

HOUSE BILL NO. 109

INTRODUCED BY SWYSGOOD, CAMPBELL, PATTERSON, DAILY, THOMAS,
MEYERS, GLASER, JENKINS, ANDERSON, WALKER

IN THE HOUSE

JANUARY 8, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON STATE ADMINISTRATION.

JANUARY 13, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 14, 1987 PRINTING REPORT.

JANUARY 15, 1987 ON MOTION, CONSIDERATION PASSED FOR
THE DAY.

 ON MOTION, TAKEN FROM SECOND READING
AND REREFERRED TO COMMITTEE
ON STATE ADMINISTRATION.

JANUARY 21, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 22, 1987 PRINTING REPORT.

JANUARY 23, 1987 SECOND READING, DO PASS.

JANUARY 24, 1987 ENGROSSING REPORT.

 THIRD READING, PASSED.

 TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 26, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON STATE ADMINISTRATION.

JANUARY 31, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

FEBRUARY 4, 1987 SECOND READING, CONCURRED IN.

FEBRUARY 6, 1987

THIRD READING, CONCURRED IN.
AYES, 49; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

FEBRUARY 9, 1987

RECEIVED FROM SENATE.

SENT TO ENROLLING.

1 H.B. BILL NO. 109
 2 INTRODUCED BY Sen. Campbell, Paterson, Daily
 3 Thomas Al Meyers, M.E. Blum, Jackson, John H. Ancelet,
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A BOARD OF
 5 COUNTY CANVASSERS TO APPLY FOR A DISTRICT COURT ORDER Walker
 6 AUTHORIZING A RECOUNT IF THE BOARD FINDS AN ERROR AFFECTING
 7 THE ACCURACY OF VOTE TOTALS; AND AMENDING SECTIONS
 8 13-15-403, 13-16-301, 13-16-303, 13-16-306, AND 13-16-307,
 9 MCA."

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

12 Section 1. Section 13-15-403, MCA, is amended to read:

13 "13-15-403. Canvass to be public -- nonessentials to
 14 be disregarded -- application for recount order. (1) The
 15 canvass shall be public. It shall proceed by opening the
 16 returns, auditing the tally books or other records of votes
 17 cast, determining the vote for each individual and for and
 18 against each ballot issue from each precinct, compiling
 19 totals, and declaring or certifying the results.

20 (2) The board shall record all write-in votes shown in
 21 the returns from each precinct.

22 (3) The returns may not be rejected because of failure
 23 to show who administered the oath to the election judges,
 24 failure to complete all the certificates in a pollbook, or
 25 because of failure of any other act making up the returns

1 that is not essential to determine for whom the votes were
 2 cast.

3 (4) If during a canvass the board finds an error
 4 affecting the accuracy of vote totals, the board immediately
 5 shall apply for a court order for a recount as provided in
 6 13-16-301."

7 Section 2. Section 13-16-301, MCA, is amended to read:

8 "13-16-301. Application and court order for recount.

9 (1) (a) Within 5 days after the canvass of election returns,
 10 an unsuccessful candidate for any public office at an
 11 election may apply to the district court of the county where
 12 the election was held for an order directing the county
 13 recount board to make a recount of the votes cast in any or
 14 all of the precincts. If the election was held in more than
 15 one county, the application shall be made to the district
 16 court of the county where the candidate resides.

17 (b) Within 5 days after the canvass of election
 18 returns, an elector who was eligible to vote on the issue
 19 and who believes that there are grounds for a recount of the
 20 votes cast for and against a ballot issue may apply to the
 21 district court of the county where he resides for an order
 22 directing the appropriate county recount board to make a
 23 recount of the votes cast in any or all of the precincts.

24 (c) If during a canvass of election returns a board of
 25 county canvassers finds an error as provided in 13-15-403,



1 the board immediately shall apply to the district court of
 2 the county in which the board is the governing body for an
 3 order directing the county recount board to make a recount
 4 of the votes cast in any or all of the precincts.

5 (2) The application shall specify the grounds for a
 6 recount and be verified by the applicant that the matters
 7 contained in it are true to the best of the applicant's
 8 knowledge, information, and belief.

9 (3) Within 5 days after filing of the application, the
 10 judge shall hear the application and determine its
 11 sufficiency.

