

OFFICE OF THE GOVERNOR  
STATE OF MONTANA

GREG GIANFORTE  
GOVERNOR



KRISTEN JURAS  
LT. GOVERNOR

May 1, 2023

The Honorable Jason Ellsworth  
President of the Senate  
State Capitol  
Helena, MT 59620

The Honorable Matt Regier  
Speaker of the House  
State Capitol  
Helena, MT 59620

Dear President Ellsworth and Speaker Regier:

I support the Legislature's interest in broadening the scope of the post-election audits to include audits in counties that only hand count votes. Senate Bill 254 pursues this intention but fails to remove all references to the vote-tabulating machine limitation.

Therefore, in accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return with amendments Senate Bill 254: "AN ACT REMOVING AN EXEMPTION FROM A POSTELECTION AUDIT FOR COUNTIES THAT TABULATE THEIR VOTES BY HAND; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 13-17-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

The attached language further amends MCA 13-17-503—which is entitled "**Random-sample audit of vote-counting machines required—rulemaking authority**" and currently directs that "the county audit committee shall conduct a random-sample audit of vote-counting machines"—to remove both references to vote-counting machines and instead, more broadly direct that "the county audit committee shall conduct a random-sample audit."

I respectfully request your concurrence with this amendment.

Sincerely,

A blue ink signature of Greg Gianforte, consisting of stylized initials and a surname.

Greg Gianforte  
Governor

President Ellsworth and Speaker Regier  
May 1, 2023  
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Enclosure

cc: Legislative Services Division  
Christi Jacobsen, Secretary of State

1 SENATE BILL NO. 254

2 INTRODUCED BY K. BOGNER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING AN EXEMPTION FROM A POSTELECTION AUDIT  
5 FOR COUNTIES THAT TABULATE THEIR VOTES BY HAND; PROVIDING RULEMAKING AUTHORITY;  
6 AMENDING SECTION 13-17-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

7

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

9

10 Section 1. Section 13-17-503, MCA, is amended to read:

11 "13-17-503. Random-sample audit ~~of vote-counting machines~~ required -- rulemaking authority.

12 (1) After unofficial results are available to the public in a federal election, but before the official canvass by the  
13 county board of canvassers, the county audit committee shall conduct a random-sample audit ~~of vote-counting~~  
14 ~~machines~~.

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

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

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

22 (a) at least 5% of the precincts in each county or a minimum of one precinct in each county,  
23 whichever is greater; and

24 (b) an election for:

- 25 (i) one statewide office race, if any;
- 26 (ii) one federal office race;
- 27 (iii) one legislative office race; and
- 28 (iv) one statewide ballot issue if a statewide ballot issue was on the ballot.

- 1 (4) The audit may not include:
- 2 (a) a retention election for a judicial candidate; or
- 3 (b) a race in which a candidate was unopposed.
- 4 (5) A county is exempt from the postelection random-sample audit requirements if:
- 5 ~~(a) the county does not use a vote counting machine; or~~
- 6 ~~(b) the county's unofficial final vote totals for a ballot issue or for any race, except precinct committee~~
- 7 ~~representative, show a tie vote or a vote within the margins allowed by Title 13, chapter 16, part 2, for a recount~~
- 8 ~~without a court order. A county meeting the requirements of this subsection (5)(b) shall notify the secretary of~~
- 9 ~~state as soon as practicable.~~
- 10 (6) The secretary of state shall adopt rules to implement the provisions of this part, including but
- 11 not limited to rules for:
- 12 (a) the process to be used for selecting precincts, races, and ballot issues for the random-sample
- 13 audit; ~~and~~
- 14 (b) the manner in which the random-sample audit of vote-counting machines will be conducted
- 15 pursuant to the procedures established in this part; and
- 16 (c) the process to be used for counties that do not use vote-counting machines."

17

18 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

19 - END -