

SENATE BILL NO. 435

INTRODUCED BY T. MANZELLA

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING HAND COUNTING AS THE PRIMARY METHOD OF

5 TABULATING BALLOTS; REVISING THE DEFINITIONS OF "BALLOT" AND "VOTING SYSTEM"; AMENDING

6 SECTIONS 13-1-101, 13-3-208, 13-10-204, 13-10-302, 13-13-241, 13-15-111, 13-15-206, 13-15-207, 13-16-

7 201, 13-17-103, 13-17-211, 13-19-106, 13-19-312, AND 13-38-201, MCA; REPEALING SECTION 13-15-209,

8 MCA; AND PROVIDING AN EFFECTIVE DATE."

9

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

11

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

13 **"13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the

14 following definitions apply:

15 (1) "Active elector" means an elector whose name has not been placed on the inactive list due to

16 failure to respond to confirmation notices pursuant to 13-2-220 or 13-19-313.

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

18 (3) "Anything of value" means any goods that have a certain utility to the recipient that is real and

19 that is ordinarily not given away free but is purchased.

20 (4) "Application for voter registration" means a voter registration form prescribed by the secretary

21 of state that is completed and signed by an elector, is submitted to the election administrator, and contains

22 voter registration information subject to verification as provided by law.

23 (5) "Ballot" means a paper ballot counted manually ~~or a paper ballot counted by a machine, such as~~

24 ~~an optical scan system or other technology that automatically tabulates votes cast by processing the paper~~

25 ~~ballots.~~

26 (6) (a) "Ballot issue" or "issue" means a proposal submitted to the people at an election for their

27 approval or rejection, including but not limited to an initiative, referendum, proposed constitutional amendment,

28 recall question, school levy question, bond issue question, or ballot question.

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

5           (7)     "Ballot issue committee" means a political committee specifically organized to support or  
 6 oppose a ballot issue.

7           (8)     "Candidate" means:

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

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

15          (i)     solicitation is made;

16          (ii)    contribution is received and retained; or

17          (iii)   expenditure is made; or

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

19          (9)     (a) "Contribution" means:

20          (i)     the receipt by a candidate or a political committee of an advance, gift, loan, conveyance,  
 21 deposit, payment, or distribution of money or anything of value to support or oppose a candidate or a ballot  
 22 issue;

23          (ii)    an expenditure, including an in-kind expenditure, that is made in coordination with a candidate  
 24 or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution;

25          (iii)   the receipt by a political committee of funds transferred from another political committee; or

26          (iv)    the payment by a person other than a candidate or political committee of compensation for the  
 27 personal services of another person that are rendered to a candidate or political committee.

28          (b)     The term does not mean:

1 (i) services provided without compensation by individuals volunteering a portion or all of their time  
2 on behalf of a candidate or political committee;

3 (ii) meals and lodging provided by individuals in their private residences for a candidate or other  
4 individual;

5 (iii) the use of a person's real property for a fundraising reception or other political event; or

6 (iv) the cost of a communication not for distribution to the general public by a religious organization  
7 exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held  
8 religious beliefs or practices.

9 (c) This definition does not apply to Title 13, chapter 37, part 6.

10 (10) "Coordinated", including any variations of the term, means made in cooperation with, in  
11 consultation with, at the request of, or with the express prior consent of a candidate or political committee or an  
12 agent of a candidate or political committee.

13 (11) "De minimis act" means an action, contribution, or expenditure that is so small that it does not  
14 trigger registration, reporting, disclaimer, or disclosure obligations under Title 13, chapter 35 or 37, or warrant  
15 enforcement as a campaign practices violation under Title 13, chapter 37.

16 (12) "Disability" means a temporary or permanent mental or physical impairment such as:

17 (a) impaired vision;

18 (b) impaired hearing;

19 (c) impaired mobility. Individuals having impaired mobility include those who require use of a  
20 wheelchair and those who are ambulatory but are physically impaired because of age, disability, or disease.

21 (d) impaired mental or physical functioning that makes it difficult for the person to participate in the  
22 process of voting.

23 (13) "Election" means a general, special, or primary election held pursuant to the requirements of  
24 state law, regardless of the time or purpose.

25 (14) (a) "Election administrator" means, except as provided in subsection (14)(b), the county clerk  
26 and recorder or the individual designated by a county governing body to be responsible for all election  
27 administration duties, except that with regard to school elections not administered by the county, the term  
28 means the school district clerk.

