



Montana Legislative Services Division
Legal Services Office

TO: State Administration and Veterans' Affairs Interim Committee

FROM: K. Virginia Aldrich

DATE: May 10, 2022 (UPDATED)

RE: Legislative Administrative Rule Review Report

Pursuant to 5-5-228, MCA, the State Administration and Veterans' Affairs Interim Committee is responsible for reviewing administrative rules within its jurisdiction. Staff for the State Administration and Veterans' Affairs Interim Committee has prepared this report for informational purposes only. This report does not represent any action or opinion of the State Administration and Veterans' Affairs Interim Committee and does not preclude additional action that may be taken by the State Administration and Veterans' Affairs Interim Committee pursuant to its authority under the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

MAR NOTICE NUMBER: 44-2-255

AGENCY/BOARD: Secretary of State

RULE CLASSIFICATION: (e.g., substantive/interpretive/emergency/temporary): Substantive

SUBJECT: Election Security and the Examination of Voting Machines and Devices

NOTICE DESCRIPTION: (e.g., proposal notice/adoption notice): Notice of Public Hearing on Proposed Adoption and Amendment

SUMMARY OF RULE(S):

The Secretary of State proposes to adopt five new rules pertaining to election security and amend one rule relating to the examination of voting machines and devices. The rules implement HB 530, which required the Secretary of State to adopt rules defining and governing election security. HB 530 was originally brought in response to recommendations stemming from a 2020 legislative audit by the Legislative Audit Division.

HB 530 has been challenged in district court. The legal arguments center around an amendment inserted into the bill on the Senate floor that are contained in section 2. While these rules concern the rule-making provided for in section 1 of the bill, on April 6, 2022, Judge Moses issued an order temporarily enjoining the enforcement of HB 530. The order provided that the Secretary of State was prohibited from "enforcing any aspect of . . . HB 530." However, in an order issued April 22, 2022, the Court clarified that the preliminary injunction applied only to section 2 of HB 530. Therefore, the Secretary of State is proceeding with the rulemaking proposal but with amended deadlines for public comment and a rescheduled hearing date.

New Rule I provides definitions for a new rule subchapter pertaining to election security,

including what security credentials are required for individuals who complete security assessments.

New Rule II provides that county election office security practices must be assessed annually based on specified security best practice frameworks and provided to the Secretary of State. The rule requires that assessments must be performed by an independent, third-party, qualified assessor once every three years. In other years, the assessments may be performed using specified self-assessments. The proposed rule also provides that security assessments are confidential and are prohibited from disclosure to the public.

New Rule III requires all county and state elections staff to complete a security awareness training provided by the Secretary of State at least once per year. Each county election administrator must maintain records concerning the completion of security awareness training by relevant staff pursuant to the relevant local government records retention schedule and must provide the Secretary of State with those records within 2 weeks after each annual training cycle. The proposed rule also provides that the Secretary of State may approve equivalent security awareness training on a case-by-case basis.

New Rule IV provides that a component used in a voting system must be physically secured "using tamperproof seals and access control." The proposed rule requires election administrators to maintain a chain of custody and a record of the chain of custody for components used in a voting system and for other controls (such as keys, cards, fobs, etc.) used to access election-related equipment or storage locations. The proposed rule requires chain of custody records be maintained according to the local government records retention schedule. In addition, proposed New Rule IV provides that ballot reconciliations must be performed prior to a county canvass and that the records must be maintained pursuant to applicable federal or local government records retention schedules. The proposed rule also recommends, but does not require, that rooms where ballots are opened, processed, tabulated, or hand counted be surveilled while the activities are being performed and maintained pursuant to applicable federal or local government records retention schedules.

New Rule V provides that components used within a voting system may not be connected to a computer network at any time. In addition, the rule requires any computing devices used by county elections staff that are connected to a network to have updated endpoint detection and response tools or updated antivirus software installed.

Proposed amendments to one rule update the rule's definitions relating to voting machines and devices. These changes were proposed in response to the Legislative Audit Division's August 2020 report that noted related definitions in ARM 44.3.1701 were not consistent with relevant statutory definitions.

NOTES: A public hearing will be held on June 3, 2022, at 10:00 a.m., Secretary of State's Office

Conference Room, Room 260, State Capitol Building, Helena, Montana. The public comment period ends on June 10, 2022.

FULL TEXT OF NOTICE: The full text of the original proposal notice and the amended proposal may be found online at https://rules.mt.gov/gateway/Cycle_Home.asp?CID=3436.