12 (4) If the judge finds there is probable cause to
 13 believe that the votes cast for ~~the applicant~~ a candidate or
 14 the a ballot issue were not correctly counted, he shall
 15 order the appropriate county recount board to assemble
 16 within 5 days after the order is issued at a time and place
 17 fixed by the order. The board shall meet and recount the
 18 ballots as specified in the order."

19 Section 3. Section 13-16-303, MCA, is amended to read:

20 "13-16-303. Presumption of incorrectness from failure
 21 to comply with provisions for counting votes. If it appears
 22 from a verified application that the election judges failed
 23 to comply with the provisions of 13-15-202, that is
 24 sufficient cause for believing that the election judges did
 25 not correctly ascertain the number of votes cast for the

1 applicant a candidate or ballot issue."

2 Section 4. Section 13-16-306, MCA, is amended to read:

3 "13-16-306. Procedure when more than one application
 4 for recount. If more than one ~~candidate~~ makes application
 5 for a recount is filed, the court may consider the
 6 applications together. The court may make separate or joint
 7 orders on the applications and apportion the expenses as
 8 defined in 13-16-307 between the applicants."

9 Section 5. Section 13-16-307, MCA, is amended to read:

10 "13-16-307. Expenses of court-ordered recount. (1) The
 11 court shall in its order determine the probable expense of
 12 making the recount, and, except as provided in subsection
 13 (6), the applicant or applicants asking for the recount
 14 shall deposit with the board the amount determined, in cash.

15 (2) If the recount shows that an applicant has been
 16 elected to office, the deposit of the applicant shall be
 17 returned to him.

18 (3) If the recount shows that an applicant has not
 19 been elected and the expense of the recount is greater than
 20 the estimated cost, the applicant shall pay the excess; but
 21 if the expense is less than the cost, the difference shall
 22 be refunded to the applicant.

23 (4) If the recount reverses the results of a ballot
 24 issue election, the deposit of the applicant shall be
 25 returned to him.

1 (5) If the recount does not reverse the results of a
2 ballot issue election and the expense of the recount is
3 greater than the estimated cost, the applicant shall pay the
4 excess; but if the expense is less than the cost, the
5 difference shall be refunded to the applicant.

6 (6) If the applicant is a board of county canvassers,
7 the expense of the recount shall be absorbed by the county."

-End-

RE-REFERRED AND
APPROVED BY COMMITTEE
ON STATE ADMINISTRATION

HOUSE BILL NO. 109

INTRODUCED BY SWYSGOOD, CAMPBELL, PATTERSON, DAILY, THOMAS,
MEYERS, GLASER, JENKINS, ANDERSON, WALKER

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PERMITTING A BOARD OF COUNTY CANVASSERS TO APPLY PETITION FOR A DISTRICT COURT ORDER AUTHORIZING A RECOUNT IF THE BOARD FINDS AN ERROR AFFECTING THE ACCURACY OF VOTE TOTALS; AND AMENDING SECTIONS 13-15-403, ~~13-16-301~~, ~~13-16-303~~, ~~13-16-306~~ 13-16-201, AND ~~13-16-307~~ 13-16-204, MCA."

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

Section 1. Section 13-15-403, MCA, is amended to read:

"13-15-403. Canvass to be public -- nonessentials to be disregarded -- application PETITION for recount order.

(1) The canvass shall be public. It shall proceed by opening the returns, auditing the tally books or other records of votes cast, determining the vote for each individual and for and against each ballot issue from each precinct, compiling totals, and declaring or certifying the results.

(2) The board shall record all write-in votes shown in the returns from each precinct.

(3) The returns may not be rejected because of failure to show who administered the oath to the election judges, failure to complete all the certificates in a pollbook, or

because of failure of any other act making up the returns that is not essential to determine for whom the votes were cast.

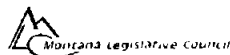
(4) If during a canvass the board finds an error IN A PRECINCT OR PRECINCTS affecting the accuracy of vote totals, the board immediately shall MAY apply--for--a--court--order PETITION for a recount OF THE VOTES CAST IN THE PRECINCT OR PRECINCTS, as provided in ~~13-16-301~~ 13-16-201."

