

SENATE BILL NO. 472

INTRODUCED BY D. EMRICH

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ELECTION LAWS; REQUIRING VOTE COUNTING TO BE COMPLETED WITHIN 3 HOURS AFTER THE POLLS CLOSE; PROVIDING A PENALTY; REVISING RETENTION REQUIREMENTS OF BALLOTS; REQUIRING THE DEPARTMENT OF JUSTICE TO CONDUCT ANNUAL INSPECTIONS OF ELECTION RECORDS; REQUIRING THE DEPARTMENT OF JUSTICE TO ASSIST WITH TESTING AND VERIFICATION OF VOTING SYSTEMS; REVISING ABSENTEE BALLOT PROCEDURES; PROVIDING FOR A CIVIL ACTION AGAINST THE SECRETARY OF STATE OR GOVERNOR; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 13-1-303, 13-13-201, 13-15-101, 13-17-101, 13-17-103, 13-17-212, 13-21-206, 13-21-220, 13-37-128, AND 13-37-130, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Election day tabulation time requirements -- oversight -- rulemaking

-- penalty. (1) On election day, pursuant to 13-15-101, tabulation must begin and continue without adjournment until all available ballots that can be legally counted have been tabulated, except for pending unresolved resolution board ballots, provisional ballots, and military overseas ballots. Tabulation must be completed within 3 hours of the polls closing.

(2) In order to meet the 3-hour time limit, counties must have two additional voting systems on site in case of any mechanical or other issues with the primary voting system.

(3) (a) If a county does not meet the 3-hour tabulation requirement, the county clerk and recorder must be placed under the direct supervision of the secretary of state's office for 2 years. During the 2-year supervision period, the county clerk and recorder shall work with the secretary of state's office to revise county election policies and procedures to ensure the 3-hour tabulation requirement is met for all future elections.

(b) The secretary of state shall adopt rules implementing the provisions of this section and providing criteria to be met during the 2-year supervision period.

1 (c) The secretary of state may not adopt any rules that violate or contradict this section.

2 (4) If any part of this section is violated through regulation, rule process, contract, agreement,
3 settlement, or executive order, the secretary of state or the governor, whichever is responsible for the violation,
4 is liable for any action taken in a civil action pursuant to 13-37-128 or by an individual member of the public.
5 The statute of limitations for the violation is 6 years.

6

7 **Section 2.** Section 13-1-303, MCA, is amended to read:

8 **"13-1-303. Disposition of ballots and other election materials -- inspection by department of**
9 **justice.** (1) (a) Except for a federal election and as provided in 13-15-301(2), the voted ballots, detached stubs,
10 unvoted ballots, and unused ballots from an election must be kept in the unopened packages received from the
11 election judges for a period of ~~12 months~~ 2 years. The packages may be opened only when an order for
12 opening is given by the proper official either for a recount procedure or to process provisional ballots and for an
13 annual inspection by a representative from the department of justice.

14 (b) The voted ballots, detached stubs, unvoted ballots, and unused ballots from a federal election
15 must be retained in the unopened packages received from the election judges for a period of ~~22 months~~ 2
16 years. The packages may be opened only as provided in subsection (1)(a) or for a postelection random-sample
17 audit of vote-counting machines.

18 (c) All electronic ballot records must be retained for a period of 2 years on an air-gapped network
19 or storage device. The election ballot records must be included in the annual inspection by the department of
20 justice provided for in subsection (1)(a).

21 (d) If the results of an election are contested by a candidate or a member of the public, all records
22 related to that election must be saved in a secure manner as provided in subsection (1)(c) for 6 years.

23 (e)(e) An election administrator may dispose of the ballots as provided in subsection (2) if after the
24 time periods provided for in this subsection (1), there is no:

25 (i) contest begun;

26 (ii) recount pending; or

27 (iii) appeal of a decision relating to a contest, a recount, or a postelection random-sample audit.

28 (2) Each election administrator shall prepare a plan for retention and destruction of election

1 records in the county according to the retention schedules established by the local government records
2 committee provided for in 2-6-1201."

3

4 **Section 3.** Section 13-13-201, MCA, is amended to read:

5 **"13-13-201. Voting by absentee ballot -- procedures.** (1) A legally registered elector or provisionally
6 registered elector is entitled to vote by absentee ballot as provided for in this part.

7 (2) The elector may vote absentee by:

8 (a) marking the ballot in the manner specified;

9 (b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

10 (c) placing the secrecy envelope containing one ballot for each election being held in the signature
11 envelope;

12 (d) executing the affirmation printed on the signature envelope; and

13 (e) returning the signature envelope with all appropriate enclosures and the elector's return
14 address by regular mail, postage paid, or by delivering it to:

15 (i) the election office;

16 (ii) a polling place within the elector's county;

17 (iii) pursuant to 13-13-229, the absentee election board or an authorized election official; or

18 (iv) in a mail ballot election held pursuant to Title 13, chapter 19, a designated place of deposit
19 within the elector's county.