1 (b) As used in chapter 2 regarding voter registration, the term means the county clerk and recorder  
2 or the individual designated by a county governing body to be responsible for all election administration duties  
3 even if the school election is administered by the school district clerk.

4 (15) (a) "Election communication" means the following forms of communication to support or  
5 oppose a candidate or ballot issue:

6 (i) a paid advertisement broadcast over radio, television, cable, or satellite;

7 (ii) paid placement of content on the internet or other electronic communication network;

8 (iii) a paid advertisement published in a newspaper or periodical or on a billboard;

9 (iv) a mailing; or

10 (v) printed materials.

11 (b) The term does not mean:

12 (i) an activity or communication for the purpose of encouraging individuals to register to vote or to  
13 vote, if that activity or communication does not mention or depict a clearly identified candidate or ballot issue;

14 (ii) a communication that does not support or oppose a candidate or ballot issue;

15 (iii) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any  
16 broadcasting station, newspaper, magazine, internet website, or other periodical publication of general  
17 circulation;

18 (iv) a communication by any membership organization or corporation to its members, stockholders,  
19 or employees;

20 (v) a communication not for distribution to the general public by a religious organization exempt  
21 from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious  
22 beliefs or practices; or

23 (vi) a communication that the commissioner determines by rule is not an election communication.

24 (16) "Election judge" means a person who is appointed pursuant to Title 13, chapter 4, part 1, to  
25 perform duties as specified by law.

26 (17) (a) "Electioneering communication" means a paid communication that is publicly distributed by  
27 radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other  
28 distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does

1 not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the  
2 district voting on the candidate or ballot issue, and that:

3 (i) refers to one or more clearly identified candidates in that election;

4 (ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that  
5 election; or

6 (iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.

7 (b) The term does not mean:

8 (i) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any  
9 broadcasting station, newspaper, magazine, internet website, or other periodical publication of general  
10 circulation unless the facilities are owned or controlled by a candidate or political committee;

11 (ii) a communication by any membership organization or corporation to its members, stockholders,  
12 or employees;

13 (iii) a commercial communication that depicts a candidate's name, image, likeness, or voice only in  
14 the candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy;

15 (iv) a communication that constitutes a candidate debate or forum or that solely promotes a  
16 candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum;

17 (v) a communication not for distribution to the general public by a religious organization exempt  
18 from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious  
19 beliefs or practices; or

20 (vi) a communication that the commissioner determines by rule is not an electioneering  
21 communication.

22 (18) "Elector" means an individual qualified to vote under state law.

23 (19) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or  
24 gift of money or anything of value:

25 (i) made by a candidate or political committee to support or oppose a candidate or a ballot issue;

26 (ii) made by a candidate while the candidate is engaging in campaign activity to pay child-care  
27 expenses as provided in 13-37-220; or

28 (iii) used or intended for use in making independent expenditures or in producing electioneering

1 communications.

2 (b) The term does not mean:

3 (i) services, food, or lodging provided in a manner that they are not contributions under subsection  
4 (9);

5 (ii) except as provided in subsection (19)(a)(ii), payments by a candidate for personal travel  
6 expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

7 (iii) the cost of any bona fide news story, commentary, blog, or editorial distributed through the  
8 facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general  
9 circulation;

10 (iv) the cost of any communication by any membership organization or corporation to its members  
11 or stockholders or employees;

12 (v) the use of a person's real property for a fundraising reception or other political event; or

13 (vi) the cost of a communication not for distribution to the general public by a religious organization  
14 exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held  
15 religious beliefs or practices.

16 (c) This definition does not apply to Title 13, chapter 37, part 6.

17 (20) "Federal election" means an election in even-numbered years in which an elector may vote for  
18 individuals for the office of president of the United States or for the United States congress.

19 (21) "General election" means an election that is held for offices that first appear on a primary  
20 election ballot, unless the primary is cancelled as authorized by law, and that is held on a date specified in 13-  
21 1-104.

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

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

25 (24) (a) "Incidental committee" means a political committee that is not specifically organized or  
26 operating for the primary purpose of supporting or opposing candidates or ballot issues but that may  
27 incidentally become a political committee by receiving a contribution or making an expenditure.

28 (b) For the purpose of this subsection (24), the primary purpose is determined by the

1 commissioner by rule and includes criteria such as the allocation of budget, staff, or members' activity or the  
2 statement of purpose or goal of the person or individuals that form the committee.

