

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE USE OF ELECTRONIC VOTE TABULATION  
5 SYSTEMS; AMENDING SECTIONS 13-1-101, 13-1-303, 13-4-203, 13-12-202, 13-13-241, 13-15-206, 13-17-  
6 101, 13-17-103, 13-17-211, 13-17-502, 13-17-505, AND 13-17-508, MCA; REPEALING SECTIONS 13-15-209,  
7 13-17-503, 13-17-504, 13-17-506, 13-17-507, AND 13-17-509, MCA; AND PROVIDING AN IMMEDIATE  
8 EFFECTIVE DATE."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11  
12 NEW SECTION. **Section 1. Electronic vote tabulation prohibited.** (1) Except as provided in  
13 subsection (2), all ballots cast in the state must be counted manually.

14 (2) Nothing in this section is intended to limit:

15 (a) the rights of a disabled elector to use a voter interface device in order to vote in accordance with  
16 13-3-208; or

17 (b) the use of an electronic vote system to cast a vote using a vote system approved and used in  
18 accordance with this chapter.

19  
20 **Section 2.** Section 13-1-101, MCA, is amended to read:

21 "**13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the  
22 following definitions apply:

23 (1) "Active elector" means an elector whose name has not been placed on the inactive list due to  
24 failure to respond to confirmation notices pursuant to 13-2-220 or 13-19-313.

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

26 (3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that  
27 is ordinarily not given away free but is purchased.

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

1 state that is completed and signed by an elector, is submitted to the election administrator, and contains voter  
2 registration information subject to verification as provided by law.

3 (5) "Ballot" means a paper ballot counted manually or a ballot cast by a disabled elector using a voter  
4 interface device ~~or a paper ballot counted by a machine, such as an optical scan system or other technology~~  
5 ~~that automatically tabulates votes cast by processing the paper ballots.~~

6 (6) (a) "Ballot issue" or "issue" means a proposal submitted to the people at an election for their  
7 approval or rejection, including but not limited to an initiative, referendum, proposed constitutional amendment,  
8 recall question, school levy question, bond issue question, or ballot question.

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

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

15 (8) "Candidate" means:

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

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

23 (i) solicitation is made;

24 (ii) contribution is received and retained; or

25 (iii) expenditure is made; or

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

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

28 (i) the receipt by a candidate or a political committee of an advance, gift, loan, conveyance, deposit,

- 1 payment, or distribution of money or anything of value to support or oppose a candidate or a ballot issue;
- 2 (ii) an expenditure, including an in-kind expenditure, that is made in coordination with a candidate or
- 3 ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution;
- 4 (iii) the receipt by a political committee of funds transferred from another political committee; or
- 5 (iv) the payment by a person other than a candidate or political committee of compensation for the
- 6 personal services of another person that are rendered to a candidate or political committee.

7 (b) The term does not mean services provided without compensation by individuals volunteering a

8 portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by

9 individuals in their private residences for a candidate or other individual.

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

11 (10) "Coordinated", including any variations of the term, means made in cooperation with, in

12 consultation with, at the request of, or with the express prior consent of a candidate or political committee or an

13 agent of a candidate or political committee.

14 (11) "De minimis act" means an action, contribution, or expenditure that is so small that it does not

15 trigger registration, reporting, disclaimer, or disclosure obligations under Title 13, chapter 35 or 37, or warrant

16 enforcement as a campaign practices violation under Title 13, chapter 37.

17 (12) "Election" means a general, special, or primary election held pursuant to the requirements of state

18 law, regardless of the time or purpose.

19 (13) (a) "Election administrator" means, except as provided in subsection (13)(b), the county clerk and

20 recorder or the individual designated by a county governing body to be responsible for all election

21 administration duties, except that with regard to school elections not administered by the county, the term

22 means the school district clerk.

23 (b) As used in chapter 2 regarding voter registration, the term means the county clerk and recorder or

24 the individual designated by a county governing body to be responsible for all election administration duties

25 even if the school election is administered by the school district clerk.