20 (3) Except as provided in 13-21-206 and 13-21-226, in order for the ballot to be counted, each
21 elector shall return it in a manner that ensures the ballot is received prior to 8 p.m. on election day. The
22 postmark on ballots returned by mail must be for no later than the day before election day.

23 (4) A provisionally registered elector may also enclose in the outer signature envelope a copy of
24 the elector's photo identification showing the elector's name. The photo identification may be but is not limited
25 to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo
26 identification. If the provisionally registered elector does not enclose a photo identification, the elector may
27 enclose a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration
28 issued pursuant to 13-2-207, government check, or other government document that shows the elector's name

1 and current address."

2

3 **Section 4.** Section 13-15-101, MCA, is amended to read:

4 **"13-15-101. Votes to be publicly counted -- return forms.** (1) Any official vote count must be open
5 to public observation.

6 (2) On election day, tabulation must begin and continue without adjournment until all available
7 ballots that can be legally counted have been tabulated, except for pending unresolved resolution board ballots,
8 provisional ballots, and military overseas ballots. Tabulation must be completed within 3 hours of the polls
9 closing.

10 ~~(2)~~(3) Immediately after all the ballots are counted by precinct, the election judges shall copy the total
11 votes cast for each candidate and for and against each proposition on the return forms furnished by the election
12 administrator.

13 ~~(3)~~(4) The election judges shall immediately display one of the return forms at the place of counting
14 and return a copy to the election administrator. Both forms must be signed by all the election judges completing
15 the count."

16

17 **Section 5.** Section 13-17-101, MCA, is amended to read:

18 **"13-17-101. Secretary of state to approve voting systems.** (1) A voting system may not be used for
19 any election in this state unless the system is approved by the secretary of state and a representative from the
20 department of justice appointed by the attorney general as provided in this section.

21 (2) The secretary of state and the department of justice representative shall:

22 (a) examine a voting system proposed for use to determine if it complies with the requirements of
23 13-17-103;

24 (b) within 30 days after examining the voting system, file a report of the examination in the
25 secretary of state's office that is signed by the secretary of state and the department of justice representative
26 provided for in subsection (1);

27 (c) include in the report the reasons for the voting system's approval or disapproval and the
28 opinion of the secretary of state's state and the department of justice representative ~~opinion~~ about the economic

1 and procedural impact that the voting system's use or nonuse may have on the various counties of this state;

2 and

3 (d) within 5 days after filing the report, transmit to each election administrator, including school

4 election administrators for elections under Title 20, chapter 20, a copy of the report.

5 (3) Voting systems may not be used in an election unless approved by the secretary of state and

6 the department of justice representative no more than 60 days or more 30 days prior to the election at which

7 they will be used following the provisions of 13-17-212."

8

9 **Section 6.** Section 13-17-103, MCA, is amended to read:

10 **"13-17-103. Required specifications for voting systems.** (1) A voting system may not be approved

11 under 13-17-101 unless the voting system:

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

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

14 (c) prevents an elector from voting on any office or ballot issue for which the elector is not entitled

15 to vote;

16 (d) allows an elector to vote only for the candidates of the party selected by the elector in the

17 primary election;

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

19 (f) allows each valid vote cast to be registered and recorded within the performance standards

20 adopted pursuant to subsection (3);

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

22 (h) prevents an individual from seeing or knowing the number of votes registered for any candidate

23 or on any ballot issue during the progress of voting;

24 (i) allows write-in voting;

25 (j) will, if purchased by a jurisdiction within the state, be provided with a guarantee that the training

26 and technical assistance will be provided to election officials under the contract for purchase of the voting

27 system;

28 (k) uses a paper ballot that allows votes to be manually counted; and

1 (l) allows auditors to access and monitor any software program while it is running on the system to
2 determine whether the software is running properly.

3 (2) Any contract for, or contract renewal of, a voting system must include software accuracy
4 verification. The verified software and source code disclosure associated with the voting system must be filed
5 with the state auditor. Any updates must be added to the file for the voting system with the state auditor. The
6 verification and disclosure may be used for periodic, official testing of the voting system to ensure continued
7 performance and accuracy.

8 ~~(2)~~(3) 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.

17 ~~(3)~~(4) To implement the provisions of subsection (1)(f), the secretary of state shall adopt rules setting
18 a benchmark performance standard that must be met in tests by each voting system prior to approval under 13-
19 17-101. The standard must be based on commonly accepted industry standards for readily available
20 technologies."