3 (25) "Independent committee" means a political committee organized for the primary purpose of  
4 receiving contributions and making expenditures that is not controlled either directly or indirectly by a candidate  
5 and that does not coordinate with a candidate in conjunction with the making of expenditures except pursuant  
6 to the limits set forth in 13-37-216(1).

7 (26) "Independent expenditure" means an expenditure for an election communication to support or  
8 oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue  
9 committee.

10 (27) "Individual" means a human being.

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

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

15 (30) "Person" means an individual, corporation, association, firm, partnership, cooperative,  
16 committee, including a political committee, club, union, or other organization or group of individuals or a  
17 candidate as defined in subsection (8).

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

20 (32) (a) "Political committee" means a combination of two or more individuals or a person other than  
21 an individual who receives a contribution or makes an expenditure:

22 (i) to support or oppose a candidate or a committee organized to support or oppose a candidate  
23 or a petition for nomination;

24 (ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot  
25 issue; or

26 (iii) to prepare or disseminate an election communication, an electioneering communication, or an  
27 independent expenditure.

28 (b) Political committees include ballot issue committees, incidental committees, independent

1 committees, and political party committees.

2 (c) A candidate and the candidate's treasurer do not constitute a political committee.

3 (d) A political committee is not formed when a combination of two or more individuals or a person  
4 other than an individual makes an election communication, an electioneering communication, or an  
5 independent expenditure of \$250 or less.

6 (e) A joint fundraising committee is not a political committee.

7 (33) "Political party committee" means a political committee formed by a political party organization  
8 and includes all county and city central committees.

9 (34) "Political party organization" means a political organization that:

10 (a) was represented on the official ballot in either of the two most recent statewide general  
11 elections; or

12 (b) has met the petition requirements provided in Title 13, chapter 10, part 5.

13 (35) "Political subdivision" means a county, consolidated municipal-county government,  
14 municipality, special purpose district, or any other unit of government, except school districts, having authority  
15 to hold an election.

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

18 (37) "Primary" or "primary election" means an election held on a date specified in 13-1-107 to  
19 nominate candidates for offices filled at a general election.

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

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

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

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

28 (42) "Registrar" means the county election administrator and any regularly appointed deputy or



1 assistant election administrator.

2 (43) "Regular school election" means the school trustee election provided for in 20-20-105(1).

3 (44) "Religious organization" means a house of worship with the major purpose of supporting  
4 religious activities, including but not limited to a church, mosque, shrine, synagogue, or temple. The organic  
5 documents of the organization must list a formal code of doctrine and discipline, and the organization must  
6 spend the majority of its money on religious activities such as regular religious services, educational  
7 preparation for its ministers, development and support of its ministers, membership development, outreach and  
8 support, and the production and distribution of religious literature developed by the organization.

9 (45) "School election" has the meaning provided in 20-1-101.

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

12 (47) "School recount board" means the board authorized pursuant to 20-20-420 to perform recount  
13 duties in school elections.

14 (48) "Signature envelope" means an envelope that contains a secrecy envelope and ballot and that  
15 is designed to:

16 (a) allow election officials, upon examination of the outside of the envelope, to determine that the  
17 ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

18 (b) allow it to be used in the United States mail.

19 (49) "Special election" means an election held on a day other than the day specified for a primary  
20 election, general election, or regular school election.

21 (50) "Special purpose district" means an area with special boundaries created as authorized by law  
22 for a specialized and limited purpose.

23 (51) "Statewide voter registration list" means the voter registration list established and maintained  
24 pursuant to 13-2-107 and 13-2-108.

25 (52) "Support or oppose", including any variations of the term, means:

26 (a) using express words, including but not limited to "vote", "oppose", "support", "elect", "defeat", or  
27 "reject", that call for the nomination, election, or defeat of one or more clearly identified candidates, the election  
28 or defeat of one or more political parties, or the passage or defeat of one or more ballot issues submitted to

1 voters in an election; or

2 (b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or  
 3 ballot issues in a manner that is susceptible of no reasonable interpretation other than as a call for the  
 4 nomination, election, or defeat of the candidate in an election, the election or defeat of the political party, or the  
 5 passage or defeat of the ballot issue or other question submitted to the voters in an election.

6 (53) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided  
 7 in 13-15-206.

