

1 HOUSE BILL NO. 457

2 INTRODUCED BY J. PRICE

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING RECOUNT BOARD LAWS; CREATING A
5 SCHOOL RECOUNT BOARD FOR SCHOOL DISTRICT ELECTIONS; PROVIDING DEFINITIONS; PROVIDING
6 PROCEDURES FOR SCHOOL RECOUNT BOARDS; CLARIFYING FUNDING FOR SCHOOL DISTRICT
7 RECOUNTS; AMENDING SECTIONS 13-1-101, 13-16-101, 13-16-201, 13-16-203, 13-16-204, 13-16-205,
8 13-16-301, 13-16-417, 13-16-418, AND 13-16-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
9 DATE."

10

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

12

13 NEW SECTION. **Section 1. School recount board -- duties -- composition.** (1) There is a school
14 recount board. If a school election requires a recount pursuant to 13-16-201, the school recount board shall
15 perform the recount following the procedures for a recount board as provided in Title 13, chapter 16.

16 (2) (a) The school recount board must consist of three members of the board of trustees of the school
17 district for which the school election took place.

18 (b) If there are more than three members of the board of trustees, the presiding officer of the board of
19 trustees shall appoint three trustees to serve as school recount board members. If the presiding officer of the
20 board of trustees is a candidate for an office or nomination for which votes are to be recounted, another trustee
21 chosen by majority vote shall serve as the presiding officer for purposes of appointing the school recount board
22 members.

23 (c) If one or more of the trustees appointed to the school recount board cannot serve or cannot attend
24 when the school recount board meets, the presiding officer shall appoint one or more remaining trustees to serve.
25 If there is an insufficient number of trustees to serve on the school recount board, the presiding officer may
26 appoint the school district clerk or the clerk's designee or the county superintendent or the superintendent's
27 designee to serve as the remaining member or members.

28 (d) A candidate for an office or nomination for which votes are to be recounted may not be a member
29 of the school recount board.

30 (e) The school district clerk is secretary of the school recount board, and the board may appoint school

1 district employees or hire any additional clerks as needed.

2

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

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

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

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

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

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

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

16 (6) "Candidate" means:

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

19 (b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained
20 contributions, made expenditures, or given consent to an individual, organization, political party, or committee
21 to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination
22 or election to any office at any time, whether or not the office for which the individual will seek nomination or
23 election is known when the:

24 (i) solicitation is made;

25 (ii) contribution is received and retained; or

26 (iii) expenditure is made; or

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

28 (7) (a) "Contribution" means:

29 (i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value
30 to influence an election;

- 1 (ii) a transfer of funds between political committees;
- 2 (iii) the payment by a person other than a candidate or political committee of compensation for the
3 personal services of another person that are rendered to a candidate or political committee.
- 4 (b) "Contribution" does not mean:
- 5 (i) services provided without compensation by individuals volunteering a portion or all of their time on
6 behalf of a candidate or political committee or meals and lodging provided by individuals in their private
7 residences for a candidate or other individual;
- 8 (ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any
9 broadcasting station, newspaper, magazine, or other periodical publication of general circulation;
- 10 (iii) the cost of any communication by any membership organization or corporation to its members or
11 stockholders or employees; or
- 12 (iv) filing fees paid by the candidate.
- 13 (8) "Election" means a general, regular, special, or primary election held pursuant to the requirements
14 of state law, regardless of the time or purpose.
- 15 (9) "Election administrator" means the county clerk and recorder or the individual designated by a county
16 governing body to be responsible for all election administration duties, except that with regard to school elections
17 not administered by the county, the term means the school district clerk.
- 18 (10) "Elector" means an individual qualified to vote under state law.
- 19 (11) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift
20 of money or anything of value made for the purpose of influencing the results of an election.
- 21 (b) "Expenditure" does not mean:
- 22 (i) services, food, or lodging provided in a manner that they are not contributions under subsection (7);
- 23 (ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or
24 personal necessities for the candidate and the candidate's family;
- 25 (iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any
26 broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or
- 27 (iv) the cost of any communication by any membership organization or corporation to its members or
28 stockholders or employees.
- 29 (12) "Federal election" means a general or primary election in which an elector may vote for individuals
30 for the office of president of the United States or for the United States congress.

