

SENATE BILL NO. 385

INTRODUCED BY D. ZOLNIKOV

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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, 13-4-203, AND 13-17-503,  
8 MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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12 NEW SECTION. 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.

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

1           **"13-1-301. Election administrator.** (1) The county clerk and recorder of each county is the election  
2 administrator unless the governing body of the county designates another official or appoints an election  
3 administrator.

4           (2) The election administrator is responsible for the administration of all procedures relating to  
5 registration of electors and conduct of elections, shall keep all county records relating to elector registration and  
6 elections, and is the primary point of contact for the county with respect to the statewide voter registration list  
7 and implementation of other provisions of applicable federal law governing elections.

8           (3) The election administrator may appoint a deputy election administrator for each political  
9 subdivision required to hold elections.

10           (4) Any complaint about a county clerk and recorder or an election administrator must be  
11 submitted to, heard by, and decided on by the county commissioners. The decision of the county  
12 commissioners must be made available to the public."

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

15           **"13-4-102. Manner of choosing election judges.** (1) (a) At least 90 days prior to the deadline in  
16 subsection (1)(b), the county clerk and recorder or the election administrator shall notify the county central  
17 committees of the requirement to submit a list of election judge nominees as long as a county central  
18 committee exists.

19           (b) Subject to 13-4-107, election judges must be chosen from lists of qualified registered electors  
20 in the county, submitted at least 45 days before the primary election in even-numbered years by the county  
21 central committees of the political parties eligible to nominate candidates in the primary.

22           (c) All qualified registered elector nominees put forward by the county central committees shall be  
23 considered eligible to serve as an election judge or a chief election judge after completing the training provided  
24 in 13-4-203 unless they have been convicted of a violation of Montana election laws.

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

26           (2) The list of each party may contain more names than the number of election judges to be  
27 appointed. The names of those not appointed as election judges must be given to the election administrator for  
28 use in making appointments to fill vacancies. The county clerk and recorder or the election administrator shall

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

3 (3) (a) Each board of election judges counting board as described in 13-15-112 must include  
4 judges representing all parties that have submitted lists as provided in subsection (1). No more than the number  
5 of election judges needed to obtain a simple majority may be appointed from the list of one political party in  
6 each county. If any of the political parties entitled to do so fail to submit a list meeting the requirements of this  
7 section, the governing body shall, to the extent possible, appoint judges so that all parties eligible to participate  
8 in the primary and general elections are represented on each counting board.

9 (b) There must be at least one election judge from each political party serving as an election judge  
10 on each counting board and at each precinct unless a judge from one of the parties was not nominated for the  
11 precinct.

12 (c) If a county central committee requests that a specific qualified election judge be appointed to a  
13 specific precinct or counting board, the county clerk and recorder or the election administrator shall honor the  
14 request.

15 (4) The election administrator shall make appointments to fill vacancies from the list provided for in  
16 subsection (2). If the list is insufficient or if one or more of the eligible political parties fails to submit a list  
17 meeting the requirements of this section, the election administrator ~~may select enough people meeting the~~  
18 ~~qualifications of 13-4-107 to fill election judge vacancies in all precincts~~ shall ask the county central committees  
19 for a list of additional nominees before appointing anyone else to fill the vacancies.

20 (5) An elector chosen to potentially serve as an election judge must be notified of selection at least  
21 30 days before the primary election in even-numbered years. Each elector who agrees to serve as an election  
22 judge shall attend a training class conducted under 13-4-203 and shall continue to serve as provided in 13-4-  
23 103.

24 (6) The county clerk and recorder or the election administrator shall provide a full list of the  
25 certified and appointed election judges to each county central committee at least 30 days before the primary  
26 and general elections in even-numbered years. If there are any changes to the list at any time, a new list must  
27 be sent to the county central committees by the close of business on the day of the change or changes."

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

2           "**13-4-201. Duties of chief election judge.** The chief election judge shall be responsible for the  
3           conduct of the proceedings in the polling place, shall assign duties to other members of the ~~board of election~~  
4           ~~judges~~ counting board as defined in 13-15-112, and, if assigned to work through the close of the polls, shall be  
5           responsible for the return of or for arranging the return of all ballots and election supplies to the election  
6           administrator. A chief election judge may not preside over more than one precinct."

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8           **Section 5.** Section 13-4-203, MCA, is amended to read:

9           "**13-4-203. Instruction of judges -- training materials.** (1) Before each election, all election judges  
10           must be instructed by the election administrator on current procedures as prescribed by the secretary of state.  
11           In precincts where voting systems are used, instructions must cover both how to operate the voting system and  
12           how to manually process any paper ballots.

13           (2)       An election administrator may require a chief election judge to attend the training session  
14           before each election, as well as a special session that the election administrator may hold for chief election  
15           judges only, even if the chief election judge possesses a current certificate of completion pursuant to 13-1-  
16           203(5)(b).

17           (3)       Any individual willing to be appointed as an election judge ~~may~~ shall attend an instruction  
18           session by registering with the election administrator. However, the individual may not be paid for attendance  
19           unless the individual is appointed as an election judge.

20           (4)       Each election judge completing a training session under this section must be given a certificate  
21           of completion. An individual may not serve as an election judge without a current certificate. However, this  
22           requirement does not apply to individuals filling vacancies in emergencies.

23           (5)       A certificate of completion is current if the certificate is obtained before the primary election in  
24           an even-numbered year.

25           (6)       Notice of the place and time of instruction must be given by the election administrator to the  
26           presiding officers of the political parties in the county.

27           (7)       Any individual who has completed the training under this section is also eligible to serve on the  
28           election-related boards provided for in rule."

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

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

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

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

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

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

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

(b) 15% of the precincts in each county experiencing a tabulation intervention by a service technician or where the replacement of a tabulation machine took place after the initial public tabulation certification; and

~~(b)~~(c) an election for:

- (i) one statewide office race, if any;
- (ii) one federal office race;
- (iii) one legislative office race; ~~and~~
- (iv) one statewide ballot issue if a statewide ballot issue was on the ballot; and
- (v) one race that goes through the recount process provided for in Title 13, chapter 16, if a recount

has occurred.

(4) The audit may not include:

- (a) a retention election for a judicial candidate; or
- (b) a race in which a candidate was unopposed.

