

SENATE BILL NO. 469

INTRODUCED BY J. BRUEGGEMAN

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3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PRIMARY ELECTIONS; PROVIDING THAT
5 ELECTORS MAY VOTE FOR A CANDIDATE IN A PRIMARY ELECTION IRRESPECTIVE OF THE
6 CANDIDATE'S POLITICAL PARTY AFFILIATION; PROVIDING THAT A POLITICAL PARTY IS NOT REQUIRED
7 TO NOMINATE CANDIDATES THROUGH A PRIMARY ELECTION; PROVIDING THAT THE PROPOSED ACT
8 BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 13-1-103, 13-1-303,
9 13-10-209, 13-10-211, 13-10-301, 13-10-311, 13-10-402, 13-10-601, 13-12-202, 13-12-203, 13-12-205,
10 13-13-214, 13-13-241, 13-15-205, 13-15-206, AND 13-17-103, MCA; ~~AND~~ REPEALING SECTIONS 13-10-302
11 AND 13-10-303, MCA; AND PROVIDING AN EFFECTIVE DATE."

12

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

14

15 **Section 1.** Section 13-1-103, MCA, is amended to read:

16 **"13-1-103. Determination of winner.** ~~The~~ (1) Subject to subsection (2), the individual receiving the
17 highest number of valid votes for any office at an election is elected or nominated to that office.

18 (2) In a primary election for a partisan office, the candidate who receives the highest number of votes
19 compared to the other candidates for the office with the same party affiliation is nominated for the general
20 election."

21

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

23 **"13-1-303. Disposition of ballots and other election materials.** (1) The voted ballots, detached stubs,
24 ~~unvoted ballots,~~ and unused ballots from an election must be kept in the unopened packages received from the
25 election judges for a period of 12 months. The packages may be opened only when an order for opening is given
26 by the proper official for a recount procedure. After 12 months, if there is no contest begun, recount pending, or
27 appeal of a decision relating to a contest or recount, an election administrator may dispose of the ballots as
28 provided in subsection (2).

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

1 for in 2-6-402."

2

3 **Section 3.** Section 13-10-209, MCA, is amended to read:

4 **"13-10-209. Arrangement and preparing of primary ballots.** (1) (a) Ballots for a primary election must
5 be arranged and prepared in the same manner and number as provided in chapter 12 for general election ballots;
6 ~~except that there must be separate ballots for each political party entitled to participate. The name of the political~~
7 ~~party must appear at the top of the separate ballot for that party and need not appear opposite each candidate's~~
8 ~~name.~~

9 (b) Nonpartisan offices and ballot issues may be prepared on separate ballots or may appear on the
10 same ballot as partisan offices if:

11 (i) each section is clearly identified as separate; and

12 ~~(ii) the nonpartisan offices and ballot issues appear on each party's ballot; and~~

13 ~~(iii)~~(ii) with respect to ballot issues, written approval is obtained as provided in 13-27-502.

14 (2) An election administrator does not need to ~~prepare~~ list a candidate's name on a primary ballot ~~for a~~
15 ~~political party~~ if:

16 (a) the candidate is affiliated with a party that does not have candidates for more than half of the offices
17 to appear on the ballot; or

18 (b) ~~no more than one candidate files for nomination by that party~~ two or more candidates with the same
19 party affiliation have not filed for any of the offices to appear on the ballot.

20 (3) If, pursuant to subsection (2), a ~~there are not at least two candidates affiliated with the same political~~
21 party to be listed on the primary ballot for a political party is not prepared, the secretary of state shall certify that
22 a primary election for the partisan offices is unnecessary ~~for that party~~ and shall instruct the election administrator
23 to certify the names of the all candidates ~~for that party~~ for the general election ballot only.

24 ~~The separate ballots for each party must have the same appearance. Each set of party ballots must~~
25 ~~bear the same number.~~ If prepared as a separate ballot, the nonpartisan ballot may have a different appearance
26 than the ~~party ballots~~ ballot with partisan offices but must be numbered in the same order as the ~~party ballots~~
27 ballot with partisan offices.

