1   SENATE BILL NO. 385

2   INTRODUCED BY D. ZOLNIKOV

3

4   A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ELECTION LAWS; CREATING A

5   PROCESS FOR THE REMOVAL OF AN ELECTION JUDGE; REVISING THE PROCESS FOR SELECTING

6   ELECTION JUDGES; ~~REMOVING THE EXEMPTION FROM THE POSTELECTION AUDIT FOR RACES~~

7   ~~THAT GO TO A RECOUNT;~~ AMENDING SECTIONS 13-1-301, 13-4-102, ~~13-4-201,~~ AND 13-4-203, ~~AND 13-~~

8   ~~17-503,~~ MCA; AND PROVIDING AN EFFECTIVE DATE."

9

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

11

12   <u>NEW SECTION.</u> **Section 1.   Removal of election judge.** (1) (a) A county clerk and recorder or an

13   election administrator may make a complaint about an election judge to the county central committee that

14   nominated the judge.

15   (b)   With the exception of any complaint against an election official or judge who is reporting

16   malfeasance or potential malfeasance of official rules for how an election is being conducted, a county clerk

17   and recorder or an election administrator may make a complaint about an election judge for:

18   (i)   violating any part of Title 13;

19   (ii)   not fulfilling their duties as provided in Title 13, chapter 4; or

20   (iii)   tampering with ballots, voting systems, or any other election materials or equipment.

21   (2)   Following a verbal warning to the election judge ~~and with the concurrence of the presiding~~

22   ~~officer of the central committee that nominated the judge~~, a county clerk and recorder or an election

23   administrator may remove, replace, or reassign an election judge who causes a disruption in a polling location

24   or willfully disobeys the provisions of this chapter.

25   (3)   A vacancy created under this section must be filled through the process described in 13-4-

26   102(4). The new judge must meet the qualifications provided in 13-4-107.

27

Legislative Services Division

1   **Section 2.** Section 13-1-301, MCA, is amended to read:

2   "**13-1-301.   Election administrator.** (1) The county clerk and recorder of each county is the election

3   administrator unless the governing body of the county designates another official or appoints an election

4   administrator.

5   (2)   The election administrator is responsible for the administration of all procedures relating to

6   registration of electors and conduct of elections, shall keep all county records relating to elector registration and

7   elections, and is the primary point of contact for the county with respect to the statewide voter registration list

8   and implementation of other provisions of applicable federal law governing elections.

9   (3)   The election administrator may appoint a deputy election administrator for each political

10   subdivision required to hold elections.

11   (4)   Any complaint about a county clerk and recorder or an election administrator must be

12   submitted to, heard by, and decided on by the county commissioners. The decision of the county

13   commissioners must be made available to the public THE COUNTY ATTORNEY."

14

15   **Section 3.** Section 13-4-102, MCA, is amended to read:

16   "**13-4-102.   Manner of choosing election judges.** (1) (a) At least 90 days prior to the deadline in

17   subsection (1)(b), the county clerk and recorder or the election administrator shall notify the county central

18   committees of the requirement to submit a list of election judge nominees as long as a county central

19   committee exists.

20   (b)   Subject to 13-4-107, election judges must be chosen from lists of qualified registered electors

21   in the county, submitted at least 45 days before the primary election in even-numbered years by the county

22   central committees of the political parties eligible to nominate candidates in the primary.

23   (c)   All qualified registered elector nominees put forward by the county central committees shall be

24   considered eligible to serve as an election judge or a chief election judge after completing the training provided

25   in 13-4-203 unless they have been convicted of a violation of Montana election laws.

26   (d)   All judges determined to be ineligible must be notified in writing of the reason for exclusion.

27   (2)   The list of each party may contain more names than the number of election judges to be

1   appointed. The names of those not appointed as election judges must be given to the election administrator for

2   use in making appointments to fill vacancies. The county clerk and recorder or the election administrator shall

3   use all the certified trained judges from the list submitted pursuant to subsection (1)(b) before seeking

4   additional judges.

5   (3)   (a) Each board of election judges counting board as described in 13-15-112 must include

6   judges representing all parties that have submitted lists as provided in subsection (1) more than one political

7   party. No more than the number of election judges needed to obtain a simple majority may be appointed from

8   the list of one political party in each county. If any of the political parties entitled to do so fail to submit a list

9   meeting the requirements of this section, the governing body shall, to the extent possible, appoint judges so

10   that all parties eligible to participate in the primary and general elections are represented on each counting

11   board. Trained election judges with no party affiliation may be used to fill positions on all boards of election

12   judges when there is insufficient multiparty participation.

13   (b)   There must be at least one election judge from each political party serving as an election judge

14   on each counting board and at each precinct unless a judge from one of the parties was not nominated for the

15   precinct.

16   (c)   If a county central committee requests that a specific qualified election judge be appointed to a

17   specific precinct or counting board, the county clerk and recorder or the election administrator shall honor the

18   request.

19   (4)   The election administrator shall make appointments to fill vacancies from the list provided for in

20   subsection (2). If the list is insufficient or if one or more of the eligible political parties fails to submit a list

21   meeting the requirements of this section, the election administrator may select enough people meeting the

22   qualifications of 13-4-107 to fill election judge vacancies in all precincts shall ask the county central committees

23   for a list of additional nominees before appointing anyone else to fill the vacancies.

