EXHIBIT 3
DATE 04/15/05
HB 177

HOUSE BILL NO. 177

INTRODUCED BY A. OLSON

BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ELECTION LAWS; CLARIFYING HOW RETENTION AND DESTRUCTION SCHEDULES ARE SET FOR ELECTION MATERIALS; CLARIFYING NOTICE PROCEDURES FOR THE CLOSE OF REGISTRATION; CLARIFYING PROVISIONS GOVERNING CANCELLATION OF AN ELECTOR'S REGISTRATION; CHANGING THE TIMEFRAME FOR REQUIRING NEW REGISTRATION AFTER A CHANGE OF RESIDENCE BEFORE AN ELECTION; CLARIFYING THAT A CANDIDATE MAY NOT FILE FOR MORE THAN ONE PUBLIC OFFICE; CLARIFYING HOW WRITE-IN VOTES ARE COUNTED; CLARIFYING WHEN A PRIMARY BALLOT DOES NOT NEED TO BE PREPARED; PROVIDING THAT A DECLARATION OF INTENT NEED NOT BE FILED FOR A WRITE-IN VOTE TO COUNT UNDER CERTAIN CIRCUMSTANCES; ~~ALLOWING~~ REVISING CHALLENGES ~~AT ANY TIME TO~~ OF AN ELECTOR'S RIGHT TO VOTE; ~~PROVIDING THAT QUESTIONABLE VOTES ARE NOT VALID VOTES; CLARIFYING RECOUNT PROCEDURES FOR PAPER BALLOTS;~~ CLARIFYING PROCEDURES FOR COUNTING VOTES WHENEVER A VOTING SYSTEM ERROR IS SUSPECTED DURING A VOTE COUNT; CLARIFYING COUNT AND RECOUNT PROCEDURES FOR PAPER AND NONPAPER BALLOTS; REVISING WHEN FEDERAL ABSENTEE BALLOTS MAY BE RECEIVED AND COUNTED; CLARIFYING THE TIMEFRAME FOR THE REQUISITION OF THE PRINTING AND DISTRIBUTION OF THE VOTER INFORMATION PAMPHLET; AND AMENDING SECTIONS ~~13-1-101,~~ 13-1-303, 13-2-301, 13-2-402, 13-2-514, 13-10-201, 13-10-204, 13-10-209, 13-10-211, 13-10-302, 13-13-212, 13-13-301, 13-14-112, 13-14-113, 13-15-107, 13-15-111, 13-15-206, ~~13-16-412, 13-16-414,~~ 13-16-412, 13-16-414, 13-17-211, 13-21-206, AND 13-27-410, M CA."

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

~~**SECTION 1.** SECTION 13-1-101, MCA, IS AMENDED TO READ:~~

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

~~(1) "Active elector" means an elector who voted in the previous federal general election and whose name is on the active list.~~

1 ~~(2) "Active list" means a list of active electors maintained pursuant to 13-2-220.~~
2 ~~(3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that~~
3 ~~is ordinarily not given away free but is purchased.~~
4 ~~(4) "Application for voter registration" means a voter registration form prescribed by the secretary of~~
5 ~~state that is completed and signed by an elector, submitted to the election administrator, and contains voter~~
6 ~~registration information subject to verification as provided by law.~~
7 ~~(5) "Ballot" means:~~
8 ~~(a) a paper ballot used with a paper-based system, such as an optical scan system or other technology~~
9 ~~that automatically tabulates votes cast by processing the paper ballots; or~~
10 ~~(b) a nonpaper ballot, such as a ballot used with a nonpaper-based system, such as a lever machine,~~
11 ~~a direct recording electronic machine, or other technology.~~
12 ~~(6) "Candidate" means:~~
13 ~~(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or~~
14 ~~appointment as a candidate for public office as required by law;~~
15 ~~(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained~~
16 ~~contributions, made expenditures, or given consent to an individual, organization, political party, or committee~~
17 ~~to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination~~
18 ~~or election to any office at any time, whether or not the office for which the individual will seek nomination or~~
19 ~~election is known when the:~~
20 ~~(i) solicitation is made;~~
21 ~~(ii) contribution is received and retained; or~~
22 ~~(iii) expenditure is made; and~~
23 ~~(c) an officeholder who is the subject of a recall election.~~
24 ~~(7) (a) "Contribution" means:~~
25 ~~(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value~~
26 ~~to influence an election;~~
27 ~~(ii) a transfer of funds between political committees;~~
28 ~~(iii) the payment by a person other than a candidate or political committee of compensation for the~~
29 ~~personal services of another person that are rendered to a candidate or political committee.~~
30 ~~(b) "Contribution" does not mean:~~