8 (54) "Voted ballot" means a ballot that is:

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

12 (55) "Voter interface device" means a voting system that:

- 13 (a) is accessible to electors with disabilities;  
 14 (b) communicates voting instructions and ballot information to a voter;  
 15 (c) allows the voter to select and vote for candidates and issues and to verify and change  
 16 selections; and

17 (d) produces a paper ballot that displays electors' choices so the elector can confirm the ballot's  
 18 accuracy and that may be manually counted.

19 (56) "Voting system" or "system" means any machine, device, technology, or equipment used to  
 20 automatically record, ~~tabulate, or process~~ the vote of an elector cast on a paper ballot."

21

22 **Section 2.** Section 13-3-208, MCA, is amended to read:

23 **"13-3-208. Voter interface device availability.** (1) The intent of this section is to:

- 24 (a) ensure that disabled electors have access to voting technology that allows the electors to cast  
 25 ballots independently, privately, and securely;  
 26 (b) provide that votes cast using accessible voting technology are collected ~~and counted~~ in a  
 27 manner that preserves secrecy; and  
 28 (c) comply with applicable federal and state law concerning accessibility for disabled electors.

1 (2) (a) Except as provided in subsection (2)(c):

2 (i) the election administrator shall ensure that at least one voter interface device is available at  
3 each polling place; and

4 (ii) in a mail ballot election, the election administrator shall ensure that voter interface devices are  
5 available at locations appropriate to provide accessibility for disabled electors.

6 (b) Each voter interface device must be set up and located in a manner that allows any elector  
7 using the device to cast a ballot independently and privately, including the provision of accommodations to  
8 provide a physical barrier or other method to ensure that the screen of the device is blocked from the view of  
9 others.

10 (c) A voter interface device is not required:

11 (i) if there are fewer than 200 registered electors eligible to vote in the election; or

12 (ii) for an irrigation district election.

13 (3) Subject to subsection (4):

14 ~~(a) —~~ votes on a ballot produced by a voter interface device ~~may~~ must be counted manually ~~or using~~  
15 ~~an automatic tabulating system; in accordance with 13-15-206.~~

16 ~~(b) — ballots counted manually must be counted in accordance with 13-15-206; and~~

17 ~~(c) — if ballots produced by a voter interface device cannot be processed through an automatic tabulator~~  
18 ~~used in the county and the election administrator does not provide for the ballots to be counted manually, the~~  
19 ~~election administrator may provide for the votes on each ballot produced by the device to be transcribed to the~~  
20 ~~standard ballot form used in the precinct so that the ballots may be processed through an automatic tabulator~~  
21 ~~used in the county.~~

22 (4) (a) If the voter interface device produces a ballot form that is distinguishable from the standard  
23 ballot form used in the precinct, the county election administrator shall take measures to protect the secrecy of  
24 the votes cast by an elector using the device.

25 (b) Measures to ensure secrecy may provide that votes on a ballot produced by the voter interface  
26 device are transcribed to the standard ballot form used in the precinct so that the ballots are indistinguishable  
27 from and counted with the other ballots.

28 (c) Measures must also include encouraging a portion of the nondisabled electors to use the

1 device to cast their ballot.

2 (5) Any transcription of votes conducted pursuant to this section must be conducted in secret by at  
3 least three election officials in substantially the same manner as provided for in 13-13-246."

4

5 **Section 3.** Section 13-10-204, MCA, is amended to read:

6 **"13-10-204. Write-in nominations.** (1) An individual nominated by having the individual's name  
7 written in and counted as provided in ~~13-15-206(5)~~ 13-15-206(4) or otherwise placed on the primary ballot and  
8 desiring to accept the nomination may not have the individual's name appear on the general election ballot  
9 unless the individual:

10 (a) received at least 5% of the total votes cast for the successful candidate for the same office at  
11 the last general election;

12 (b) files with the secretary of state or election administrator, no later than 10 days after the official  
13 canvass, a written declaration indicating acceptance of the nomination; and

14 (c) complies with the provisions of 13-37-126.

15 (2) A write-in candidate who was exempt from filing a declaration of intent under 13-10-211 shall,  
16 at the time of filing the declaration of acceptance, pay the filing fee specified in 13-10-202 or, if indigent, file the  
17 appropriate documents described in 13-10-203."