24   (5)   An elector chosen to potentially serve as an election judge must be notified of selection at least

25   30 days before the primary election in even-numbered years. Each elector who agrees to serve as an election

26   judge shall attend a training class conducted under 13-4-203 and shall continue to serve as provided in 13-4-

27   103.

1   (6)   The county clerk and recorder or the election administrator shall provide a full list of the

2   certified and appointed election judges to each county central committee at least 30 days before the primary

3   and general elections in even-numbered years and to a county central committee at any time on request. If

4   there are any changes to the list at any time, a new list must be sent to the county central committees by the

5   close of business on the day of the change or changes."

6

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

8   "**13-4-201.   Duties of chief election judge.** The chief election judge shall be responsible for the

9   conduct of the proceedings in the polling place, shall assign duties to other members of the board of election

10   judges counting board as defined in 13-15-112, and, if assigned to work through the close of the polls, shall be

11   responsible for the return of or for arranging the return of all ballots and election supplies to the election

12   administrator. A chief election judge may not preside over more than one precinct."

13

14   **Section 4.** Section 13-4-203, MCA, is amended to read:

15   "**13-4-203.   Instruction of judges -- training materials.** (1) Before each election, all election judges

16   must be instructed by the election administrator on current procedures as prescribed by the secretary of state.

17   In precincts where voting systems are used, instructions must cover both how to operate the voting system and

18   how to manually process any paper ballots.

19   (2)   An election administrator may require a chief election judge to attend the training session

20   before each election, as well as a special session that the election administrator may hold for chief election

21   judges only, even if the chief election judge possesses a current certificate of completion pursuant to 13-1-

22   203(5)(b).

23   (3)   Any individual willing to be appointed as an election judge may shall attend an instruction

24   session by registering with the election administrator. However, the individual may not be paid for attendance

25   unless the individual is appointed as an election judge.

26   (4)   Each election judge completing a training session under this section must be given a certificate

27   of completion. An individual may not serve as an election judge without a current certificate. However, this

1   requirement does not apply to individuals filling vacancies in emergencies.

2   (5)   A certificate of completion is current if the certificate is obtained before the primary election in

3   an even-numbered year.

4   (6)   Notice of the place and time of instruction must be given by the election administrator to the

5   presiding officers of the political parties in the county.

6   (7)   Any individual who has completed the training under this section is also eligible to serve on the

7   election-related boards provided for in rule."

8

9   **Section 6.** Section 13-17-503, MCA, is amended to read:

10   "**13-17-503.   Random-sample audit of vote-counting machines required -- rulemaking authority.**

11   (1) After unofficial results are available to the public in a federal election, but before the official canvass by the

12   county board of canvassers, the county audit committee shall conduct a random-sample audit of vote-counting

13   machines.

14   (2)   The random-sample audit may not must include a ballot that a vote-counting machine was

15   unable to process and that was not resolved pursuant to 13-15-206 because unless the ballot:

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

17   (b)   appeared to be blank; or

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

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

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

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

22   whichever is greater; and

23   (b)   15% of the precincts in each county experiencing a tabulation intervention by a service

24   technician or where the replacement of a tabulation machine took place after the initial public tabulation

25   certification; and

26   (b)(c)   an election for:

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

1   (ii)   one federal office race;

2   (iii)   one legislative office race; and

3   (iv)   one statewide ballot issue if a statewide ballot issue was on the ballot; and

4   (v)   one race that goes through the recount process provided for in Title 13, chapter 16, if a recount

5   has occurred.

6   (4)   The audit may not include:

7   (a)   a retention election for a judicial candidate; or

8   (b)   a race in which a candidate was unopposed.

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

10   (a)   the county does not use a vote-counting machine; or

11   (b)   the county's unofficial final vote totals for a ballot issue or for any race, except precinct committee

12   representative, show a tie vote or a vote within the margins allowed by Title 13, chapter 16, part 2, for a recount

13   without a court order. A county meeting the requirements of this subsection (5)(b) shall notify the secretary of

14   state as soon as practicable.

15   (6)(5)   The secretary of state shall adopt rules to implement the provisions of this part, including but

16   not limited to rules for:

17   (a)   the process to be used for selecting precincts, races, and ballot issues for the random-sample

18   audit; and

19   (b)   the manner in which the random-sample audit of vote-counting machines will be conducted

20   pursuant to the procedures established in this part."

21

22   NEW SECTION. **Section 5.   Codification instruction.** [Section 1] is intended to be codified as an

23   integral part of Title 13, chapter 4, part 1, and the provisions of Title 13, chapter 4, part 1, apply to [section 1].

24

25   NEW SECTION. **Section 6.   Severability.** If a part of [this act] is invalid, all valid parts that are

26   severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,

27   the part remains in effect in all valid applications that are severable from the invalid applications.

1

2   <u>NEW SECTION.</u> **Section 7.   Effective date.** [This act] is effective July 1, 2023.

3   - END -

Legislative Services Division