~~Section 2--Section 13-16-301, MCA, is amended to read:~~

~~"13-16-301--Application and court order--for--recount:~~

~~(1)-(a) Within 5 days after the canvass of election returns, an unsuccessful candidate for any public office at an election may apply to the district court of the county where the election was held for an order directing the county recount board to make a recount of the votes cast in any or all of the precincts. If the election was held in more than one county, the application shall be made to the district court of the county where the candidate resides;~~

~~(b) Within 5 days after the canvass of election returns, an elector who was eligible to vote on the issue and who believes that there are grounds for a recount of the votes cast for and against a ballot issue may apply to the district court of the county where he resides for an order directing the appropriate county recount board to make a recount of the votes cast in any or all of the precincts;~~



1 (c) If during a canvass of election returns a board of
 2 county canvassers finds an error as provided in 13-15-403,
 3 the board immediately shall apply to the district court of
 4 the county in which the board is the governing body for an
 5 order directing the county recount board to make a recount
 6 of the votes cast in any or all of the precincts.

7 (2) The application shall specify the grounds for a
 8 recount and be verified by the applicant that the matters
 9 contained in it are true to the best of the applicant's
 10 knowledge, information, and belief.

11 (3) Within 5 days after filing of the application, the
 12 judge shall hear the application and determine its
 13 sufficiency.

14 (4) If the judge finds there is probable cause to
 15 believe that the votes cast for the applicant a candidate or
 16 the a ballot issue were not correctly counted, he shall
 17 order the appropriate county recount board to assemble
 18 within 5 days after the order is issued at a time and place
 19 fixed by the order. The board shall meet and recount the
 20 ballots as specified in the order.

21 Section 3, Section 13-16-303, MCA, is amended to read:

22 "13-16-303. Presumption of incorrectness from failure
 23 to comply with provisions for counting votes. If it appears
 24 from a verified application that the election judges failed
 25 to comply with the provisions of 13-15-202 that is

1 sufficient cause for believing that the election judges did
 2 not correctly ascertain the number of votes cast for the
 3 applicant a candidate or ballot issue."

4 Section 4, Section 13-16-306, MCA, is amended to read:

5 "13-16-306. Procedure when more than one application
 6 for recount is filed; the court may consider the
 7 applications together. The court may make separate or joint
 8 orders on the applications and apportion the expenses as
 9 defined in 13-16-307 between the applicants."

11 Section 5, Section 13-16-307, MCA, is amended to read:

12 "13-16-307. Expenses of court-ordered recount. (1)
 13 The court shall in its order determine the probable expense
 14 of making the recount, and, except as provided in subsection
 15 (6), the applicant or applicants asking for the recount
 16 shall deposit with the board the amount determined, in cash.

17 (2) If the recount shows that an applicant has been
 18 elected to office, the deposit of the applicant shall be
 19 returned to him.

20 (3) If the recount shows that an applicant has not
 21 been elected and the expense of the recount is greater than
 22 the estimated cost, the applicant shall pay the excess, but
 23 if the expense is less than the cost, the difference shall
 24 be refunded to the applicant.

25 (4) If the recount reverses the results of a ballot

~~issue election, the deposit of the applicant shall be returned to him.~~

~~(5) If the recount does not reverse the results of a ballot issue election and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess, but if the expense is less than the cost, the difference shall be refunded to the applicant.~~

~~(6) If the applicant is a board of county canvassers, the expense of the recount shall be absorbed by the county.~~"

SECTION 2. SECTION 13-16-201, MCA, IS AMENDED TO READ:

"13-16-201. Conditions under which recount to be made.

A recount shall be made under any of the following conditions:

(1) If a candidate for a county, municipal, or district office voted for in only one county, other than a legislator or a judge of the district court, or a precinct office is defeated by a margin not exceeding 1/4 of 1% of the total votes cast or by a margin not exceeding 10 votes, whichever is greater, he may, within 5 days after the official canvass, file with the election administrator a verified petition stating he believes a recount will change the result and a recount of the votes for the office or nomination should be had.