26 (14) (a) "Election communication" means the following forms of communication to support or oppose a

27 candidate or ballot issue:

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

- 1 (ii) paid placement of content on the internet or other electronic communication network;
- 2 (iii) a paid advertisement published in a newspaper or periodical or on a billboard;
- 3 (iv) a mailing; or
- 4 (v) printed materials.
- 5 (b) The term does not mean:
- 6 (i) an activity or communication for the purpose of encouraging individuals to register to vote or to
- 7 vote, if that activity or communication does not mention or depict a clearly identified candidate or ballot issue;
- 8 (ii) a communication that does not support or oppose a candidate or ballot issue;
- 9 (iii) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any
- 10 broadcasting station, newspaper, magazine, internet website, or other periodical publication of general
- 11 circulation;
- 12 (iv) a communication by any membership organization or corporation to its members, stockholders, or
- 13 employees; or
- 14 (v) a communication that the commissioner determines by rule is not an election communication.
- 15 (15) "Election judge" means a person who is appointed pursuant to Title 13, chapter 4, part 1, to
- 16 perform duties as specified by law.
- 17 (16) (a) "Electioneering communication" means a paid communication that is publicly distributed by
- 18 radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other
- 19 distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does
- 20 not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the
- 21 district voting on the candidate or ballot issue, and that:
- 22 (i) refers to one or more clearly identified candidates in that election;
- 23 (ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that
- 24 election; or
- 25 (iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.
- 26 (b) The term does not mean:
- 27 (i) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any
- 28 broadcasting station, newspaper, magazine, internet website, or other periodical publication of general

- 1 circulation unless the facilities are owned or controlled by a candidate or political committee;
- 2 (ii) a communication by any membership organization or corporation to its members, stockholders, or
- 3 employees;
- 4 (iii) a commercial communication that depicts a candidate's name, image, likeness, or voice only in the
- 5 candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy;
- 6 (iv) a communication that constitutes a candidate debate or forum or that solely promotes a candidate
- 7 debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or
- 8 (v) a communication that the commissioner determines by rule is not an electioneering
- 9 communication.
- 10 (17) "Elector" means an individual qualified to vote under state law.
- 11 (18) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or
- 12 gift of money or anything of value:
- 13 (i) made by a candidate or political committee to support or oppose a candidate or a ballot issue; or
- 14 (ii) used or intended for use in making independent expenditures or in producing electioneering
- 15 communications.
- 16 (b) The term does not mean:
- 17 (i) services, food, or lodging provided in a manner that they are not contributions under subsection
- 18 (9);
- 19 (ii) payments by a candidate for personal travel expenses, food, clothing, lodging, or personal
- 20 necessities for the candidate and the candidate's family;
- 21 (iii) the cost of any bona fide news story, commentary, blog, or editorial distributed through the facilities
- 22 of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or
- 23 (iv) the cost of any communication by any membership organization or corporation to its members or
- 24 stockholders or employees.
- 25 (c) This definition does not apply to Title 13, chapter 37, part 6.
- 26 (19) "Federal election" means an election in even-numbered years in which an elector may vote for
- 27 individuals for the office of president of the United States or for the United States congress.
- 28 (20) "General election" means an election that is held for offices that first appear on a primary election

1 ballot, unless the primary is canceled as authorized by law, and that is held on a date specified in 13-1-104.

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

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

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

8 (b) For the purpose of this subsection (23), the primary purpose is determined by the commissioner  
9 by rule and includes criteria such as the allocation of budget, staff, or members' activity or the statement of  
10 purpose or goal of the person or individuals that form the committee.

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

15 (25) "Independent expenditure" means an expenditure for an election communication to support or  
16 oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue  
17 committee.

18 (26) "Individual" means a human being.

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

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

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

26 (30) "Place of deposit" means a location designated by the election administrator pursuant to 13-19-  
27 307 for a mail ballot election conducted under Title 13, chapter 19.

28 (31) (a) "Political committee" means a combination of two or more individuals or a person other than

1 an individual who receives a contribution or makes an expenditure:

2 (i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a  
3 petition for nomination;

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

5 (iii) to prepare or disseminate an election communication, an electioneering communication, or an  
6 independent expenditure.

7 (b) Political committees include ballot issue committees, incidental committees, independent  
8 committees, and political party committees.

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

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

13 (32) "Political party committee" means a political committee formed by a political party organization  
14 and includes all county and city central committees.

15 (33) "Political party organization" means a political organization that:

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

17 or

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

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

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

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

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

28 (38) "Provisionally registered elector" means an individual whose application for voter registration was

1 accepted but whose identity or eligibility has not yet been verified as provided by law.

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

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

6 (41) "Registrar" means the county election administrator and any regularly appointed deputy or  
7 assistant election administrator.

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

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

10 (44) "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 (45) "School recount board" means the board authorized pursuant to 20-20-420 to perform recount  
13 duties in school elections.