28 (5) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or
29 on a separate ballot. A separate ballot may have a different appearance than the other ballots in the election but
30 must be numbered in the same order.

1 (6) Each elector must receive a set of ballots that includes the ~~party~~ partisan offices, nonpartisan offices,
 2 and ballot issue choices."
 3

4 **Section 4.** Section 13-10-211, MCA, is amended to read:

5 **"13-10-211. Declaration of intent for write-in candidates.** (1) Except as provided in subsection (7),
 6 a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The
 7 declaration of intent must be filed with the secretary of state or election administrator, depending on where a
 8 declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district
 9 clerk for a school district office. Except as provided in subsections (2) and (3), the declaration must be filed no
 10 later than 5 p.m. on the 10th day before the date established under 13-13-205 on which a ballot must be available
 11 for absentee voting for the election and must contain:

- 12 (a) (i) the candidate's first and last names;
 13 (ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the
 14 candidate's last name;
 15 (iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and
 16 (iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;
 17 (b) the candidate's mailing address;
 18 (c) a statement declaring the candidate's intention to be a write-in candidate;
 19 (d) the title of the office sought;
 20 (e) the candidate's party affiliation, if the declaration of intent is for a primary election and the office
 21 sought is a partisan office;
 22 ~~(e)~~(f) the date of the election;
 23 ~~(f)~~(g) the date of the declaration; and
 24 ~~(g)~~(h) the candidate's signature.

25 (2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than
 26 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office
 27 that the write-in candidate is seeking dies or is charged with a felony offense.

28 (3) A person seeking to become a write-in candidate in a mail ballot election or for a trustee position in
 29 a school board election shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

30 (4) The secretary of state shall notify each election administrator of the names of write-in candidates who

1 have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk
2 shall notify the election judges in the county or district of the names of write-in candidates who have filed a
3 declaration of intent.

4 (5) A declaration of intent may be sent by facsimile transmission if a facsimile facility is available for use
5 by the election administrator or by the secretary of state, delivered in person, or mailed to the election
6 administrator or to the secretary of state.

7 (6) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the
8 secretary of state or the election administrator.

9 (7) The requirements in subsection (1) do not apply in a general election if:

10 ~~(a) an election is held;~~

11 ~~(b)(a)~~ a person's name is written in on the ballot;

12 ~~(c)(b)~~ the person is qualified for and seeks election to the office for which the person's name was written
13 in; and

14 ~~(d)(c)~~ no other candidate has filed a declaration or petition for nomination or a declaration of intent for
15 the office."

16

17 **Section 5.** Section 13-10-301, MCA, is amended to read:

18 "**13-10-301. Casting of ~~ballot~~ ballots.** (1) Unless otherwise provided by law, the conduct of the primary
19 election, the voting procedure, the counting, tallying, and return of ballots and all election records and supplies,
20 the canvass of votes, the certification and notification of nominees, recounts, procedures upon tie votes, and any
21 other necessary election procedures must be at the same times and in the same manner as provided for in the
22 laws for the general election.

23 (2) At a primary election, the elector ~~shall cast votes on only one of the party ballots~~ may vote for a
24 candidate running for a partisan office irrespective of the candidate's party affiliation, preparing the ballot as
25 provided in 13-13-117. After casting votes on any other ballots received ~~other than the party ballots~~, the elector
26 shall ensure the proper disposition of the ballots in accordance with instructions provided pursuant to 13-13-112.

27 (3) The elector's ~~ballot~~ ballots must be handled as prescribed in 13-13-117."
28

29 **Section 6.** Section 13-10-311, MCA, is amended to read:

30 "**13-10-311. Election judges' duties when preparing for count in primary.** (1) Except as otherwise

1 provided in this section, election judges at the primary election shall prepare for a count of votes in the manner
2 prescribed in 13-15-201.