~~(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual;~~

~~(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;~~

~~(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees; or~~

~~(iv) filing fees paid by the candidate.~~

~~(8) "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.~~

~~(9) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.~~

~~(10) "Elector" means an individual qualified to vote under state law.~~

~~(11) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.~~

~~(b) "Expenditure" does not mean:~~

~~(i) services, food, or lodging provided in a manner that they are not contributions under subsection (7);~~

~~(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;~~

~~(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or~~

~~(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.~~

~~(12) "Federal election" means a general or primary election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.~~

~~(13) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the~~

1 ~~legislature to the electors at a general election, "general election" means an election held at the time provided~~
2 ~~in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted~~
3 ~~as a constitutional initiative at a regular election, regular election means an election held at the time provided~~
4 ~~in 13-1-104(1).~~
5 ~~(14) "Inactive elector" means an individual who failed to vote in the preceding federal general election~~
6 ~~and whose name was placed on an inactive list pursuant to 13-2-220.~~
7 ~~(15) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220.~~
8 ~~(16) "Individual" means a human being.~~
9 ~~(17) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval~~
10 ~~or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall~~
11 ~~questions, school levy questions, bond issue questions, or a ballot question. For the purposes of chapters 35~~
12 ~~and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure~~
13 ~~necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue~~
14 ~~becomes a "ballot issue" upon approval by the secretary of state of the form of the petition or referral.~~
15 ~~(18) "Legally registered elector" means an individual whose application for voter registration was~~
16 ~~accepted, processed, and verified as provided by law.~~
17 ~~(19) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee,~~
18 ~~club, union, or other organization or group of individuals or a candidate as defined in subsection (6).~~
19 ~~(20) "Political committee" means a combination of two or more individuals or a person other than an~~
20 ~~individual who makes a contribution or expenditure:~~
21 ~~(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a~~
22 ~~petition for nomination; or~~
23 ~~(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue;~~
24 ~~or~~
25 ~~(c) as an earmarked contribution.~~
26 ~~(21) "Political subdivision" means a county, consolidated municipal-county government, municipality,~~
27 ~~special district, or any other unit of government, except school districts, having authority to hold an election for~~
28 ~~officers or on a ballot issue.~~
29 ~~(22) "Primary" or "primary election" means an election held throughout the state to nominate candidates~~
30 ~~for public office at times specified by law, including nominations of candidates for offices of political subdivisions~~

