



Montana Legislative Services Division

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TO: State Administration and Veterans' Affairs Interim Committee

FROM: Andria Hardin

DATE: January 5, 2024

RE: Legislative Administrative Rule Review Report

Pursuant to 5-5-228, MCA, 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: 44-2-273

AGENCY/BOARD: Secretary of State

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

SUBJECT: Postelection Audit Processes for Federal and Nonfederal Elections

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

SUMMARY OF RULE(S): The Secretary of State proposes one new rule, one amendment to a rule, and the repeal of two rules.

Section 1 of House Bill 172 (2023) (codified as 13-17-510, MCA) provided a new statute authorizing the board of county commissions to request a random sample audit of vote counting machines after a nonfederal election, while Section 3 amended 13-17-503, MCA providing for postelection audits that apply only to federal elections. This delineation is the purpose behind the proposed New Rule I, which sets out the process and requirements of a random postelection audit after a nonfederal election, categorized by either precincts or ballot styles, races and ballot issues, or vote counting machines (if applicable). The rule also requires the selection of category to be audited to be made in a public meeting and the appointment of individuals to an audit committee, which will conduct the audit, the results of which must be reported to the Secretary of State on an approved form.

The Secretary of State proposes to amend ARM 44.3.1719 to reflect changes in law pursuant to SB 254 (2023), SB 197 (2023), and HB 172 (2023). This rule is currently titled Selection Process for Random-Sample Audit. The amendment seeks to retitle the rule to Postelection Audit Process for a Federal Election, to again differentiate between federal and nonfederal election audits resulting from HB 172. The amendment also removes the exemption from postelection audit for counties that tabulate their votes by hand (pursuant to SB 254 (2023)) and

provides the process for audits in such circumstances. The amendment also seeks to implement SB 197 (2023), which increased the number of races included in the postelection audit. The proposed amendment also provides for a statistically random technique for auditing any countywide race and updates the selection process for precincts, races, and ballot issues to be audited so that the process is more easily understood.

The Secretary of State proposes to repeal ARM 44.3.1718 and ARM 44.3.1720. ARM 44.3.1718 contains two definitions that are now obsolete and ARM 44.3.1720 is proposed in subsection (12) of the amendment to ARM 44.3.1719.

NOTES: A public hearing will be held on January 16, 2024 at 3:00 p.m. in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana. The public comment period ends on January 19, 2024 at 5:00 p.m.

STAFF COMMENT: None.

FULL TEXT OF NOTICE: The full text of the proposal notice may be found online at https://rules.mt.gov/gateway/Cycle_Home.asp?CID=3774