3 (2) In preparing for a count, the election judges shall:

4 ~~(a) separate the ballots for each political party and count each party's ballots separately;~~

5 ~~(b)(a)~~ reconcile the total number of party partisan ballots and the separate total number of other ballots
6 used at the election with the number of electors voting. Any discrepancies in the reconciliations must be handled
7 as provided in 13-15-201.

8 ~~(e)(b)~~ list ~~each party's~~ candidates separately in the tally books but grouped by party affiliation; and

9 ~~(d)(c)~~ bundle the voted ballots ~~for each party separately~~ for return to the election administrator. The
10 ~~unvoted unused~~ unused ballots must be bundled in accordance with rules established pursuant to 13-12-202."
11

12 **Section 7.** Section 13-10-402, MCA, is amended to read:

13 "**13-10-402. Ballot.** The regular party partisan primary ~~ballots shall~~ ballot must be used for the
14 presidential preference primary election. The presidential section of the ballot ~~shall~~ must be placed before any
15 other section, national, state, or local."
16

17 **Section 8.** Section 13-10-601, MCA, is amended to read:

18 "**13-10-601. Parties eligible for primary election -- petitions by minor parties.** (1) Each political party
19 that had a candidate for a statewide office in either of the last two general elections who received a total vote that
20 was 5% or more of the total votes cast for the most recent successful candidate for governor ~~shall~~ may nominate
21 its candidates for public office, ~~except for~~ including presidential electors, by a primary election as provided in this
22 chapter.
23

24 (2) (a) A political party that does not qualify to hold a primary election under subsection (1) may qualify
25 to nominate its candidates by primary election by presenting a petition, in a form prescribed by the secretary of
26 state, requesting the primary election.

27 (b) The petition must be signed by a number of registered voters equal to 5% or more of the total votes
28 cast for the successful candidate for governor at the last general election or 5,000 electors, whichever is less,
29 which number must include the registered voters in more than one-third of the legislative districts equal to 5%
30 or more of the total votes cast for the successful candidate for governor at the last general election in those
31 districts or 150 electors in those districts, whichever is less.

1 (c) At least 1 week before the filing deadline provided in subsection (2)(d), the petition and the affidavits
 2 of circulation required by 13-27-302 must be presented to the election administrator of the county in which the
 3 signatures were gathered to be verified under the procedures provided in 13-27-303 through 13-27-306.

4 (d) The election administrator shall forward the verified petition to the secretary of state at least 75 days
 5 before the date of the primary."

6

7 **Section 9.** Section 13-12-202, MCA, is amended to read:

8 **"13-12-202. Ballot form and uniformity.** (1) The secretary of state shall adopt statewide uniform rules
 9 that prescribe the ballot form for each type of ballot used in this state. The rules must conform to the provisions
 10 of this title unless the voting system used clearly requires otherwise. At a minimum, the rules must address:

11 (a) the manner in which each type of ballot may be corrected under 13-12-204;

12 (b) what provisions must be made on the ballot for write-in candidates;

13 (c) the size and content of stubs on paper ballots, except as provided in 13-19-106(1);

14 (d) how ~~unvoted~~ unused ballots must be handled;

15 (e) how the number of individuals voting and the number of ballots cast must be recorded; and

16 (f) the order and arrangement of voting system ballots.

17 (2) The names of all candidates to appear on the ballots must be in the same font size and style.

18 (3) Notwithstanding 13-19-106(1), when the stubs are detached, it must be impossible to distinguish any
 19 one of the ballots from another ballot for the same office or issue.

20 (4) The ballots must contain the name of each candidate whose nomination is certified under law for an
 21 office and no other names, except that the names of candidates for president and vice president of the United
 22 States must appear on the ballot as provided in 13-25-101(2)."

