

HOUSE BILL NO. 812

INTRODUCED BY L. HELLEGAARD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ELECTION LAWS RELATED TO TRANSCRIBED BALLOTS; REQUIRING AN AUDIT OF TRANSCRIBED BALLOTS DURING THE COUNTY AND STATE CANVASS; PROVIDING A PROCESS FOR THE TRANSCRIPTION OF CERTAIN BALLOTS; AND AMENDING SECTIONS 13-13-246, 13-15-206, AND 13-21-226, MCA."

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

NEW SECTION. **Section 1. Audit of transcribed ballots.** An audit must be conducted on all transcribed ballots during the county and state canvass provided for in Title 13, chapter 15, parts 3 and 4. The election officials conducting the audit may not be the same as the election officials who transcribed the ballot. The audit must be open to the public with poll watchers located where the poll watchers can easily see the ballots and any supporting documents, such as signature envelopes.

**Section 2.** Section 13-13-246, MCA, is amended to read:

**"13-13-246. Electronic ballots for disabled persons -- procedures -- definition -- rulemaking. (1)**

(a) Upon a written or an in-person request from a legally registered or provisionally registered elector with a disability, an election administrator shall provide the elector with an electronic ballot.

(b) The request may be made by electronic mail.

(2) (a) After receiving a request and verifying that the elector is legally registered or provisionally registered, the election administrator shall provide to the elector an electronic ballot, instructions for completing the ballot, a secrecy envelope or page, and a transmittal cover sheet that includes an elector affirmation. If the elector is provisionally registered, the election administrator shall include instructions about what information the elector shall include with the voted ballot pursuant to 13-13-201(4).

(b) The election administrator shall maintain an official log of all ballots provided pursuant to this section.

1 (c) After voting the ballot, the elector shall print the ballot, place it in the secrecy envelope or under  
2 the secrecy page, sign the affirmation, including by fingerprint, mark, or agent pursuant to 13-1-116, or provide  
3 a driver's license number or the last four digits of the elector's social security number. If the elector is  
4 provisionally registered, the elector shall also return sufficient voter identification and eligibility information to  
5 allow the election administrator to determine pursuant to rules adopted under 13-2-109 that the elector is legally  
6 registered. The elector shall return the voted ballot and affirmation in a manner that ensures both are received  
7 by 8 p.m. on election day.

8 (d) An elector may return the voted ballot and affirmation in the regular mail provided they are  
9 received at the office of the election administrator by 8 p.m. on election day. A valid ballot must be counted if it  
10 is received at the office of the election administrator by 8 p.m. on election day.

11 (3) After receiving a ballot and secrecy envelope and if the validity of the ballot is confirmed  
12 pursuant to 13-13-241, the election administrator shall log the receipt of the ballot and process it as required in  
13 Title 13, chapter 13. If the ballot is rejected, the election administrator shall notify the elector pursuant to 13-13-  
14 245.

15 (4) (a) When performing the procedures prescribed in 13-13-241(7) to open secrecy envelopes, an  
16 election official shall place in a secure absentee ballot envelope any ballot returned pursuant to this section that  
17 requires transcription. No sooner than the time provided in 13-13-241(7), the election administrator shall  
18 transcribe the returned ballots using the procedure prescribed below and in accordance with any rules  
19 established by the secretary of state to ensure the security of the ballots and the secrecy of the votes.

20 (b) No fewer than three election officials, as provided in 13-4-102, shall participate in the  
21 transcription process to transfer the elector's vote from the received ballot to the standard ballot used in the  
22 precinct.

23 (c) A number must be written on the secrecy envelope ~~or~~ and page that contains the original voted  
24 electronic ballot, and the same number must be placed on the transcribed ballot and in the official log.

25 (d) The election officials who transcribed the original voted electronic ballot shall sign the log next  
26 to the number.

27 (e) No one participating in the ballot transmission process may reveal any information about the  
28 ballot.

1 (5) The secretary of state shall adopt rules to implement and administer this section, including  
2 rules to ensure the security of the ballots and the secrecy of the votes."