18

19 **Section 4.** Section 13-10-302, MCA, is amended to read:

20 **"13-10-302. Write-in votes for previously nominated candidates.** (1) Subject to subsection (2), if  
21 an elector casts a write-in vote for a candidate on a primary party ballot when the candidate's name also  
22 appears or is written in for the same office on another party's ballot, the write-in vote counts only with respect to  
23 the party on whose ballot the write-in vote was cast and the write-in votes, if on multiple parties' ballots, and the  
24 votes cast for the candidate on the other party's ballots may not be added together.

25 (2) A write-in vote must be counted as provided in ~~13-15-206(5)~~ 13-15-206(4)."

26

27 **Section 5.** Section 13-13-241, MCA, is amended to read:

28 **"13-13-241. Examination of absentee ballot signature envelopes -- deposit of absentee and**

1 **unvoted ballots -- rulemaking.** (1) (a) Upon receipt of each absentee ballot signature envelope, an election  
2 administrator shall compare the signature of the elector or elector's agent on the absentee ballot request or on  
3 the elector's voter registration form with the signature on the signature envelope.

4 (b) If the elector is legally registered and the signature on the signature envelope matches the  
5 signature on the absentee ballot application or on the elector's voter registration form, the election administrator  
6 or an election judge shall handle the ballot as a regular ballot.

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

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

14 (iii) If voter identification or eligibility information was not enclosed or the information enclosed is  
15 insufficient to legally 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  
17 shall place the ballot in a secrecy envelope without examining the ballot.

18 (3) In a primary election, if unvoted party ballots are returned by a voter, they must be separated  
19 and handled pursuant to 13-1-303 and 13-12-202.

20 (4) If an elector's ballot is to be handled as a provisional ballot, the election administrator shall  
21 notify the absentee elector as provided in 13-13-245.

22 (5) If the signature on the absentee ballot signature envelope does not match the signature on the  
23 absentee ballot request form or on the elector's voter registration form or if there is no signature on the  
24 absentee ballot signature envelope, the election administrator shall notify the elector as provided in 13-13-245.

25 (6) If at any point there is a question concerning the validity of a particular ballot, the question must  
26 be resolved as provided in 13-13-245.

27 (7) (a) Except as provided in subsection (8), after receiving an absentee ballot secrecy envelope  
28 and if the validity of the ballot is confirmed pursuant to 13-13-245, then no sooner than 3 business days before

1 election day, the election official may open the secrecy envelope and place the ballot in the proper, secured  
 2 ballot box until tabulation by hand occurs. ~~Automatic tabulation using a vote-counting machine may not begin~~  
 3 ~~sooner than 1 day before election day.~~ Tabulation using a manual count may not begin until election day.

4 (b) An election official may not conduct the process described in subsection (7)(a) on a Saturday  
 5 or a Sunday.

6 (c) Ballot preparation as described in this subsection (7) is open to the public. Tabulation is open  
 7 to the public as provided in 13-15-101.

8 ~~(d) Access to an electronic system containing early tabulation results is limited to the election~~  
 9 ~~administrator and the election administrator's designee. Results may not be released except as provided in 13-~~  
 10 ~~35-241.~~

11 (8) For a county with fewer than 8,000 registered electors or fewer than 5,000 absentee electors at  
 12 the close of regular registration, the ballot preparation process described in subsection (7)(a) may not begin  
 13 sooner than 1 business day before election day.

14 (9) The election administrator shall safely and securely keep the absentee ballots in the election  
 15 administrator's office until delivered by the election administrator to the election judges.

16 (10) The secretary of state shall develop administrative rules to establish the process and  
 17 procedures to be used during the early preparation of ballots to ensure the security of the ballots and the  
 18 secrecy of the votes during the early preparation period. The rules must include but are not limited to:

- 19 (a) the allowable distance from the observers to the judges and ballots;
- 20 (b) the security in the observation area;
- 21 (c) secrecy of votes during the preparation of the ballots; and
- 22 (d) security of the secured ballot boxes in storage until tabulation by hand procedures begin."

23

24 **Section 6.** Section 13-15-111, MCA, is amended to read:

25 "**13-15-111. Write-in elections -- general election.** (1) An individual elected by having the  
 26 individual's name written in at the general election and receiving the largest number of votes counted as  
 27 provided in ~~13-15-206(5)~~ 13-15-206(4) shall:

28 (a) file with the secretary of state or election administrator, not later than 10 days after the official

- 1 canvass, a written declaration indicating the individual's acceptance of the position for which elected;
- 2 (b) comply with the provisions of 13-37-225; and
- 3 (c) pay the required filing fee or, if indigent, comply with 13-10-203.
- 4 (2) If an individual fails to comply with the requirements in subsection (1), the individual may not
- 5 assume the position for which elected."
- 6

7 **Section 7.** Section 13-15-206, MCA, is amended to read:

8 **"13-15-206. Counting votes -- uniformity -- rulemaking -- definitions.** (1) When conducting vote

9 counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and

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

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

12 (a) One election judge on the board shall read the ballot while the two other judges on the board

13 shall each record on an official tally sheet the number of valid votes cast for each individual or ballot issue.