23

24 **Section 10.** Section 13-12-203, MCA, is amended to read:

25 **"13-12-203. Appearance of candidate's name and party designation on ballot.** (1) Subject to
 26 13-12-202 and except as provided in 13-10-209 for nonpartisan offices ~~and 13-10-303 for certain other~~
 27 ~~candidates~~, in partisan elections, candidates' names must appear under the title of the office sought, with the
 28 name of the party with which the candidate is affiliated in not more than three words appearing opposite the
 29 name.

30 (2) Subject to 13-12-202, in nonpartisan elections, the candidates' names must appear under the title

1 of the office sought, with no description or designation appearing with the name unless partisan and nonpartisan
 2 offices appear on the same ballot. In such a case, the names of nonpartisan candidates must appear with the
 3 words "Nominated without party designation"."

4

5 **Section 11.** Section 13-12-205, MCA, is amended to read:

6 **"13-12-205. Arrangement of names -- rotation on ballot.** (1) The candidates' names must be arranged
 7 alphabetically on the ballot according to surnames under the title of the respective offices and rotated as provided
 8 in this section.

9 (2) (a) If two or more individuals are candidates for nomination or election to the same office, the election
 10 administrator shall divide the ballot forms into sets equal in number to the greatest number of candidates for any
 11 office. ~~The candidates for nomination to an office by each political party must be considered separately in~~
 12 ~~determining the number of sets necessary for a primary election.~~

13 (b) The election administrator shall begin with a form arranged alphabetically and rotate the names of
 14 the candidates so that each candidate's name will be at the top of the list for each office on substantially an equal
 15 number of ballots. If it is not numerically possible to place each candidate's name at the top of the list, the names
 16 must be rotated in groups so that each candidate's name is as near the top of the list as possible on substantially
 17 an equal number of ballots.

18 (c) If the county contains more than one legislative district, the election administrator may rotate each
 19 candidate's name so that it will be at or near the top of the list for each office on substantially an equal number
 20 of ballots in each house district.

21 (d) For purposes of rotation, the offices of president and vice president and of governor and lieutenant
 22 governor must be considered as a group.

23 (e) No more than one of the sets may be used in preparing the ballot for use in any one precinct, and
 24 all ballots furnished for use in any precinct must be identical."

25

26 **Section 12.** Section 13-13-214, MCA, is amended to read:

27 **"13-13-214. Mailing absentee ballot to elector -- delivery to person other than elector.** (1) (a) Except
 28 as provided in 13-13-213 and in subsection (1)(b) of this section, the election administrator shall, no sooner than
 29 authorized in 13-13-205, mail, postage prepaid, to each legally registered elector and provisionally registered
 30 elector from whom the election administrator has received a valid absentee ballot application under 13-13-211

1 and 13-13-212 whatever official ballots are necessary.

2 (b) The election administrator may deliver a ballot in person to an individual other than the elector if:

3 (i) the elector has designated the individual, either by a signed letter or by making the designation on
4 the application form in a manner prescribed by the secretary of state or pursuant to 13-1-116;

5 (ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the
6 ballot;

7 (iii) the election administrator believes that the individual receiving the ballot is the designated person;

8 and

9 (iv) the designated person has not previously picked up ballots for four other electors.

10 (2) The election administrator shall enclose with the ballots:

11 (a) a form prescribed by the secretary of state that allows the elector to request absentee ballots for each
12 subsequent federal election only or for all subsequent elections, as provided for in 13-13-212(4);

13 (b) a secrecy envelope, free of any marks that would identify the voter; and

14 (c) an envelope for the return of the ballots. The envelope must be self-addressed by the election
15 administrator and an affirmation in the form prescribed by the secretary of state must be printed on the back of
16 the envelope.

17 (3) The election administrator shall ensure that the ballots provided to an absentee elector are marked
18 as provided in 13-13-116 and remove the stubs from the ballots, attaching the stubs to the elector's absentee
19 ballot application.