21

22 **Section 7.** Section 13-17-212, MCA, is amended to read:

23 **"13-17-212. Performance testing and certification of voting systems prior to election.** (1) (a) No
24 more than 30 days prior to an election in which a voting system is used, the election administrator shall publicly
25 test and certify that the system is performing properly.

26 (b) An election administrator shall publicly test all central count vote tabulation machines to be
27 used if automatic tabulation begins pursuant to 13-13-241(7)(a) the day before the election.

28 (c) A representative from the department of justice and from the secretary of state's office must be

1 present for the test provided for in subsection (1)(a) and, if the test shows there are no issues with the voting
2 system, the representatives shall provide a letter of verification to be displayed by the voting system.

3 (d) After the test provided for in subsection (1)(a), the voting system must be sealed and secured.
4 The voting system must be disqualified for use in the current election and be subject to accuracy and software
5 verification for recertification for use in future elections.

6 (e) In accordance with subsection (3), the secretary of state shall adopt rules to meet the
7 requirements of this subsection.

8 (2) The secretary of state shall ensure that at least 10% of each type of voting system in the state
9 has been randomly tested and certified at least once every calendar year.

10 (3) The provisions of this section must be implemented according to rules adopted by the secretary
11 of state pursuant to 13-17-211."

12

13 **Section 8.** Section 13-21-206, MCA, is amended to read:

14 **"13-21-206. Counting of federal write-in absentee ballots.** (1) A federal write-in absentee ballot
15 received by an election administrator may be counted only if:

16 (a) the elector's voter registration and identification information is sufficient to determine that the
17 elector is eligible to vote in the election pursuant to 13-21-220;

18 (b) the election administrator has not received a regular absentee ballot from the elector by 8 p.m.
19 on election day; and

20 (c) the ballot is sent by 8 p.m. on election day and is received by 3 p.m. on the Monday following
21 the election.

22 (2) Federal write-in absentee ballots received before the close of the polls on election day may not
23 be counted until the polls have closed."

24

25 **Section 9.** Section 13-21-220, MCA, is amended to read:

26 **"13-21-220. Covered voter's registration address.** (1) In registering to vote, a covered voter who is
27 eligible to vote in Montana shall use and must be assigned to the voting precinct of the address of the last place
28 of residence of the voter in Montana. If that address is no longer a recognized residential address, the voter

1 must be assigned an address for voting purposes.

2 (2) The voter must submit a signed affidavit confirming that the voter's residency of record is in
3 Montana."

4

5 **Section 10.** Section 13-37-128, MCA, is amended to read:

6 **"13-37-128. Cause of action created.** (1) A person who intentionally or negligently violates any of the
7 reporting provisions of this chapter, a provision of 13-35-225, or a provision of Title 13, chapter 35, part 4, is
8 liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in
9 13-37-124 and 13-37-125 for an amount up to \$500 or three times the amount of the unlawful contributions or
10 expenditures, whichever is greater.

11 (2) A person who makes or receives a contribution or expenditure in violation of 13-35-227, 13-35-
12 228, or this chapter or who violates 13-35-226 is liable in a civil action brought by the commissioner or a county
13 attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to \$500 or three
14 times the amount of the unlawful contribution or expenditure, whichever is greater.

15 (3) A person who violates the provisions of 13-37-502 is liable in a civil action brought by the
16 commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an
17 amount up to \$500 or three times the amount of the unlawful disbursement, contribution, expenditure, or
18 promise, whichever is greater.

19 (4) If any part of [section 1] is violated through regulation, rule process, contract, agreement,
20 settlement, or executive order, the secretary of state or the governor, whichever is responsible for the violation,
21 is liable for any action taken in a civil action brought by the commissioner or county attorney pursuant to 13-37-
22 124. The statute of limitations for the violation is 6 years."

23

24 **Section 11.** Section 13-37-130, MCA, is amended to read:

25 **"13-37-130. Limitation of action.** An action may not be brought under 13-37-128 and 13-37-129
26 more than ~~4 years~~ 6 years after the occurrence of the facts that give rise to the action. No more than one
27 judgment against a particular defendant may be had on a single state of facts. The civil action created in 13-37-
28 128 and 13-37-129 is the exclusive remedy for violation of the contribution, expenditure, and reporting

1 provisions of this chapter. These provisions are not subject to the misdemeanor penalties of 13-35-103 but may
2 be a ground for contest of election or removal from office as provided in 13-35-106(3) and Title 13, chapter 36."

3
4 NEW SECTION. Section 12. Codification instruction. [Section 1] is intended to be codified as an
5 integral part of Title 13, chapter 15, part 2, and the provisions of Title 13, chapter 15, part 2, apply to [section 1].

6
7 NEW SECTION. Section 13. Effective date. [This act] is effective on passage and approval.

8 - END -