14 (46) "Signature envelope" means an envelope that contains a secrecy envelope and ballot and that is  
15 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 (47) "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 (48) "Special purpose district" means an area with special boundaries created as authorized by law for  
22 a specialized and limited purpose.

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

25 (50) "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 (51) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in  
7 13-15-206.

8 (52) "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 (53) "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 selections;

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

21 (b) The term does not include a machine, device, technology, or equipment used to electronically  
22 tabulate an elector's vote."

23

24 **Section 3.** Section 13-1-303, MCA, is amended to read:

25 **"13-1-303. Disposition of ballots and other election materials.** (1) (a) Except for a federal election  
26 and as provided in 13-15-301(2), the voted ballots, detached stubs, unvoted ballots, and unused ballots from an  
27 election must be kept in the unopened packages received from the election judges for a period of 12 months.

28 The packages may be opened only when an order for opening is given by the proper official either for a recount

1 procedure or to process provisional ballots.

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

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

8 (i) contest begun;

9 (ii) recount pending; or

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

11 (2) Each election administrator shall prepare a plan for retention and destruction of election records in  
12 the county according to the retention schedules established by the local government records committee  
13 provided for in 2-6-1201."  
14

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

16 **"13-4-203. Instruction of judges -- training materials.** (1) Before each election, all election judges  
17 must be instructed by the election administrator on current procedures as prescribed by the secretary of state.  
18 ~~In precincts where voting systems are used, instructions~~ Instructions must cover ~~both how to operate the voting~~  
19 ~~system and how to manually process any paper ballots~~ and how to use voting systems, if used to cast ballots.

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

23 (3) Any individual willing to be appointed as an election judge may attend an instruction session by  
24 registering with the election administrator. However, the individual may not be paid for attendance unless the  
25 individual is appointed as an election judge.

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

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

3 (6) Notice of the place and time of instruction must be given by the election administrator to the  
4 presiding officers of the political parties in the county."  
5

6 **Section 5.** Section 13-12-202, MCA, is amended to read:

7 **"13-12-202. Ballot form and uniformity.** (1) The secretary of state shall adopt statewide uniform  
8 rules that prescribe the ballot form for each type of ballot used in this state. The rules must conform to the  
9 provisions of this title ~~unless the voting system used clearly requires otherwise~~. At a minimum, the rules must  
10 address:

- 11 (a) the manner in which each type of ballot may be corrected under 13-12-204;
  - 12 (b) what provisions must be made on the ballot for write-in candidates;
  - 13 (c) the size and content of stubs on paper ballots, except as provided in 13-19-106(1);
  - 14 (d) how unvoted ballots must be handled;
  - 15 (e) how the number of individuals voting and the number of ballots cast must be recorded; and
  - 16 (f) the order and arrangement of ~~voting system~~ ballots.
- 17 (2) The names of all candidates that appear on the face of a ballot must appear in the same font size  
18 and style.
- 19 (3) Notwithstanding 13-19-106(1) and except as provided in 13-3-208, when the stubs are detached,  
20 it must be impossible to distinguish any one of the ballots from another ballot for the same office or issue.
- 21 (4) The ballots must contain the name of each candidate whose nomination is certified under law for  
22 an office and no other names, except that the names of candidates for president and vice president of the  
23 United States must appear on the ballot as provided in 13-25-101(5)."  
24

25 **Section 6.** Section 13-13-241, MCA, is amended to read:

26 **"13-13-241. Examination of absentee ballot signature envelopes -- deposit of absentee and**  
27 **unvoted ballots -- rulemaking.** (1) (a) Upon receipt of each absentee ballot signature envelope, an election  
28 administrator shall compare the signature of the elector or elector's agent on the absentee ballot request or on

1 the elector's voter registration form with the signature on the signature envelope.

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

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

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

12 (iii) If voter identification or eligibility information was not enclosed or the information enclosed is  
13 insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.

14 (2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator  
15 shall place the ballot in a secrecy envelope without examining the ballot.

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

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

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

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

25 (7) (a) Except as provided in subsection (8), after receiving an absentee ballot secrecy envelope and  
26 if the validity of the ballot is confirmed pursuant to 13-13-245, then no sooner than 3 business days before  
27 election day, the election official may open the secrecy envelope and place the ballot in the proper, secured  
28 ballot box until tabulation occurs. ~~Automatic tabulation using a vote counting machine may not begin sooner~~

1 ~~than 1 day before election day.~~ Tabulation using a manual count may not begin until election day.