1 (13) "General election" or "regular election" means an election held for the election of public officers
2 throughout the state at times specified by law, including elections for officers of political subdivisions when the
3 time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues
4 required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the
5 legislature to the electors at a general election, "general election" means an election held at the time provided
6 in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted
7 as a constitutional initiative at a regular election, regular election means an election held at the time provided in
8 13-1-104(1).

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

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

12 (16) "Individual" means a human being.

13 (17) (a) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval
14 or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall
15 questions, school levy questions, bond issue questions, or a ballot question.

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

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

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

24 (20) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee,
25 club, union, or other organization or group of individuals or a candidate as defined in subsection (6).

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

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

30 (a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a

1 petition for nomination; or

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

3 (c) as an earmarked contribution.

4 (23) "Political subdivision" means a county, consolidated municipal-county government, municipality,
5 special district, or any other unit of government, except school districts, having authority to hold an election for
6 officers or on a ballot issue.

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

9 (25) "Primary" or "primary election" means an election held throughout the state to nominate candidates
10 for public office at times specified by law, including nominations of candidates for offices of political subdivisions
11 when the time for nominations is set on the same date for all similar subdivisions in the state.

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

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

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

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

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

22 (31) "School election" has the meaning provided in 20-20-101.

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

25 (33) "School recount board" means the board authorized pursuant to [section 1] to perform recount duties
26 in school elections.

27 ~~(34)~~(34) "Special election" means an election other than a statutorily scheduled primary or general
28 election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily
29 scheduled election.

30 ~~(35)~~(35) "Statewide voter registration list" means the voter registration list established and maintained

1 pursuant to 13-2-107 and 13-2-108.

2 ~~(33)~~(36) "Transfer form" means a form prescribed by the secretary of state that may be filled out by an
3 elector to transfer the elector's registration when the elector's residence address has changed within the county.

4 ~~(34)~~(37) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided
5 in 13-15-206.

6 ~~(35)~~(38) "Voted ballot" means a ballot that is:

- 7 (a) deposited in the ballot box at a polling place;
8 (b) received at the election administrator's office; or
9 (c) returned to a place of deposit.

10 ~~(36)~~(39) "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 13-16-101, MCA, is amended to read:

14 **"13-16-101. County governing body as county recount board.** (1) The county recount board must
15 consist of three members.

16 (2) Three members of the governing body must be appointed by the presiding officer if there are more
17 than three members of the governing body.

18 (3) If three members of the governing body cannot attend when the board meets, any vacant position
19 must be filled by one or more county officers chosen by the remaining members of the governing body.

20 (4) If a member of the recount board is a candidate for an office or nomination for which votes are to be
21 recounted, the member must be disqualified.

22 (5) The election administrator is secretary of the recount board, and the board may hire any additional
23 clerks as needed.

24 (6) The board may appoint county employees or hire clerks to assist as needed.

25 (7) If the recount is for a school election, the school recount board as provided in [section 1] shall perform
26 recount board duties."
27

28 **Section 4.** Section 13-16-201, MCA, is amended to read:

29 **"13-16-201. Conditions under which recount to be conducted.** (1) A recount must be conducted if:

- 30 (a) a candidate for a precinct office or for a county, municipal, or district office voted for in only one

1 county, other than a legislator or a judge of the district court, is defeated by a margin not exceeding 1/4 of 1% of
2 the total votes cast or by a margin not exceeding 10 votes, whichever is greater, and the defeated candidate,
3 within 5 days after the official canvass, files with the election administrator a verified petition stating that the
4 candidate believes that a recount will change the result and that a recount of the votes for the office or nomination
5 should be conducted;

6 (b) a candidate for a congressional office, a state or district office voted on in more than one county, the
7 legislature, or judge of the district court is defeated by a margin not exceeding 1/4 of 1% of the total votes cast
8 for all candidates for the same position and the defeated candidate, within 5 days after the official canvass, files
9 a petition with the secretary of state as set forth in subsection (1)(a). The secretary of state shall immediately
10 notify by certified mail each election administrator whose county includes any precincts that voted for the office,
11 and a recount must be conducted in those precincts.