20 ~~(4) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an~~
21 ~~extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way~~
22 ~~so that it can be identified as being used by any one elector.~~

23 ~~(5)(4)~~ Instructions for voting must be enclosed with the ballots. ~~Instructions for primary elections must~~
24 ~~include use of the envelope for unvoted ballots.~~ The instructions must include information concerning the type
25 or types of writing instruments that may be used to mark the absentee ballot. The instructions must include
26 information regarding use of the secrecy envelope and use of the return envelope. The election administrator
27 shall include a voter information pamphlet with the instructions if:

28 (a) a statewide ballot issue appears on the ballot mailed to the elector; and

29 (b) the elector requests a voter information pamphlet."
30

1 **Section 13.** Section 13-13-241, MCA, is amended to read:

2 "**13-13-241. Examination of absentee ballot return envelopes -- deposit of absentee and ~~unvoted~~**
3 **ballots.** (1) (a) After an absentee ballot is received, an election administrator shall compare the signature of the
4 elector on the absentee ballot request with the signature on the absentee ballot return envelope.

5 (b) If the elector is legally registered and the signature on the return envelope matches the signature on
6 the absentee ballot application, the election administrator or an election judge shall handle the ballot as a regular
7 ballot.

8 (c) (i) If the elector is provisionally registered and the signature on the return envelope matches the
9 signature on the absentee ballot application, the election administrator or an election judge shall open the outer
10 return envelope and determine whether the elector's voter identification information, if enclosed pursuant to
11 13-13-201, is sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.

12 (ii) If the voter identification information is sufficient to legally register the elector, the ballot must be
13 handled as a regular ballot.

14 (iii) If voter identification information was not enclosed or the information enclosed is insufficient to legally
15 register the elector, the ballot must be handled as a provisional ballot under 13-15-107.

16 (2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall
17 place the ballot in a secrecy envelope without examining the ballot.

18 ~~(3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and
19 handled without being removed from their enclosure envelopes.~~

20 ~~(4)~~(3) If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify
21 the absentee elector by mail or by the most expedient method available under rules adopted by the secretary of
22 state that the elector's identification information was insufficient and that the elector's ballot will be treated as a
23 provisional ballot until the elector provides sufficient information, pursuant to rules adopted by the secretary of
24 state. If the elector is notified by mail, the election administrator shall provide a self-addressed return envelope
25 along with a description of the information necessary for the absentee elector to reclassify the provisional ballot
26 as a regular ballot.

27 ~~(5)~~(4) If the signature on the absentee ballot return envelope does not match the signature on the
28 absentee ballot request form, the absentee ballot must be rejected. The election administrator, without opening
29 the absentee ballot return envelope, shall mark across it the reason for rejection. Unopened rejected absentee
30 ballot return envelopes must be handled in the same manner as provided for rejected ballots in 13-15-108(1).

1 ~~(6)~~(5) After receiving an absentee ballot secrecy envelope, without opening the secrecy envelope, the
2 election judges shall on election day place the secrecy envelope in the proper ballot box."

3

4 **Section 14.** Section 13-15-205, MCA, is amended to read:

5 **"13-15-205. Items to be delivered to election administrator by election judges -- disposition of**
6 **other items.** (1) Before they adjourn, the election judges shall enclose in a strong envelope or package, securely
7 fastened:

8 (a) the precinct register;

9 (b) the list of individuals challenged;

10 (c) the pollbook;

11 (d) both of the tally sheets.

12 (2) The election judges shall enclose in a separate package or envelope, securely sealed, all unused
13 ballots with the numbered stubs attached.

14 (3) The election judges shall enclose in a separate package or envelope, securely sealed, all ballots
15 voted, including those not counted or allowed, and detached stubs from all counted or rejected absentee ballots.
16 This envelope shall must be endorsed on the outside "ballots voted". ~~At the primary election the unvoted party~~
17 ~~ballots shall be enclosed in a separate package or envelope, securely sealed, and marked on the outside~~
18 ~~"unvoted ballots".~~

19 (4) Each election judge shall write ~~his~~ the election judge's name across all seals.