(2) If a candidate for a congressional office, a state or district office voted on in more than one county, the

legislature, or judge of the district court is defeated by a margin not exceeding 1/4 of 1% of the total votes cast for all candidates for the same position, he may, within 5 days after the official canvass, file a petition with the secretary of state as set forth in subsection (1). The secretary of state shall immediately notify each election administrator whose county includes any precincts which voted for the same office by certified or registered mail, and a recount shall be conducted in those precincts.

(3) If a question submitted to the vote of the people of a county, municipality, or district within a county is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question, a petition as set forth in subsection (1) may be filed with the election administrator. This petition must be signed by not less than 10 electors of the jurisdiction and must be filed within 5 days after the official canvass.

(4) If a question submitted to the vote of the people of the state is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question, a petition as set forth in subsection (1) may be filed with the secretary of state. This petition must be signed by not less than 100 electors of the state, representing at least five counties of the state, and must be filed within 5 days after the official canvass.

1 (5) If a question submitted to the vote of the people
 2 of a multicounty district is decided by a margin not
 3 exceeding 1/4 of 1% of the total votes cast for and against
 4 the question, a petition as set forth in subsection (1) may
 5 be filed with the secretary of state. This petition must be
 6 signed by not less than 25 electors of the district,
 7 representing at least two counties, and must be filed within
 8 5 days after the official canvass.

9 (6) The secretary of state shall immediately notify
 10 each election administrator by certified mail of the filing
 11 of the petition, and a recount shall be conducted in all
 12 precincts in each county.

13 (7) If during a canvass of election returns a board of
 14 county canvassers finds an error, as provided in 13-15-403,
 15 the board immediately shall MAY file a petition with the
 16 election administrator."

17 SECTION 3. SECTION 13-16-204, MCA, IS AMENDED TO READ:

18 "13-16-204. Meeting of recount board when recount
 19 requested. (1) Immediately upon receiving an-application a
 20 petition for a recount ~~as--provided--in--13-16-201(1)~~ or a
 21 notice from the secretary of state that ~~an-application a~~
 22 petition has been filed with him, as provided in 13-16-201,
 23 the election administrator shall notify the members of the
 24 county recount board.

25 (2) The board shall convene at the usual meeting place

1 of the governing body without undue delay but not later than
 2 5 days after receiving notice from the election
 3 administrator."

-End-

1 HOUSE BILL NO. 109

2 INTRODUCED BY SWYSGOOD, CAMPBELL, PATTERSON, DAILY, THOMAS,
3 MEYERS, GLASER, JENKINS, ANDERSON, WALKER

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PERMITTING A
6 BOARD OF COUNTY CANVASSERS TO APPLY PETITION FOR A-DISTRICT
7 COURT-ORDER-AUTHORIZING A RECOUNT IF THE BOARD FINDS AN
8 ERROR AFFECTING THE ACCURACY OF VOTE TOTALS; AND AMENDING
9 SECTIONS 13-15-403, ~~13-16-301~~, ~~13-16-302~~, ~~13-16-306~~
10 13-16-201, AND ~~13-16-307~~ 13-16-204, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 13-15-403, MCA, is amended to read:

14 "13-15-403. Canvass to be public -- nonessentials to
15 be disregarded -- application PETITION for recount order.

16 (1) The canvass shall be public. It shall proceed by opening
17 the returns, auditing the tally books or other records of
18 votes cast, determining the vote for each individual and for
19 and against each ballot issue from each precinct, compiling
20 totals, and declaring or certifying the results.

21 (2) The board shall record all write-in votes shown in
22 the returns from each precinct.

23 (3) The returns may not be rejected because of failure
24 to show who administered the oath to the election judges,
25 failure to complete all the certificates in a pollbook, or

1 because of failure of any other act making up the returns
2 that is not essential to determine for whom the votes were
3 cast.

4 (4) If during a canvass the board finds an error IN A
5 PRECINCT OR PRECINCTS affecting the accuracy of vote totals,
6 the board immediately shall MAY apply--for--a--court--order
7 PETITION for a recount OF THE VOTES CAST IN THE PRECINCT OR
8 PRECINCTS, as provided in ~~13-16-301~~ 13-16-201."