12 (c) a question submitted to the vote of the people of a county, municipality, or district within a county is
13 decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition
14 as set forth in subsection (1)(a) is filed with the election administrator. This petition must be signed by not less
15 than 10 electors of the jurisdiction and must be filed within 5 days after the official canvass.

16 (d) a question submitted to the vote of the people of the state is decided by a margin not exceeding 1/4
17 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed
18 with the secretary of state. This petition must be signed by not less than 100 electors of the state, representing
19 at least five counties of the state, and must be filed within 5 days after the official canvass.

20 (e) a question submitted to the vote of the people of a multicounty district is decided by a margin not
21 exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection
22 (1)(a) is filed with the secretary of state. This petition must be signed by not less than 25 electors of the district,
23 representing at least two counties, and must be filed within 5 days after the official canvass.

24 (f) a canvassing board petitions for a recount as provided in 13-15-403.

25 (2) If the election is a school election, the petition is filed with the school election filing officer ~~with whom~~
26 ~~the declarations for nomination for school district office were filed or with whom the school ballot issue was filed.~~

27 (3) When a recount is required under subsection (1)(b), (1)(d), or (1)(e), the secretary of state shall
28 immediately notify each election administrator of the filing of the petition, and a recount must be conducted in all
29 precincts in each affected county."
30

1 **Section 5.** Section 13-16-203, MCA, is amended to read:

2 **"13-16-203. Recount for tie votes.** (1) When a tie has been certified to the election administrator, as
3 provided in 13-15-405(4), or the secretary of state, the administrator or the secretary of state shall proceed as
4 if a petition for a recount has been filed. If a tie exists after the recount, the tie must be resolved as provided by
5 law.

6 (2) In the event of a tie in a school election, the board of trustees shall proceed as if a petition for a
7 recount has been filed pursuant to 13-16-204(1)(b). If a tie exists after the recount, the tie must be resolved
8 pursuant to 20-20-418 or as otherwise provided by law."

9

10 **Section 6.** Section 13-16-204, MCA, is amended to read:

11 **"13-16-204. Meeting of recount board when recount requested.** (1) (a) Immediately upon receiving
12 a petition for a recount or a notice from the secretary of state that a petition has been filed as provided in
13 13-16-201, the election administrator shall notify the members of the county recount board.

14 (b) Upon receipt of a petition for a school election recount as provided in 13-16-201(2), the school
15 election filing officer shall notify the members of the school recount board.

16 (2) The board shall convene at the usual meeting place of the governing body without undue delay but
17 not later than 5 days after receiving notice from the election administrator or school election filing officer."

18

19 **Section 7.** Section 13-16-205, MCA, is amended to read:

20 **"13-16-205. Expenses of recount.** The (1) Except as provided in subsection (2), the expense of the
21 recount provided for in 13-16-201 is a county charge. Recount expenses of the secretary of state and board of
22 state canvassers are a state charge.

23 (2) If the recount is for a school election, the expense of the recount is a school district charge as
24 provided in 20-20-107(1)."

25

26 **Section 8.** Section 13-16-301, MCA, is amended to read:

27 **"13-16-301. Application and court order for recount.** (1) (a) Within 5 days after the canvass of
28 election returns, an unsuccessful candidate for any public office at an election may apply to the district court of
29 the county where the election was held for an order directing the appropriate county or school recount board to
30 make a recount of the votes cast in any or all of the precincts or the school district polling places. If the election

1 was held in more than one county, the application must be made to the district court of the county where the
2 candidate resides.

3 (b) Within 5 days after the canvass of election returns, an elector who was eligible to vote on the issue
4 and who believes that there are grounds for a recount of the votes cast for and against a ballot issue may apply
5 to the district court of the county where the elector resides for an order directing the appropriate county or school
6 recount board to make a recount of the votes cast in any or all of the precincts or the school district polling places.

7 (2) The application must specify the grounds for a recount, and it must be verified by the applicant that
8 the matters contained in it are true to the best of the applicant's knowledge, information, and belief.

9 (3) Within 5 days after filing of the application, the judge shall hear the application and determine its
10 sufficiency.

