered years in which an elector may vote for
8 individuals for the office of president of the United States or for the United States congress.

9 (21) "General election" means an election that is held for offices that first appear on a primary
10 election ballot, unless the primary is cancelled as authorized by law, and that is held on a date specified in 13-
11 1-104.

12 (22) "Inactive elector" means an individual who failed to respond to confirmation notices and whose
13 name was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

14 (23) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

15 (24) (a) "Incidental committee" means a political committee that is not specifically organized or
16 operating for the primary purpose of supporting or opposing candidates or ballot issues but that may
17 incidentally become a political committee by receiving a contribution or making an expenditure.

18 (b) For the purpose of this subsection (24), the primary purpose is determined by the
19 commissioner by rule and includes criteria such as the allocation of budget, staff, or members' activity or the
20 statement of purpose or goal of the person or individuals that form the committee.

21 (25) "Independent committee" means a political committee organized for the primary purpose of
22 receiving contributions and making expenditures that is not controlled either directly or indirectly by a candidate
23 and that does not coordinate with a candidate in conjunction with the making of expenditures except pursuant
24 to the limits set forth in 13-37-216(1).

25 (26) "Independent expenditure" means an expenditure for an election communication to support or
26 oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue
27 committee.

28 (27) "Individual" means a human being.

(28) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

(29) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing ballots to all active electors.

(30) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, including a political committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (8).

(31) "Place of deposit" means a location designated by the election administrator pursuant to 13-19-307 for a mail ballot election conducted under Title 13, chapter 19.

(32) (a) "Political committee" means a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure:

(i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination;

(ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(iii) to prepare or disseminate an election communication, an electioneering communication, or an independent expenditure.

(b) Political committees include ballot issue committees, incidental committees, independent committees, and political party committees.

(c) A candidate and the candidate's treasurer do not constitute a political committee.

(d) A political committee is not formed when a combination of two or more individuals or a person other than an individual makes an election communication, an electioneering communication, or an independent expenditure of \$250 or less.

(e) A joint fundraising committee is not a political committee.

(33) "Political party committee" means a political committee formed by a political party organization and includes all county and city central committees.

(34) "Political party organization" means a political organization that:

(a) was represented on the official ballot in either of the two most recent statewide general

1 elections; or

2 (b) has met the petition requirements provided in Title 13, chapter 10, part 5.

3 (35) "Political subdivision" means a county, consolidated municipal-county government,
4 municipality, special purpose district, or any other unit of government, except school districts, having authority
5 to hold an election.

6 (36) "Polling place election" means an election primarily conducted at polling places rather than by
7 mail under the provisions of Title 13, chapter 19.

8 (37) "Primary" or "primary election" means an election held on a date specified in 13-1-107 to
9 nominate candidates for offices filled at a general election.

10 (38) "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not
11 been verified as provided by law.

12 (39) "Provisionally registered elector" means an individual whose application for voter registration
13 was accepted but whose identity or eligibility has not yet been verified as provided by law.

14 (40) "Public office" means a state, county, municipal, school, or other district office that is filled by
15 the people at an election.

16 (41) "Random-sample audit" means an audit involving a manual count of ballots from designated
17 races and ballot issues in precincts selected through a random process as provided in 13-17-503 and [section
18 1].

19 (42) "Registrar" means the county election administrator and any regularly appointed deputy or
20 assistant election administrator.

21 (43) "Regular school election" means the school trustee election provided for in 20-20-105(1).

22 (44) "Religious organization" means a house of worship with the major purpose of supporting
23 religious activities, including but not limited to a church, mosque, shrine, synagogue, or temple. The organic
24 documents of the organization must list a formal code of doctrine and discipline, and the organization must
25 spend the majority of its money on religious activities such as regular religious services, educational
26 preparation for its ministers, development and support of its ministers, membership development, outreach and
27 support, and the production and distribution of religious literature developed by the organization.

28 (45) "School election" has the meaning provided in 20-1-101.

(46) "School election filing officer" means the filing officer with whom the declarations for nomination for school district office were filed or with whom the school ballot issue was filed.

(47) "School recount board" means the board authorized pursuant to 20-20-420 to perform recount duties in school elections.

(48) "Signature envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:

(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

(b) allow it to be used in the United States mail.

(49) "Special election" means an election held on a day other than the day specified for a primary election, general election, or regular school election.

(50) "Special purpose district" means an area with special boundaries created as authorized by law for a specialized and limited purpose.