14 Write-in votes must be counted in accordance with subsection ~~(5)~~ (4) and rules adopted pursuant to subsection

15 ~~(7)~~ (6). If a vote has not been cast according to instructions, the vote must be considered questionable and the

16 entire ballot must be set aside and votes on the ballot must be handled as provided in subsection ~~(4)~~ (3).

17 (b) (i) After the vote count is complete, the tally sheets of the two judges recording the votes must

18 be compared.

19 (ii) If the two tallies match, the judges shall record in the official results records:

20 (A) the names of all individuals who received votes;

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

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

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

24 (iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2)

25 until the two tallies match.

26 ~~(3) (a) When a voting system is counting votes:~~

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

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

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

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

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

7 ~~(d) After all valid votes have been counted and totaled, the judges shall record in the official results~~  
 8 ~~records the information specified in subsection (2)(b)(ii).~~

9 ~~(4)(3)~~ (a) ~~(i)~~ Before being counted, each questionable vote on a ballot set aside under subsection  
 10 ~~(2)(a) or (3)(b)~~ must be reviewed by the counting board. The counting board shall evaluate each questionable  
 11 vote according to rules adopted by the secretary of state.

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

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

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

19 ~~(5)(4)~~ A write-in vote may be counted only if:

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

21 (ii) pursuant to 13-10-211(7), a declaration of nomination was not filed and the write-in vote  
 22 identifies an individual who is qualified for the office; and

23 (b) the oval, box, or other designated voting area on the ballot is marked.

24 ~~(6)(5)~~ A vote is not valid and may not be counted if the elector's choice cannot be determined as  
 25 provided in this section.

26 ~~(7)(6)~~ The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each  
 27 type of ballot ~~and for each type of voting system~~ used in the state. The rules must provide a sufficient guarantee  
 28 that all votes are treated equally among jurisdictions using similar ballot types ~~and voting systems~~.



1           ~~(8)~~(7) Local election administrators shall adopt policies to govern local processes that are consistent  
2 with the provisions of this title and that provide for:

- 3           (a) the security of the counting process against fraud;
- 4           (b) the place and time and public notice of each count or recount;
- 5           (c) public observance of each count or recount, including observance by representatives  
6 authorized under 13-16-411;
- 7           (d) the recording of objections to determinations on the validity of an individual vote or to the entire  
8 counting process; and
- 9           (e) the keeping of a public record of count or recount proceedings.

10           ~~(9)~~(8) For purposes of this section, "overvote" means an elector's vote that has been interpreted by  
11 the ~~voting system~~ counting board as an elector casting more votes than allowable for a particular office or ballot  
12 issue."  
13

14           **Section 8.** Section 13-15-207, MCA, is amended to read:

15           **"13-15-207. Counting board procedures.** (1) After ballots have been prepared pursuant to 13-15-  
16 201, the election administrator may arrange for the vote ~~count~~ tabulation by hand to begin no sooner than 1 day  
17 before election day, or immediately upon the closure of the polls, in the manner prescribed in this section.

- 18           (2) When a count is conducted after the polls have closed, the counting board shall:
  - 19           (a) meet at a place designated by the election administrator;
  - 20           (b) continue counting until the votes cast for all candidates and issues are counted; and
  - 21           (c) count votes as prescribed in 13-15-206.
- 22           (3) When votes are counted prior to the close of the polls:
  - 23           (a) the election administrator shall make provisions for the delivery of voted ballots to the counting  
24 center at any time prior to the closing of the polls;
  - 25           (b) the board must be located in a room separate from the room where ballots are being cast;
  - 26           (c) the ballots may be processed and counted as they are received;
  - 27           (d) an election judge or other individual having access to early count results is subject to 13-35-  
28 241; and

1 (e) votes must be counted as prescribed in 13-15-206.