1 ~~when the time for nominations is set on the same date for all similar subdivisions in the state.~~
2 ~~(23) "Provisional ballot" means a ballot cast by an elector whose identity and eligibility to vote have not~~
3 ~~been verified as provided by law.~~
4 ~~(24) "Provisionally registered elector" means an individual whose application for voter registration was~~
5 ~~accepted but whose eligibility has not yet been verified as provided by law.~~
6 ~~(25) "Public office" means a state, county, municipal, school, or other district office that is filled by the~~
7 ~~people at an election.~~
8 ~~(26) "Registrar" means the county election administrator and any regularly appointed deputy or assistant~~
9 ~~election administrator.~~
10 ~~(27) "Special election" means an election other than a statutorily scheduled primary or general election~~
11 ~~held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled~~
12 ~~election.~~
13 ~~(28) "Statewide voter registration list" means the voter registration list established and maintained~~
14 ~~pursuant to 13-2-107 and 13-2-108.~~
15 ~~(29) "Transfer form" means a form prescribed by the secretary of state that may be filled out by an~~
16 ~~elector to transfer the elector's registration when the elector's residence address has changed within the county.~~
17 ~~(30) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in~~
18 ~~13-15-206.~~
19 ~~(31) "Voting system" or "system" means any machine, device, technology, or equipment used to~~
20 ~~automatically record, tabulate, or process the vote of an elector cast on a paper or nonpaper ballot."~~
21
22 NEW SECTION. **SECTION 1. HANDLING VOTING SYSTEM ERROR DURING COUNT.** (1) During a count of paper
23 or nonpaper ballots in which votes are being automatically tabulated by a voting system, if the election
24 administrator or counting board has reason to believe that the voting system is not operating correctly, the count
25 must be halted and the system must be tested in accordance with rules adopted by the secretary of state
26 pursuant to 13-17-211.
27 (2) If the test does not show any errors, the count must proceed using the voting system.
28 (3) If the test continues to show errors and the errors cannot be corrected or if a majority of the counting
29 board agrees that the system may not be functioning correctly:
30 (a) votes cast on paper ballots must be counted manually in accordance with 13-15-206(2);

(b) votes cast on a nonpaper ballot must be counted as provided in rules adopted under 13-17-211.

Section 2. Section 13-1-303, MCA, is amended to read:

"13-1-303. Disposition of ballots and other election materials. (1) The voted ballots, detached stubs, unvoted ballots, and unused ballots from an election must be kept in the unopened packages received from the election judges for a period of 12 months. The packages may be opened only when an order for opening is given by the proper official for a recount procedure. After 12 months, if there is no contest begun, recount pending, or appeal of a decision relating to a contest or recount, an election administrator may dispose of the ballots ~~according to a plan approved by the secretary of state~~ AS PROVIDED IN SUBSECTION (2).

(2) ~~The secretary of state, in consultation with the state records committee, shall prepare a suggested plan for retention and destruction of all other election records.~~ Each election administrator shall prepare a plan for retention and destruction of election records in the county ~~and shall submit it to the secretary of state for approval. After approval of a plan, records may be disposed of as provided in the plan~~ according to the retention schedules established by the local government records committee provided for in 2-6-402."

Section 3. Section 13-2-301, MCA, is amended to read:

"13-2-301. Close of registration -- procedure. (1) The election administrator shall:

(a) close registrations for 30 days before any election; and

(b) publish a notice specifying the day registrations will close on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the county at least ~~once a week for 3~~ three times in the 4 weeks ~~before~~ preceding the close of registration. The provisions of this subsection (1)(b) are fulfilled upon the third publication.

(2) Information to be included in the notice must be prescribed by the secretary of state.

(3) An individual who submits a completed registration form to the election administrator before the deadline provided in subsection (1)(a) is allowed to correct a mistake on the completed registration form until 5 p.m. on the 10th day following the close of registration, and the qualified elector is then eligible to vote in the next election."

Section 4. Section 13-2-402, MCA, is amended to read:

"13-2-402. Reasons for cancellation. The election administrator shall cancel the registration of an

elector if:

(1) ~~at~~ the elector submits a written request ~~of the registered elector~~ for cancellation;

(2) ~~if~~ a certificate of the death of the elector is filed or if the elector is reported to the election administrator as deceased by the department of public health and human services in the department's reports submitted to the county under 50-15-409 ~~or by another verifiable method, such as by a relative~~ or through a newspaper obituary;

(3) ~~if~~ the elector is of unsound mind as established by a court;

(4) ~~if~~ the incarceration of the elector in a penal institution for a felony conviction is legally established;

(5) ~~if~~ a certified copy of a court order directing the cancellation is filed with the election administrator;

~~(6) if the elector is successfully challenged and not allowed to vote at an election upon determination of an election judge;~~

~~(7)~~(6) ~~if~~ a notice is received from the secretary of state or from another county or state that the elector has registered in another county or state; ~~or~~

~~(8)~~(7) ~~if~~ the elector fails to respond to certain confirmation mailings and fails to vote in two consecutive federal general elections; or

~~(9)~~(8) the elector fails to meet any voter qualification that is listed in 13-1-111."