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

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

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

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

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

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

17 (a) the allowable distance from the observers to the judges and ballots;

18 (b) the security in the observation area;

19 (c) secrecy of votes during the preparation of the ballots; and

20 (d) security of the secured ballot boxes in storage until tabulation procedures begin."

21

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

23 **"13-15-206. Counting votes -- uniformity -- rulemaking -- definitions.** (1) When conducting vote  
24 counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and  
25 determine the validity of each vote in a uniform manner as provided in this section.

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

27 (a) One election judge on the board shall read the ballot while the two other judges on the board shall  
28 each record on an official tally sheet the number of valid votes cast for each individual or ballot issue. Write-in

1 votes must be counted in accordance with subsection (5) and rules adopted pursuant to subsection (7). If a  
 2 vote has not been cast according to instructions, the vote must be considered questionable and the entire ballot  
 3 must be set aside and votes on the ballot must be handled as provided in subsection (4).

4 (b) (i) After the vote count is complete, the tally sheets of the two judges recording the votes must be  
 5 compared.

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

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

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

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

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

11 (iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2)  
 12 until the two tallies match.

13 (3) (a) ~~When a voting system is counting votes~~ ballots are being manually counted:

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

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

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

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

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

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

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

28 (ii) If a majority of the counting board members agree that under the rules the voter's intent can be

1 clearly determined, the vote is valid and must be counted according to the voter's intent.

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

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

7 (5) A write-in vote may be counted only if:

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

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

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

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

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

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

19 (a) the security of the counting process against fraud;

20 (b) the place and time and public notice of each count or recount;

21 (c) public observance of each count or recount, including observance by representatives authorized  
22 under 13-16-411;

23 (d) the recording of objections to determinations on the validity of an individual vote or to the entire  
24 counting process; and

25 (e) the keeping of a public record of count or recount proceedings.

26 (9) For purposes of this section, "overvote" means an elector's vote that has been interpreted by the  
27 voting system as an elector casting more votes than allowable for a particular office or ballot issue."

28

1           **Section 8.** Section 13-17-101, MCA, is amended to read:

2           **"13-17-101. Secretary of state to approve voting systems.** (1) A voting system may not be used for  
3 any election in this state unless the system is approved by the secretary of state as provided in this section and  
4 used solely for use by an elector to cast a vote, not for the tabulation of election results.

5           (2) The secretary of state shall:

6           (a) examine a voting system proposed for use to determine if it complies with the requirements of 13-  
7 17-103;

8           (b) within 30 days after examining the voting system, file a report of the examination in the secretary  
9 of state's office;

10           (c) include in the report the reasons for the voting system's approval or disapproval and the secretary  
11 of state's opinion about the economic and procedural impact that the voting system's use or nonuse may have  
12 on the various counties of this state; and

13           (d) within 5 days after filing the report, transmit to each election administrator, including school  
14 election administrators for elections under Title 20, chapter 20, a copy of the report.

15           (3) Voting systems may not be used in an election unless approved by the secretary of state 60 days  
16 or more prior to the election at which they will be used."

17

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

19           **"13-17-103. Required specifications for voting systems.** (1) A voting system may not be approved  
20 under 13-17-101 unless the voting system:

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

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

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

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

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

28           (f) allows each valid vote cast to be registered, ~~and~~ recorded, and printed for manual tabulation ~~within~~



- 1 ~~the performance standards adopted pursuant to subsection (3);~~
- 2 (g) is protected from tampering for a fraudulent purpose;
- 3 (h) prevents an individual from seeing or knowing the number of votes registered for any candidate or
- 4 on any ballot issue during the progress of voting;
- 5 (i) allows write-in voting;
- 6 (j) will, if purchased by a jurisdiction within the state, be provided with a guarantee that the training
- 7 and technical assistance will be provided to election officials under the contract for purchase of the voting
- 8 system; and
- 9 (k) uses a paper ballot that allows votes to be manually counted; ~~and~~
- 10 ~~(l) allows auditors to access and monitor any software program while it is running on the system to~~
- 11 ~~determine whether the software is running properly.~~
- 12 (2) A voter interface device may not be approved for use in this state unless:
- 13 (a) the device meets the electronic security standards adopted by the secretary of state;
- 14 (b) the device provides accessible voting technology for electors with hearing, vision, speech, or
- 15 ambulatory impairments;
- 16 (c) the device meets all requirements specified in subsection (1);
- 17 (d) the device has been made available for demonstration and use by electors with disabilities in at
- 18 least one public event held by the secretary of state; and
- 19 (e) disabled electors have been able to participate in the process of determining whether the system
- 20 meets accessibility standards.
- 21 (3) To implement the provisions of subsection (1)(f), the secretary of state shall adopt rules setting a
- 22 benchmark performance standard that must be met in tests by each voting system prior to approval under 13-
- 23 17-101. The standard must be based on commonly accepted industry standards for readily available
- 24 technologies."