9 Section 2--Section 13-16-301, MCA, is amended to read:

10 "~~13-16-301--Application and court order--for--recount:~~

11 ~~(1)--(a)--Within 5 days after the canvass of election returns,~~
12 ~~an--unsuccessful--candidate--for--any--public--office--at--an~~
13 ~~election may apply to the district court of the county where~~
14 ~~the election was held for--an--order--directing--the--county~~
15 ~~recount--board--to--make--a--recount--of--the--votes--cast--in--any--or~~
16 ~~all--of--the--precincts.--If--the--election--was--held--in--more--than~~
17 ~~one--county,--the--application--shall--be--made--to--the--district~~
18 ~~court--of--the--county--where--the--candidate--resides.~~

19 ~~(b)--Within 5 days after the canvass of election~~
20 ~~returns, an elector who was eligible to vote on the issue~~
21 ~~and who believes that there are grounds for a recount of the~~
22 ~~votes--cast--for--and--against--a--ballot--issue--may--apply--to--the~~
23 ~~district court of the county where he resides for--an--order~~
24 ~~directing--the--appropriate--county--recount--board--to--make--a~~
25 ~~recount--of--the--votes--cast--in--any--or--all--of--the--precincts.~~

1 (c) If during a canvass of election returns a board of
 2 county canvassers finds an error as provided in 13-15-403,
 3 the board immediately shall apply to the district court of
 4 the county in which the board is the governing body for an
 5 order directing the county recount board to make a recount
 6 of the votes cast in any or all of the precincts.

7 (2) The application shall specify the grounds for a
 8 recount and be verified by the applicant that the matters
 9 contained in it are true to the best of the applicant's
 10 knowledge, information, and belief.

11 (3) Within 5 days after filing of the application, the
 12 judge shall hear the application and determine its
 13 sufficiency.

14 (4) If the judge finds there is probable cause to
 15 believe that the votes cast for the applicant a candidate or
 16 the a ballot issue were not correctly counted, he shall
 17 order the appropriate county recount board to assemble
 18 within 5 days after the order is issued at a time and place
 19 fixed by the order. The board shall meet and recount the
 20 ballots as specified in the order.

21 Section 3, Section 13-16-303, MEA, is amended to read:

22 "13-16-303. Presumption of incorrectness from failure
 23 to comply with provisions for counting votes. If it appears
 24 from a verified application that the election judges failed
 25 to comply with the provisions of 13-15-202, that is

1 sufficient cause for believing that the election judges did
 2 not correctly ascertain the number of votes cast for the
 3 applicant a candidate or ballot issue."

4 Section 4, Section 13-16-306, MEA, is amended to read:

5 "13-16-306. Procedure when more than one application
 6 for recount. If more than one candidate makes application
 7 for a recount is filed, the court may consider the
 8 applications together. The court may make separate or joint
 9 orders on the applications and apportion the expenses as
 10 defined in 13-16-307 between the applicants."

11 Section 5, Section 13-16-307, MEA, is amended to read:

12 "13-16-307. Expenses of court ordered recount. (1)
 13 The court shall in its order determine the probable expense
 14 of making the recount, and except as provided in subsection
 15 (6), the applicant or applicants asking for the recount
 16 shall deposit with the board the amount determined, in cash.

17 (2) If the recount shows that an applicant has been
 18 elected to office, the deposit of the applicant shall be
 19 returned to him.

20 (3) If the recount shows that an applicant has not
 21 been elected and the expense of the recount is greater than
 22 the estimated cost, the applicant shall pay the excess, but
 23 if the expense is less than the cost, the difference shall
 24 be refunded to the applicant.

25 (4) If the recount reverses the results of a ballot

1 issue--election,--the--deposit--of--the--applicant--shall--be
2 returned--to--him.

3 ~~{5}--if--the--recount--does--not--reverse--the--results--of--a
4 ballot--issue--election--and--the--expense--of--the--recount--is
5 greater--than--the--estimated--cost,--the--applicant--shall--pay--the
6 excess;--but--if--the--expense--is--less--than--the--cost,--the
7 difference--shall--be--refunded--to--the--applicant.~~

8 ~~{6}--if--the--applicant--is--a--board--of--county--canvassers,
9 the--expense--of--the--recount--shall--be--absorbed--by--the--county."~~

10 SECTION 2. SECTION 13-16-201, MCA, IS AMENDED TO READ:

11 *13-16-201. Conditions under which recount to be made.