2 (4) (a) When votes are being counted prior to the close of the polls, in addition to the official oath  
3 taken and subscribed to by the election judges, the members of the counting board and observers shall  
4 complete and sign the following affirmation: "I, \_\_\_\_\_, will not discuss the results of the early counting of votes  
5 at any time prior to the closing of the polls on election day."

6 (b) The election administrator or chief election judge shall witness and sign the affirmation in  
7 subsection (4)(a)."

8

9 **Section 9.** Section 13-16-201, MCA, is amended to read:

10 **"13-16-201. Conditions under which recount to be conducted.** (1) A recount must be conducted if:

11 (a) a candidate for a precinct office or for a county, municipal, or district office voted for in only one  
12 county, other than a legislator or a judge of the district court, is defeated by a margin not exceeding 1/4 of 1% of  
13 the total votes cast or by a margin not exceeding 10 votes, whichever is greater, and the defeated candidate,  
14 within 5 days after the official canvass, files with the election administrator a verified petition stating that the  
15 candidate believes that a recount will change the result and that a recount of the votes for the office or  
16 nomination should be conducted;

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

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

27 (d) a question submitted to the vote of the people of the state is decided by a margin not  
28 exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection

1 (1)(a) is filed with the secretary of state. This petition must be signed by not less than 100 electors of the state,  
2 representing at least five counties of the state, and must be filed within 5 days after the official canvass.

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

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

8 (2) If the election is a school election, the petition is filed with the school election filing officer.

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

12 (4) The recount must be conducted by the process established in 13-15-206.

13

14 **Section 10.** Section 13-17-103, MCA, is amended to read:

15 **"13-17-103. Required specifications for voting systems.** (1) A voting system may not be approved  
16 under 13-17-101 unless the voting system:

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

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

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

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

23 (e) allows an elector to vote a split ticket in a general election if the elector desires;

24 (f) allows each valid vote cast to be registered and recorded within the performance standards  
25 adopted pursuant to subsection (3);

26 (g) is protected from tampering for a fraudulent purpose;

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

- 1 (i) allows write-in voting;
- 2 (j) will, if purchased by a jurisdiction within the state, be provided with a guarantee that the training
- 3 and technical assistance will be provided to election officials under the contract for purchase of the voting
- 4 system;
- 5 (k) uses a paper ballot that allows votes to be manually counted; and
- 6 (l) allows auditors to access and monitor any software program while it is running on the system to
- 7 determine whether the software is running properly.

8 (2) A voter interface device may not be approved for use in this state unless:

- 9 (a) the device meets the electronic security standards adopted by the secretary of state;
- 10 (b) the device provides accessible voting technology for electors with hearing, vision, speech, or
- 11 ambulatory impairments;
- 12 (c) the device meets all requirements specified in subsection (1);
- 13 (d) the device has been made available for demonstration and use by electors with disabilities in at
- 14 least one public event held by the secretary of state; ~~and~~
- 15 (e) disabled electors have been able to participate in the process of determining whether the
- 16 system meets accessibility standards; and
- 17 (f) the device uses a paper ballot that allows votes to be manually counted.

18 (3) To implement the provisions of subsection (1)(f), the secretary of state shall adopt rules setting

19 a benchmark performance standard that must be met in tests by each voting system prior to approval under 13-

20 17-101. The standard must be based on commonly accepted industry standards for readily available

21 technologies.

22 (4) Voting systems may only be used for vote casting. Voting systems may not be used to tabulate

23 votes. All vote tabulation shall be conducted by hand."

24

25 **Section 11.** Section 13-17-211, MCA, is amended to read:

26 **"13-17-211. Uniform procedures for using voting systems.** (1) For each voting system approved

27 under 13-17-101, the secretary of state shall adopt rules specifying the procedures to be uniformly applied in

28 elections conducted with the voting system.

- 1 (2) The rules must, at a minimum, specify procedures that address the following:
- 2 (a) performance testing and certification under 13-17-212;
- 3 (b) how electors ensure the proper disposition of a ballot pursuant to 13-13-117(2);
- 4 (c) the procedures to be followed if the comparison under 13-15-206(2)(b) reveals discrepancies;
- 5 ~~(d) how to operate and test the system during counts; and~~
- 6 ~~(e)~~(d) the security measures necessary to secure the voting system before, during, and after an
- 7 election."

8

9 **Section 12.** Section 13-19-106, MCA, is amended to read:

10 **"13-19-106. General requirements for mail ballot election.** A mail ballot election must be  
11 conducted substantially as follows:

12 (1) Subject to 13-12-202, official mail ballots must be prepared and all other initial procedures  
13 followed as provided by law, except that mail ballots must be paper ballots and are not required to have stubs.