11 (4) If the judge finds there is probable cause to believe that the votes cast for the applicant or the ballot
12 issue were not correctly counted, the judge shall order the appropriate county or school recount board to
13 assemble within 5 days after the order is issued at a time and place fixed by the order. The board shall meet and
14 recount the ballots as specified in the order."
15

16 **Section 9.** Section 13-16-417, MCA, is amended to read:

17 "**13-16-417. Sealing ballots and voting systems.** (1) When a recount of paper ballots that was
18 conducted using a voting system is finished, each ballot must again be sealed in the same package or envelope
19 in the presence of the election administrator and the appropriate county or school recount board and must be
20 delivered to the election administrator for custody.

21 (2) All voting systems must be secured as provided in rules adopted under 13-17-211.

22 (3) All other materials used in the recount that are required to be sealed must be resealed in the same
23 manner and delivered to the election administrator for custody."
24

25 **Section 10.** Section 13-16-418, MCA, is amended to read:

26 "**13-16-418. Certification after recount.** (1) (a) Immediately after the recount, the county recount board
27 shall certify the result.

28 ~~(2)~~(b) At least two members of the board shall sign the certificate, and it must be attested to under seal
29 by the election administrator.

30 ~~(3)~~(c) The certificate must set forth in substance the proceedings of the board and the appearance of

1 any candidates or representatives. The certificate must adequately designate:

2 ~~(a)~~(i) each precinct recounted;

3 ~~(b)~~(ii) the vote of each precinct according to the official canvass previously made;

4 ~~(c)~~(iii) the nomination, position, or question involved; and

5 ~~(d)~~(iv) the correct vote of each precinct as determined by the recount.

6 ~~(4)~~(d) When the certificate relates to a recount for a congressional office, a state or district office voted
7 on in more than one county, a legislative office, or an office of judge of the district court or a ballot issue voted
8 on in more than one county, the certificate must be made in duplicate. One copy must be transmitted immediately
9 to the secretary of state by certified mail.

10 ~~(5)~~(e) ~~(a)~~(i) If the recount relates to a county, municipal, or district office voted for in only one county, other
11 than that of a legislator or a judge of the district court, or a precinct office or a ballot issue voted on in only one
12 county, the county recount board shall immediately recanvass the returns as corrected by the certificate showing
13 the result of the recount and make a corrected abstract of the votes.

14 ~~(b)~~(ii) If the corrected abstract shows no change in the result, no further action is needed.

15 ~~(c)~~(iii) If there is a change in the result, a new certificate of election or nomination must be issued to each
16 candidate found to be elected or nominated and the first certificate is void. The individual receiving the second
17 certificate must be elected or nominated to the office.

18 (2) (a) In the event of a school election recount, immediately after the recount, the school recount board
19 shall certify the result. At least two members of the recount board shall sign the certificate, and it must be attested
20 to under seal by the school election administrator.

21 (b) The certificate must adequately designate:

22 (i) the vote of the district according to the official canvass previously made;

23 (ii) the position or question involved; and

24 (iii) the correct vote of the district as determined by the recount.

25 (c) The school recount board shall immediately recanvass the returns as corrected by the certificate
26 showing the result of the recount and make a corrected abstract of the votes. If the corrected abstract shows no
27 change in the result, no further action is needed. If there is a change in the result, a new certificate of election
28 must be issued to each candidate found to be elected and the first certificate is void. The individual receiving the
29 second certificate must be elected to the office."

30

1 **Section 11.** Section 13-16-420, MCA, is amended to read:

2 "**13-16-420. Misplaced or missing ballots.** If during a recount the appropriate county or school recount
3 board discovers that ballots are misplaced or missing, it may petition the election administrator to inspect all
4 sealed paper ballots within the county precincts or school district polling places to find the misplaced or missing
5 ballots. Upon receiving the petition, the election administrator shall inspect the sealed ballots to find the misplaced
6 or missing ballots. Upon completion of the recount, the misplaced or missing ballots must be placed ~~in their~~ with
7 the proper precinct or school district polling place ballots and sealed with ~~the remaining ballots them.~~"

8
9 NEW SECTION. **Section 12. Codification instruction.** [Section 1] is intended to be codified as an
10 integral part of Title 20, chapter 20, part 4, and the provisions of Title 20, chapter 20, part 4, apply to [section 1].

11

12 NEW SECTION. **Section 13. Effective date.** [This act] is effective on passage and approval.

13

- END -