12 A recount shall be made under any of the following
13 conditions:

14 (1) If a candidate for a county, municipal, or
15 district office voted for in only one county, other than a
16 legislator or a judge of the district court, or a precinct
17 office is defeated by a margin not exceeding 1/4 of 1% of
18 the total votes cast or by a margin not exceeding 10 votes,
19 whichever is greater, he may, within 5 days after the
20 official canvass, file with the election administrator a
21 verified petition stating he believes a recount will change
22 the result and a recount of the votes for the office or
23 nomination should be had.

24 (2) If a candidate for a congressional office, a state
25 or district office voted on in more than one county, the

1 legislature, or judge of the district court is defeated by a
2 margin not exceeding 1/4 of 1% of the total votes cast for
3 all candidates for the same position, he may, within 5 days
4 after the official canvass, file a petition with the
5 secretary of state as set forth in subsection (1). The
6 secretary of state shall immediately notify each election
7 administrator whose county includes any precincts which
8 voted for the same office by certified or registered mail,
9 and a recount shall be conducted in those precincts.

10 (3) If a question submitted to the vote of the people
11 of a county, municipality, or district within a county is
12 decided by a margin not exceeding 1/4 of 1% of the total
13 votes cast for and against the question, a petition as set
14 forth in subsection (1) may be filed with the election
15 administrator. This petition must be signed by not less than
16 10 electors of the jurisdiction and must be filed within 5
17 days after the official canvass.

18 (4) If a question submitted to the vote of the people
19 of the state is decided by a margin not exceeding 1/4 of 1%
20 of the total votes cast for and against the question, a
21 petition as set forth in subsection (1) may be filed with
22 the secretary of state. This petition must be signed by not
23 less than 100 electors of the state, representing at least
24 five counties of the state, and must be filed within 5 days
25 after the official canvass.

1 (5) If a question submitted to the vote of the people
 2 of a multicounty district is decided by a margin not
 3 exceeding 1/4 of 1% of the total votes cast for and against
 4 the question, a petition as set forth in subsection (1) may
 5 be filed with the secretary of state. This petition must be
 6 signed by not less than 25 electors of the district,
 7 representing at least two counties, and must be filed within
 8 5 days after the official canvass.

9 (6) The secretary of state shall immediately notify
 10 each election administrator by certified mail of the filing
 11 of the petition, and a recount shall be conducted in all
 12 precincts in each county.

13 (7) If during a canvass of election returns a board of
 14 county canvassers finds an error, as provided in 13-15-403,
 15 the board immediately shall MAY file a petition with the
 16 election administrator."

17 SECTION 3. SECTION 13-16-204, MCA, IS AMENDED TO READ:

18 "13-16-204. Meeting of recount board when recount
 19 requested. (1) Immediately upon receiving an application a
 20 petition for a recount as--provided--in--13-16-201(1) or a
 21 notice from the secretary of state that an application a
 22 petition has been filed with him, as provided in 13-16-201,
 23 the election administrator shall notify the members of the
 24 county recount board.

25 (2) The board shall convene at the usual meeting place

1 of the governing body without undue delay but not later than
 2 5 days after receiving notice from the election
 3 administrator."

-End-

1 HOUSE BILL NO. 109

2 INTRODUCED BY SWYSGOOD, CAMPBELL, PATTERSON, DAILY, THOMAS,
3 MEYERS, GLASER, JENKINS, ANDERSON, WALKER

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PERMITTING A
6 BOARD OF COUNTY CANVASSERS TO APPLY PETITION FOR A-DISTRICT
7 COURT-ORDER-AUTHORIZING A RECOUNT IF THE BOARD FINDS AN
8 ERROR AFFECTING THE ACCURACY OF VOTE TOTALS; AND AMENDING
9 SECTIONS 13-15-403, ~~13-16-301~~, ~~13-16-303~~, ~~13-16-306~~
10 13-16-201, AND ~~13-16-307~~ 13-16-204, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 13-15-403, MCA, is amended to read:

14 "13-15-403. Canvass to be public -- nonessentials to
15 be disregarded -- application PETITION for recount order.

16 (1) The canvass shall be public. It shall proceed by opening
17 the returns, auditing the tally books or other records of
18 votes cast, determining the vote for each individual and for
19 and against each ballot issue from each precinct, compiling
20 totals, and declaring or certifying the results.

