

HOUSE BILL NO. 632  
INTRODUCED BY B. WISEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A MANDATORY RANDOM SAMPLE AUDIT OF PRECINCT VOTE-COUNTING SYSTEMS; PROVIDING DEFINITIONS AND PROCEDURES; SPECIFYING RESPONSIBILITY FOR COSTS; AND AMENDING SECTION 13-1-303, MCA."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 7], the following definitions apply:

- (1) "Audit" means a manual vote count.
- (2) "Vote-counting machine" means an individual piece of equipment used to automatically count votes.
- (3) "Vote-counting system" means a type or class of voting system, as defined in 13-1-101, used to automatically count votes.

NEW SECTION. **Section 2. Mandatory random sample audit of vote-counting systems.** (1) After unofficial results are available to the public in a primary or general election, but before the official canvass by the state board of canvassers, a random sample audit of votes must be conducted as provided in [sections 1 through 7].

- (2) To the extent statistically possible, the audit must include:
  - (a) at least 5% of the precincts or a minimum of one precinct in each county, whichever is greater;
  - (b) a statewide total number of vote-counting machines that is statistically required to provide 99% confidence that an error will be uncovered in the audit;
  - (c) subject to subsection (4), an election for:
    - (i) a statewide office;
    - (ii) a federal office; and
    - (iii) a statewide ballot initiative or referendum if there is one.
- (3) Elections for statewide and federal offices and statewide ballot initiatives or referendums that are to be included in the audit must be chosen by the secretary of state on the 7th day following the election.
- (4) An election in which a recount will be conducted, in which there is a question of retention of a judicial

officer, or in which there is an unopposed race may not be included in the audit.

**NEW SECTION. Section 3. Administration -- statistical analysis -- random sample selection -- audit committees.** (1) After the unofficial election results are publicized by counties, the secretary of state shall, after consultation with a statistician as to how to meet the criteria specified in [section 2], randomly choose the precincts to be audited. The secretary of state shall issue a directive to allow county election officials to unseal ballots needed for the audit. If more than 5% of precincts are needed to meet the criteria under [section 2], the secretary of state shall randomly choose additional precincts to be audited from counties with more than 50,000 registered voters.

(2) The election administrator shall provide reasonable public notice of the place and time of the audit, including notice to political parties.

(3) Each county board of canvassers shall appoint an audit committee consisting of three members for each precinct subject to the audit. The members must be selected randomly from a list of county employees and volunteers. A person who served as an election judge in the precinct being included in the audit or a person employed by a vendor of a voting system being audited may not be a member of the audit committee.

**NEW SECTION. Section 4. Conduct of the audit.** (1) The audit must be completed at least 1 day before the official canvass by the state board of canvassers.

(2) For each precinct included in the audit, the audit committee shall manually count the votes for the offices and ballot initiative or referendum on the precinct ballots included in the audit. The audit must be conducted in accordance with the provisions of 13-15-206.

(3) The results of each audit must be accessible to the public.

**NEW SECTION. Section 5. Results of audit.** (1) If there is a discrepancy between the machine count and the audit, the audit is the definitive record.

(2) If the discrepancy exceeds the benchmark performance standard for the voting system set pursuant to 13-17-103(3) in any county by more than 0.5%, then at least three additional precincts within that county must be audited. If the discrepancy again exceeds the benchmark performance standard set pursuant to 13-17-103(3) by more than 0.5%, then all remaining precincts in the county must be audited for the office or ballot issue in question.

(3) A vote-counting system used in a precinct where an audit finds more than a 0.5% discrepancy

between the machine count and the audit may not be used in another election until each vote-counting machine of that system type has been examined, tested, and approved by the secretary of state.

**NEW SECTION. Section 6. Reimbursement for county costs.** (1) Except as provided in subsection (2), the secretary of state shall reimburse each county for any costs incurred in implementing the provisions of [sections 1 through 7].

(2) The vendor of any voting system that fails an audit due to software or machine defects or vendor employee error shall pay the costs incurred for the audit of that voting system.

**NEW SECTION. Section 7. Machine maintenance -- source code held in escrow.** (1) Upgrades, patches, fixes, or alterations may not be applied to vote-counting machines during the 30 days following a primary or general election.

(2) The current source code of each vote-counting machine must be retained by the secretary of state prior to a primary or general election and, if a precinct fails an audit pursuant to [section 5], must be subject to examination by a computer expert independent of the vendor of the voting system.

**Section 8.** Section 13-1-303, MCA, is amended to read:

**"13-1-303. Disposition of ballots and other election materials.** (1) The voted ballots, detached stubs, unvoted ballots, and unused ballots from an election must be kept in the unopened packages received from the election judges for a period of 12 months. The packages may be opened only when an order for opening is given by the proper official for a recount procedure or an audit pursuant to [sections 1 through 7]. After 12 months, if there is no contest begun, recount pending, or appeal of a decision relating to a contest or recount, an election administrator may dispose of the ballots as provided in subsection (2).

(2) Each election administrator shall prepare a plan for retention and destruction of election records in the county according to the retention schedules established by the local government records committee provided for in 2-6-402."

**NEW SECTION. Section 9. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 13, chapter 17, and the provisions of Title 13, chapter 17, apply to [sections 1 through 7].

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