14 (2) An official ballot must be mailed to every qualified elector of the political subdivision conducting  
15 the election.

16 (3) Each signature envelope must contain a form that is the same as the form for absentee ballot  
17 signature envelopes and that is prescribed by the secretary of state for the elector to verify the accuracy of the  
18 elector's address or notify the election administrator of the elector's correct mailing address and to return the  
19 corrected address with the voted ballot in the manner provided by 13-19-306.

20 (4) The elector shall mark the ballot and place it in a secrecy envelope.

21 (5) (a) The elector shall then place the secrecy envelope containing the elector's ballot in a  
22 signature envelope and mail it or deliver it in person to a place of deposit designated by the election  
23 administrator.

24 (b) Except as provided in 13-21-206 and 13-21-226, the voted ballot must be received before 8  
25 p.m. on election day.

26 (6) Election officials shall first qualify the voted ballot by examining the signature envelope to  
27 determine whether it is submitted by a qualified elector who has not previously voted in the election.

28 (7) If the voted ballot qualifies and is otherwise valid, officials shall then open the signature

1 envelope and remove the secrecy envelope, which must be deposited unopened in an official ballot box  
2 pursuant to the timeline specified in 13-13-241(7).

3 (8) Except as provided in 13-19-312, voted ballots must be hand counted and canvassed as  
4 provided in Title 13, chapter 15."

5

6 **Section 13.** Section 13-19-312, MCA, is amended to read:

7 **"13-19-312. Preparation for count and counting procedure.** (1) The preparation for counting  
8 ballots must be as provided in 13-15-201.

9 (2) Except as provided in subsection (3), after the close of voting on election day, the counting  
10 board appointed pursuant to 13-15-112 shall:

11 (a) open the official ballot boxes;

12 (b) if the process authorized under 13-13-241(7) was not used, open each secrecy envelope,  
13 removing the voted ballot; and

14 (c) proceed to hand count the votes as provided in Title 13, chapter 15.

15 (3) The election administrator may begin the procedures described in subsection (2) no sooner  
16 than 1 day before election day if the election administrator complies with the procedures described in 13-15-  
17 207(3)."

18

19 **Section 14.** Section 13-38-201, MCA, is amended to read:

20 **"13-38-201. Election or appointment of committee representatives at primary -- vacancies -- tie**  
21 **votes.** (1) Each political party shall appoint or elect at each primary election one person of each sex to serve as  
22 committee representatives for each election precinct. The committee representatives must be residents and  
23 registered voters of the precinct.

24 (2) If a political party chooses to appoint precinct committee representatives, the political party  
25 shall make the appointments as provided in the party's rules.

26 (3) If a political party chooses to elect precinct committee representatives, the party may:

27 (a) administer the election itself as provided in the party's rules; or

28 (b) elect precinct committee representatives in a primary election, subject to 13-10-209 and

1 subsection (4) of this section.

2 (4) In a primary election for a precinct committee representative:

3 (a) if the number of candidates nominated for a party's precinct committee representatives is less  
4 than or equal to the number of positions to be elected, the election administrator may give notice that a party's  
5 precinct committee election will not be held in that precinct;

6 (b) if a party precinct committee election is not held pursuant to subsection (4)(a), the election  
7 administrator shall declare elected by acclamation the candidate who filed for the position or who filed a  
8 declaration of intent to be a write-in candidate. The election administrator shall issue a certificate of election to  
9 the designated party.

10 (c) write-in votes for a precinct committee representative may be counted as specified in ~~13-15-~~  
11 ~~206(5)~~ 13-15-206(4) only if the individual whose name is written in has filed a declaration of intent as a write-in  
12 candidate by the deadline prescribed in 13-10-211(1);

13 (d) in the case of a tie vote for a precinct committee representative position, the county central  
14 committee shall determine a winner.

15 (5) Pursuant to 13-38-101, a vacancy in a precinct committee representative position must be filled  
16 by the party governing body as provided in its rules."

17  
18 **NEW SECTION. Section 15. Repealer.** The following section of the Montana Code Annotated is  
19 repealed:

20 13-15-209. Handling voting system error during count.

21  
22 **NEW SECTION. Section 16. Effective date.** [This act] is effective July 1, 2023.

23 - END -