21 (2) The board shall record all write-in votes shown in
22 the returns from each precinct.

23 (3) The returns may not be rejected because of failure
24 to show who administered the oath to the election judges,
25 failure to complete all the certificates in a pollbook, or

1 because of failure of any other act making up the returns
2 that is not essential to determine for whom the votes were
3 cast.

4 (4) If during a canvass the board finds an error IN A
5 PRECINCT OR PRECINCTS affecting the accuracy of vote totals,
6 the board immediately shall MAY apply--for--a--court--order
7 PETITION for a recount OF THE VOTES CAST IN THE PRECINCT OR
8 PRECINCTS, as provided in ~~13-16-301~~ 13-16-201."

9 Section 2: ~~Section 13-16-301, MCA, is amended to read:~~

10 ~~"13-16-301--Application-and-court-order--for--recount--~~
11 ~~(1)-(a) Within 5 days after the canvass of election returns,~~
12 ~~an--unsuccessful--candidate--for--any--public--office--at--an~~
13 ~~election may apply to the district court of the county where~~
14 ~~the election was held for an order directing the county~~
15 ~~recount board to make a recount of the votes cast in any or~~
16 ~~all of the precincts; if the election was held in more than~~
17 ~~one county, the application shall be made to the district~~
18 ~~court of the county where the candidate resides;~~

19 ~~(b) Within 5 days after the canvass of election~~
20 ~~returns, an elector who was eligible to vote on the issue~~
21 ~~and who believes that there are grounds for a recount of the~~
22 ~~votes cast for and against a ballot issue may apply to the~~
23 ~~district court of the county where he resides for an order~~
24 ~~directing the appropriate county recount board to make a~~
25 ~~recount of the votes cast in any or all of the precincts;~~

1 ~~(c) If during a canvass of election returns a board of~~
 2 ~~county canvassers finds an error as provided in 13-15-403,~~
 3 ~~the board immediately shall apply to the district court of~~
 4 ~~the county in which the board is the governing body for an~~
 5 ~~order directing the county recount board to make a recount~~
 6 ~~of the votes cast in any or all of the precincts.~~

7 (2) The application shall specify the grounds for a
 8 recount and be verified by the applicant that the matters
 9 contained in it are true to the best of the applicant's
 10 knowledge, information, and belief.

11 (3) Within 5 days after filing of the application, the
 12 judge shall hear the application and determine its
 13 sufficiency.

14 (4) If the judge finds there is probable cause to
 15 believe that the votes cast for the applicant a candidate or
 16 the a ballot issue were not correctly counted, he shall
 17 order the appropriate county recount board to assemble
 18 within 5 days after the order is issued at a time and place
 19 fixed by the order. The board shall meet and recount the
 20 ballots as specified in the order.

21 Section 3. Section 13-16-303, MCA, is amended to read:

22 "13-16-303. Presumption of incorrectness from failure
 23 to comply with provisions for counting votes. If it appears
 24 from a verified application that the election judges failed
 25 to comply with the provisions of 13-15-202 that is

1 sufficient cause for believing that the election judges did
 2 not correctly ascertain the number of votes cast for the
 3 applicant a candidate or ballot issue."

4 Section 4. Section 13-16-306, MCA, is amended to read:
 5 "13-16-306. Procedure when more than one application
 6 for recount. If more than one candidate makes application
 7 for a recount is filed, the court may consider the
 8 applications together. The court may make separate or joint
 9 orders on the applications and apportion the expenses as
 10 defined in 13-16-307 between the applicants."

11 Section 5. Section 13-16-307, MCA, is amended to read:

12 "13-16-307. Expenses of court ordered recount. (1)
 13 The court shall in its order determine the probable expense
 14 of making the recount, and except as provided in subsection
 15 (6) the applicant or applicants asking for the recount
 16 shall deposit with the board the amount determined, in cash:

17 (2) If the recount shows that an applicant has been
 18 elected to office, the deposit of the applicant shall be
 19 returned to him.

20 (3) If the recount shows that an applicant has not
 21 been elected and the expense of the recount is greater than
 22 the estimated cost, the applicant shall pay the excess, but
 23 if the expense is less than the cost, the difference shall
 24 be refunded to the applicant.