(51) "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

(52) "Support or oppose", including any variations of the term, means:

(a) using express words, including but not limited to "vote", "oppose", "support", "elect", "defeat", or "reject", that call for the nomination, election, or defeat of one or more clearly identified candidates, the election or defeat of one or more political parties, or the passage or defeat of one or more ballot issues submitted to voters in an election; or

(b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or ballot issues in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election, or defeat of the candidate in an election, the election or defeat of the political party, or the passage or defeat of the ballot issue or other question submitted to the voters in an election.

(53) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

(54) "Voted ballot" means a ballot that is:

(a) deposited in the ballot box at a polling place;

1 (b) received at the election administrator's office; or

2 (c) returned to a place of deposit.

3 (55) "Voter interface device" means a voting system that:

4 (a) is accessible to electors with disabilities;

5 (b) communicates voting instructions and ballot information to a voter;

6 (c) allows the voter to select and vote for candidates and issues and to verify and change

7 selections; and

8 (d) produces a paper ballot that displays electors' choices so the elector can confirm the ballot's

9 accuracy and that may be manually counted.

10 (56) "Voting system" or "system" means any machine, device, technology, or equipment used to
11 automatically record, tabulate, or process the vote of an elector cast on a paper ballot."

12

13 **Section 3.** Section 13-17-503, MCA, is amended to read:

14 **"13-17-503. Random-sample audit of vote-counting machines required after federal election --**
15 **rulemaking authority.** (1) After unofficial results are available to the public in a federal election, but before the
16 official canvass by the county board of canvassers, the county audit committee shall conduct a random-sample
17 audit of vote-counting machines.

18 (2) The random-sample audit may not include a ballot that a vote-counting machine was unable to
19 process and that was not resolved pursuant to 13-15-206 because the ballot:

20 (a) appeared to have at least one overvote;

21 (b) appeared to be blank;

22 (c) was in a condition that prevented its processing by a vote-counting machine; or

23 (d) contained a mark, error, or omission that prevented its processing by a vote-counting machine.

24 (3) Except as provided in subsections (4) and (5), the random-sample audit must include:

25 (a) at least 5% of the precincts in each county or a minimum of one precinct in each county,

26 whichever is greater; and

27 (b) an election for:

28 (i) one statewide office race, if any;

- (ii) one federal office race;
- (iii) one legislative office race; ~~and~~
- (iv) one statewide ballot issue if a statewide ballot issue was on the ballot; and
- (v) one countywide race if requested ~~and approved~~ by the board of county commissioners using the process in [section 1].

(4) The audit may not include:

- (a) a retention election for a judicial candidate; or
- (b) a race in which a candidate was unopposed.

(5) A county is exempt from the postelection random-sample audit requirements if:

- (a) the county does not use a vote-counting machine; or
- (b) the county's unofficial final vote totals for a ballot issue or for any race, except precinct committee representative, show a tie vote or a vote within the margins allowed by Title 13, chapter 16, part 2, for a recount without a court order. A county meeting the requirements of this subsection (5)(b) shall notify the secretary of state as soon as practicable.

(6) The secretary of state shall adopt rules to implement the provisions of this part, including but not limited to rules for:

- (a) the process to be used for selecting precincts, races, and ballot issues for the random-sample audit; and
- (b) the manner in which the random-sample audit of vote-counting machines will be conducted pursuant to the procedures established in this part."

Section 4. Section 13-17-505, MCA, is amended to read:

"13-17-505. Selection process for random-sample audit after federal election. (1) No sooner than 7 days after the federal election and no later than 9 days after the federal election, the state board of canvassers, pursuant to 13-17-503 and as established by rule, shall randomly select:

- (a) the races and ballot issue to be audited;
- (b) the precincts to be audited in each county; and
- (c) three additional precincts in each county that would be audited if a discrepancy in vote tallies

1 occurs and results in the need to audit additional precincts pursuant to 13-17-507.

2 (2) The selection process must be open to the public.

3 (3) After selecting the precincts, races, and ballot issue for the random-sample audit, the state

4 board of canvassers shall direct the secretary of state to:

5 (a) notify each county election administrator of the selections; and

6 (b) make a list of the selections available electronically."

7

8 **NEW SECTION. Section 5. Codification instruction.** [Section 1] is intended to be codified as an
9 integral part of Title 13, chapter 17, part 5, and the provisions of Title 13, chapter 17, part 5, apply to [section 1].

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11 **NEW SECTION. Section 6. Effective date.** [This act] is effective on passage and approval.

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