20 (5) The return form provided for in 13-15-101 shall must be returned with the items provided for in this
21 section but may not be sealed in any of the packages.

22 (6) The envelopes or packages required by this section shall must be delivered to the election
23 administrator by the chief election judge or another judge appointed by the chief judge in the manner ordered by
24 the election administrator.

25 (7) The election administrator shall instruct the chief election judge in writing on the proper disposition
26 of all other election materials and supplies."

27

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

29 **"13-15-206. Counting votes -- uniformity -- rulemaking -- definitions.** (1) When conducting vote
30 counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and

1 determine the validity of each vote in a uniform manner as provided in this section.

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

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

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

10 (ii) If the two tallies match, the judges shall record in the pollbook:

11 (A) the names of all individuals who received votes and, with respect to a primary election for a partisan
12 office, the party affiliation of each individual who received votes;

13 (B) the offices for which individuals received votes;

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

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

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

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

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

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

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

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

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

27 (d) After all valid votes have been counted and totaled, the judges shall record in the pollbook the
28 information specified in subsection (2)(b)(ii).

29 (4) (a) (i) Before being counted, each questionable vote on a ballot set aside under subsection (2)(a) or
30 (3)(b) must be reviewed by the counting board. The counting board shall evaluate each questionable vote

1 according to rules adopted by the secretary of state.

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

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

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

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

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

11 (b) pursuant to 13-10-211(7) for a general election, a declaration of nomination was not filed and the
12 write-in vote identifies an individual who is qualified for the office.

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

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

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

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

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

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

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

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

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

29

30 **Section 16.** Section 13-17-103, MCA, is amended to read:

1 **"13-17-103. Required specifications for voting systems.** (1) A voting system may not be approved
2 under 13-17-101 unless the voting system:

3 (a) allows an elector to vote in secrecy;

4 (b) prevents an elector from voting for any candidate or on any ballot issue more than once;

5 (c) prevents an elector from voting on any office or ballot issue for which the elector is not entitled to vote;

6 ~~(d) allows an elector to vote only for the candidates of the party selected by the elector in the primary~~
7 ~~election;~~

8 ~~(e)~~(d) allows an elector to vote a split ticket in a primary or general election if the elector desires;

9 ~~(f)~~(e) allows each valid vote cast to be registered and recorded within the performance standards
10 adopted pursuant to subsection (2);

11 ~~(g)~~(f) may be protected from tampering for a fraudulent purpose;

12 ~~(h)~~(g) prevents an individual from seeing or knowing the number of votes registered for any candidate
13 or on any ballot issue during the progress of voting;

14 ~~(i)~~(h) allows write-in voting;

15 ~~(j)~~(i) will, if purchased by a jurisdiction within the state, be provided with a guarantee that the training and
16 technical assistance will be provided to election officials under the contract for purchase of the voting system;

17 ~~(k)~~(j) uses a paper ballot that allows votes to be manually counted; and

18 ~~(l)~~(k) allows auditors to access and monitor any software program while it is running on the system to
19 determine whether the software is running properly.

20 (2) To implement the provisions of subsection ~~(4)~~(f) (1)(e), the secretary of state shall adopt rules setting
21 a benchmark performance standard that must be met in tests by each voting system prior to approval under
22 13-17-101. The standard must be based on commonly accepted industry standards for readily available
23 technologies."

24

25 NEW SECTION. Section 17. Repealer. Sections 13-10-302 and 13-10-303, MCA, are repealed.

26

27 NEW SECTION. SECTION 18. EFFECTIVE DATE. IF APPROVED BY THE ELECTORATE, THIS ACT IS EFFECTIVE
28 JANUARY 1, 2011.

29

30 NEW SECTION. SECTION 19. SUBMISSION TO ELECTORATE. THIS AMENDMENT SHALL BE SUBMITTED TO THE