25 (4) If the recount reverses the results of a ballot

1 issue--election,--the--deposit--of--the--applicant--shall--be
 2 returned--to--him--

3 ~~(5)--If--the--recount--does--not--reverse--the--results--of--a
 4 ballot--issue--election--and--the--expense--of--the--recount--is
 5 greater--than--the--estimated--cost,--the--applicant--shall--pay--the
 6 excess,--but--if--the--expense--is--less--than--the--cost,--the
 7 difference--shall--be--refunded--to--the--applicant;~~

8 ~~(6)--if--the--applicant--is--a--board--of--county--canvassers,
 9 the--expense--of--the--recount--shall--be--absorbed--by--the--county."~~

10 SECTION 2. SECTION 13-16-201, MCA, IS AMENDED TO READ:

11 "13-16-201. Conditions under which recount to be made.
 12 A recount shall be made under any of the following
 13 conditions:

14 (1) If a candidate for a county, municipal, or
 15 district office voted for in only one county, other than a
 16 legislator or a judge of the district court, or a precinct
 17 office is defeated by a margin not exceeding 1/4 of 1% of
 18 the total votes cast or by a margin not exceeding 10 votes,
 19 whichever is greater, he may, within 5 days after the
 20 official canvass, file with the election administrator a
 21 verified petition stating he believes a recount will change
 22 the result and a recount of the votes for the office or
 23 nomination should be had.

24 (2) If a candidate for a congressional office, a state
 25 or district office voted on in more than one county, the

1 legislature, or judge of the district court is defeated by a
 2 margin not exceeding 1/4 of 1% of the total votes cast for
 3 all candidates for the same position, he may, within 5 days
 4 after the official canvass, file a petition with the
 5 secretary of state as set forth in subsection (1). The
 6 secretary of state shall immediately notify each election
 7 administrator whose county includes any precincts which
 8 voted for the same office by certified or registered mail,
 9 and a recount shall be conducted in those precincts.

10 (3) If a question submitted to the vote of the people
 11 of a county, municipality, or district within a county is
 12 decided by a margin not exceeding 1/4 of 1% of the total
 13 votes cast for and against the question, a petition as set
 14 forth in subsection (1) may be filed with the election
 15 administrator. This petition must be signed by not less than
 16 10 electors of the jurisdiction and must be filed within 5
 17 days after the official canvass.

18 (4) If a question submitted to the vote of the people
 19 of the state is decided by a margin not exceeding 1/4 of 1%
 20 of the total votes cast for and against the question, a
 21 petition as set forth in subsection (1) may be filed with
 22 the secretary of state. This petition must be signed by not
 23 less than 100 electors of the state, representing at least
 24 five counties of the state, and must be filed within 5 days
 25 after the official canvass.

1 (5) If a question submitted to the vote of the people
 2 of a multicounty district is decided by a margin not
 3 exceeding 1/4 of 1% of the total votes cast for and against
 4 the question, a petition as set forth in subsection (1) may
 5 be filed with the secretary of state. This petition must be
 6 signed by not less than 25 electors of the district,
 7 representing at least two counties, and must be filed within
 8 5 days after the official canvass.

9 (6) The secretary of state shall immediately notify
 10 each election administrator by certified mail of the filing
 11 of the petition, and a recount shall be conducted in all
 12 precincts in each county.

13 (7) If during a canvass of election returns a board of
 14 county canvassers finds an error, as provided in 13-15-403,
 15 the board immediately shall MAY file a petition with the
 16 election administrator."

17 SECTION 3. SECTION 13-16-204, MCA, IS AMENDED TO READ:

18 "13-16-204. Meeting of recount board when recount
 19 requested. (1) Immediately upon receiving an application a
 20 petition for a recount ~~as provided in 13-16-201(1)~~ or a
 21 notice from the secretary of state that ~~an application a~~
 22 petition has been filed with him, as provided in 13-16-201,
 23 the election administrator shall notify the members of the
 24 county recount board.

25 (2) The board shall convene at the usual meeting place

1 of the governing body without undue delay but not later than
 2 5 days after receiving notice from the election
 3 administrator."

-End-