25

26 **Section 10.** Section 13-17-211, MCA, is amended to read:

27 **"13-17-211. Uniform procedures for using voting systems.** (1) For each voting system approved

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

1 elections conducted with the voting system and ensure that the voting system is not used to allow for electronic  
2 vote tabulation.

3 (2) The rules must, at a minimum, specify procedures that address the following:

4 (a) performance testing and certification under 13-17-212;

5 (b) how electors ensure the proper disposition of a ballot pursuant to 13-13-117(2);

6 (c) the procedures to be followed if the comparison under 13-15-206(2)(b) reveals discrepancies;

7 (d) how to operate and test the system during counts; and

8 (e) the security measures necessary to secure the voting system before, during, and after an  
9 election."

10

11 **Section 11.** Section 13-17-502, MCA, is amended to read:

12 "**13-17-502. Definitions.** As used in this part, ~~the following definitions apply:~~

13 ~~(1) "Computer "computer software expert" means a person who has obtained a bachelor of science~~  
14 ~~degree in computer science with expertise in software engineering and who is not affiliated with an election~~  
15 ~~software vendor.~~

16 ~~(2) "County audit committee" means the committee that conducts a random-sample audit in a county.~~

17 ~~(3) "Vote counting machine" means an individual piece of equipment used to automatically tabulate~~  
18 ~~votes."~~

19

20 **Section 12.** Section 13-17-505, MCA, is amended to read:

21 "**13-17-505. Selection process for random-sample audit.** (1) No sooner than 7 days after the  
22 election and no later than 9 days after the election, the state board of canvassers, ~~pursuant to 13-17-503 and~~  
23 ~~as established by rule, shall randomly select:~~

24 (a) the races and ballot issue to be audited;

25 (b) the precincts to be audited in each county; and

26 (c) three additional precincts in each county that would be audited if a discrepancy in vote tallies  
27 occurs ~~and results in the need to audit additional precincts pursuant to 13-17-507.~~

28 (2) The selection process must be open to the public.

1 (3) After selecting the precincts, races, and ballot issue for the random-sample audit, the state board  
2 of canvassers shall direct the secretary of state to:

3 (a) notify each county election administrator of the selections; and

4 (b) make a list of the selections available electronically."  
5

6 **Section 13.** Section 13-17-508, MCA, is amended to read:

7 **"13-17-508. Reimbursement of county costs.** ~~(1) Except as provided in subsection (2), the~~ The  
8 secretary of state shall reimburse each county for any costs incurred in implementing the provisions of this part.

9 ~~(2) A vendor who supplies a vote-counting machine that was purchased after October 1, 2009, and~~  
10 ~~that fails an audit due to software or machine defects or vendor employee error shall pay the costs incurred for~~  
11 ~~the audit of vote-counting machines in the affected county. The provisions of this subsection must be reflected~~  
12 ~~in the contract for the purchase of vote-counting machines."~~  
13

14 NEW SECTION. **Section 14. Repealer.** The following sections of the Montana Code Annotated are  
15 repealed:

- 16 13-15-209. Handling voting system error during count.
- 17 13-17-503. Random-sample audit of vote-counting machines required -- rulemaking authority.
- 18 13-17-504. County audit committee -- membership -- oath required.
- 19 13-17-506. Conduct of random-sample audit.
- 20 13-17-507. Discrepancies -- substitution of results -- examination of machines.
- 21 13-17-509. Vote-counting machine maintenance -- examination.

22  
23 NEW SECTION. **Section 15. Notification to tribal governments.** The secretary of state shall send a  
24 copy of [this act] to each federally recognized tribal government in Montana.  
25

26 NEW SECTION. **Section 16. Codification instruction.** [Section 1] is intended to be codified as an  
27 integral part of Title 13, chapter 17, and the provisions of Title 13, chapter 17, apply to [section 1].  
28