3

4 **Section 3.** Section 13-15-206, MCA, is amended to read:

5 **"13-15-206. Counting votes -- uniformity -- rulemaking -- definitions.** (1) When conducting vote  
6 counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and  
7 determine the validity of each vote in a uniform manner as provided in this section.

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

9 (a) One election judge on the board shall read the ballot while the two other judges on the board  
10 shall each record on an official tally sheet the number of valid votes cast for each individual or ballot issue.  
11 Write-in votes must be counted in accordance with subsection (5) and rules adopted pursuant to subsection (7).  
12 If a vote has not been cast according to instructions, the vote must be considered questionable and the entire  
13 ballot must be set aside and votes on the ballot must be handled as provided in subsection (4).

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

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

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

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

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

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

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

23 (3) (a) When a voting system is counting votes:

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

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

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

27 (b) If the voting system cannot process the ballot because of the ballot's condition or if the voting  
28 system registers an unmarked ballot or an overvote, which must be considered a questionable vote, the entire

1 ballot must be set aside and the votes on the ballot must be counted as provided in subsection (4).

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

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

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

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

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

13 (b) If a ballot was set aside under subsection (3)(b) because it could not be processed by the  
14 voting system due to the ballot's condition, the counting board shall ~~transfer~~ transcribe all valid votes to a new  
15 ballot that can be processed by the voting system- using the following process:

16 (i) No fewer than three election officials, as provided in 13-4-102, shall participate in the  
17 transcription process to transfer the elector's vote from the received ballot to the standard ballot used in the  
18 precinct.

19 (ii) A number must be written on the secrecy envelope and page that contains the original voted  
20 electronic ballot. The same number must be placed on the transcribed ballot and in the official log.

21 (iii) The election officials who transcribed the original voted electronic ballot shall sign the log next  
22 to the number.

23 (iv) No one participating in the ballot transcription process may reveal any information about the  
24 ballot.

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

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

27 (ii) pursuant to 13-10-211(7), a declaration of nomination was not filed and the write-in vote

28 identifies an individual who is qualified for the office; and

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

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

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

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

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

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

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

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

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

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

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19 **Section 4.** Section 13-21-226, MCA, is amended to read:

20 **"13-21-226. Receipt of voted ballot.** (1) A valid military-overseas ballot must be counted if it is  
21 received by 8 p.m. on election day or by 5 p.m. on the day after election day if transmitted electronically by 8  
22 p.m. on election day.

23 (2) Voted ballots transmitted electronically by 8 p.m. on election day and received by 5 p.m. on the  
24 day after election day must be counted at the same time as provisional ballots are counted.

25 (3) When performing the procedures described in 13-13-241(7) to open a secrecy envelope, an  
26 election official shall place a ballot returned pursuant to this section that requires transcription in a secure  
27 absentee ballot envelope. No sooner than the time provided in 13-13-241(7), the election administrator shall  
28 transcribe the returned ballots using the procedure prescribed in subsection (4) of this section and in

1 accordance with any rules established by the secretary of state to ensure the secrecy of the ballots and the  
2 secrecy of the vote.

3 (4) If a ballot was set aside under 13-15-206(3)(b) because it could not be processed by the voting  
4 system due to the ballot's condition, the counting board shall transcribe all valid votes to a new ballot that can  
5 be processed by the voting system using the following process:

6 (a) No fewer than three election officials, as provided in 13-4-102, shall participate in the  
7 transcription process to transfer the elector's vote from the received ballot to the standard ballot used in the  
8 precinct.

9 (b) A number must be written on the secrecy envelope and page that contains the original voted  
10 electronic ballot. The same number must be placed on the transcribed ballot and in the official log.

11 (c) The election officials who transcribed the original voted electronic ballot shall sign the log next  
12 to the number.

13 (d) No one participating in the ballot transcription process may reveal any information about the  
14 ballot."

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

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19 NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are  
20 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
21 the part remains in effect in all valid applications that are severable from the invalid applications.

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