

HB 552 INTRODUCED BY SANDS
GENERALLY REVISE PROCEDURE AND BASIS FOR CHALLENGING
BALLOT ISSUE
BY REQUEST OF SECRETARY OF STATE

1/30 INTRODUCED
1/30 REFERRED TO STATE ADMINISTRATION
2/04 HEARING
2/05 TABLED IN COMMITTEE

1 House BILL NO. 552
 2 INTRODUCED BY Stank
 3 BY REQUEST OF THE SECRETARY OF STATE
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5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 6 PROCEDURE, GROUNDS, AND TIME FOR CHALLENGING BALLOT ISSUES."
 7

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

9 Section 1. Grounds for contest of certification of
 10 initiative to ballot or approval of ballot issue. An elector
 11 may contest the certification of an initiative to the ballot
 12 or approval of a ballot issue for which the elector has the
 13 right to vote for any of the following causes:

- 14 (1) serious and material violation of any provision of
- 15 the law relating to qualifications for inclusion on the
- 16 ballot or approval of ballot issues;
- 17 (2) constitutional defects in the substance of a
- 18 proposed ballot issue; or
- 19 (3) illegal petition signatures or votes or an
- 20 erroneous or fraudulent count or canvass of petition
- 21 signatures or votes.

22 Section 2. Court having jurisdiction of proceedings.
 23 An action challenging petition signatures or a vote canvass
 24 in a particular county may be brought in the district court
 25 for that county. All other actions brought under the

1 authority of [this act] must be brought in the district
 2 court in the county of Lewis and Clark.

3 Section 3. Limitation of actions. (1) The sufficiency
 4 of an initiative petition may not be questioned after the
 5 election is held, whether the petition is for the enactment
 6 of law, amendment of the constitution, or calling of a
 7 constitutional convention. The form or wording of the
 8 petition, the statements of the attorney general forming a
 9 part of the petition, the petition signatures, and the
 10 counting of signatures are all issues relating to the
 11 sufficiency of the petition.

12 (2) No ballot issue contest may be entertained by the
 13 courts of the state before the election unless the contest
 14 was filed in the appropriate district court within 10 days
 15 after the issue was certified to the governor as provided in
 16 13-27-308.

17 (3) An action to contest the election at which a
 18 ballot issue was approved by a majority of those voting on
 19 the issue or to annul or set aside such election must be
 20 commenced within 1 year after the day of the election at
 21 which the issue was approved.

22 (4) Nothing in this section limits the right to
 23 challenge the substance of a measure enacted by a vote of
 24 the people except that the courts of the state may not
 25 entertain such an action, commenced more than 10 days after



1 the issue was certified to the governor, until after the
2 election thereon.

3 Section 4. Commencement of actions. (1) A preelection
4 contest seeking to remove a ballot issue from the ballot
5 must be commenced by filing a petition stating the grounds
6 for the contest and serving a copy upon the proponent of the
7 issue no later than 10 days after the issue was certified to
8 the governor as provided in 13-27-308.

9 (2) Actions commenced after the election must follow
10 the Montana Rules of Civil Procedure and must include the
11 proponent of the ballot issue as a party.

12 (3) Actions commenced before the election, but which
13 do not seek to remove the issue from the ballot, must be
14 stayed until the date of the election.

15 Section 5. Reception of illegal votes -- allegations
16 and evidence. When the reception of illegal votes is alleged
17 as a cause of contest, it is sufficient to state generally
18 that in one or more specified voting precincts illegal votes
19 were given to the contested side which, if taken away, will
20 reduce the number of legal votes to a number equal to or
21 below the number of legal votes given the other side. No
22 testimony may be received concerning any illegal votes
23 unless the party contesting the election delivers to the
24 opposite party, at least 3 days before trial, a written list
25 of the number of illegal votes, and by whom given, that he

1 intends to prove at trial. This provision does not prevent
2 the contestant from offering evidence of illegal votes not
3 included in the statement if he did not know, and by
4 reasonable diligence was unable to learn of, such additional
5 illegal votes, and by whom they were given, before
6 delivering the written list.

7 Section 6. Form of complaint. A petition or complaint
8 filed under the provisions of [this act] is sufficient if it
9 is substantially in the form set forth in 13-36-203.

10 Section 7. Bond required and recovery of costs.
11 Bonding and recovery of costs must be governed by the
12 provisions of 13-36-204 and 13-36-205.

13 Section 8. Notice of filing -- prompt hearing. On the
14 filing of a petition or complaint under [section 4], the
15 clerk shall immediately notify the judge of the court and
16 issue a citation to the proponent of the ballot issue
17 contested, citing him to appear and answer not less than 3
18 or more than 7 days after the date of filing the petition.
19 The court shall hear the cause, and each ballot issue
20 contest shall take precedence over all other business on the
21 court docket and be tried and disposed of with all
22 convenient dispatch. The court must always be considered in
23 session for the trial of such cases.

24 Section 9. Hearing of contest. The petitioner
25 (contestant) and the contestee may appear and produce

1 evidence at the hearing, but no other person may be made a
 2 party to the proceedings or be heard thereon except by order
 3 of the court. If more than one petition is pending or more
 4 than one election is contested, the court may order the
 5 cases to be heard together and may apportion the costs,
 6 disbursements, and attorney fees among them. The court
 7 shall finally determine all questions of law and fact,
 8 except that the judge may impanel a jury to decide on
 9 questions of fact. The court shall immediately certify its
 10 decision to the governing body or official issuing
 11 certificates of election. The governing body or official
 12 shall issue certificates of election for the ballot issues
 13 entitled to certificates under the court's decision. If
 14 judgment of disapproval of a ballot issue is rendered, the
 15 measure must be declared void by the judgment.

16 Section 10. Advancement of cases -- dismissal.
 17 Proceedings under [this act] must be advanced on the docket
 18 upon request of either party for speedy trial, but the court
 19 may postpone or continue the trial if necessary, and in case
 20 of a continuance or postponement, the court may impose costs
 21 as a condition thereof. No petition may be dismissed without
 22 the consent of the county attorney unless it is dismissed by
 23 the court.

24 Section 11. When election not to be vacated. Nothing
 25 in the grounds of contest specified in [section 1] is to be

1 construed as authorizing an election to be set aside on
 2 account of illegal votes unless it appears that the number
 3 of illegal votes given to the side whose right to prevail is
 4 contested, if taken from that side, would reduce the number
 5 of legal votes:

6 (1) below the number of legal votes given to the other
 7 side, after deducting therefrom the illegal votes that may
 8 be shown to have been given to the other side; or

9 (2) below the number of legal votes required for
 10 approval of the measure.

11 Section 12. Declaration of result of election after
 12 rejection of illegal votes. If in any case of a contest on
 13 the ground of illegal votes it appears that a side other
 14 than the one returned has the highest number of legal votes
 15 after the illegal votes have been eliminated, the court
 16 shall declare the prevailing side as it determines.

17 Section 13. Codification instruction. Sections 1
 18 through 12 are intended to be codified as an integral part
 19 of Title 13, chapter 27, and the provisions of Title 13,
 20 chapter 27, apply to sections 1 through 12.

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