Section 5. Section 13-2-514, MCA, is amended to read:

"13-2-514. Change of residence to another county. (1) An elector who changes residence to a different county within this state shall register in the new county of residence in order to vote in any election unless the change occurs less than ~~45~~ 30 days before the election.

(2) An elector who changes residence to a different county ~~45~~ 30 days or less before an election may vote in person or by absentee ballot in the precinct and county where previously registered.

(3) The registration information of an elector who votes under the provisions of subsection (2) must be updated in the statewide voter registration list after the election pursuant to rules adopted under 13-2-108."

Section 6. Section 13-10-201, MCA, is amended to read:

"13-10-201. Declaration for nomination. (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of chapter 14, shall file a declaration for nomination with the secretary of state or election administrator. A candidate may not file for more than one public office. Each

candidate for governor shall file a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination must be filed in the office of:

(a) the secretary of state for placement of a name on the ballot for the presidential preference primary, a congressional office, a state or district office to be voted for in more than one county, a member of the legislature, or a judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. The declaration for nomination must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by the elector's party. For a partisan election, an elector may not file a declaration for more than one party's nomination.

(5) (a) The declaration for nomination must be in the form and contain the information prescribed by the secretary of state.

(b) A person seeking nomination to the legislature shall provide the secretary of state with a street address, legal description, or road designation to indicate the person's place of residence. If a candidate for the legislature changes residence, the candidate shall, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.

(c) The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.

(6) Declarations for nomination must be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.

(7) A declaration for nomination form may be sent by facsimile transmission~~,~~ if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state."

Section 7. Section 13-10-204, MCA, is amended to read:

"13-10-204. Write-in nominations. An individual nominated by having the individual's name written

in and counted as provided in ~~13-15-206(5)~~ 13-15-206~~(4)~~ (5) or otherwise placed on the primary ballot and desiring to accept the nomination may not have the individual's name appear on the general election ballot unless the individual:

(1) files with the secretary of state or election administrator, no later than 10 days after the official canvass, a written declaration indicating acceptance of the nomination;

(2) pays the required filing fee or, if indigent, complies with 13-10-203;

(3) received at least 5% of the total votes cast for the successful candidate for the same office at the last general election; and

(4) complies with the provisions of 13-37-126."

Section 8. Section 13-10-209, MCA, is amended to read:

"13-10-209. Arrangement and preparing of primary ballots. (1)(a) Ballots for a primary election must be arranged and prepared in the same manner and number as provided in chapter 12 for general election ballots, except that there must be separate ballots for each political party entitled to participate. The name of the political party must appear at the top of the separate ballot for that party and need not appear opposite each candidate's name.

(b) Nonpartisan offices and ballot issues may be prepared on separate ballots or may appear on the same ballot as partisan offices if:

(i) each section is clearly identified as separate;

(ii) the nonpartisan offices and ballot issues appear on each party's ballot; and

(iii) with respect to ballot issues, written approval is obtained as provided in 13-27-502.

(2) An election administrator does not need to prepare a primary ballot for a political party if:

(a) the party does not have candidates for more than half of the offices to appear on the ballot; ~~and~~ or

(b) no more than one candidate files for nomination by that party for any of the offices to appear on the ballot.

(3) If, pursuant to subsection (2), a primary ballot for a political party is not prepared, the secretary of state shall certify that a primary election is unnecessary for that party and shall instruct the election administrator to certify the names of the candidates for that party for the general election ballot only.

(4) The separate ballots for each party must have the same appearance. Each set of party ballots must bear the same number. If prepared as a separate ballot, the nonpartisan ballot must have a different appearance

1 than the party ballots but must be numbered in the same order as the party ballots.
2 (5) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot
3 or a separate ballot. A separate ballot may have a different appearance than the other ballots in the election but
4 must be numbered in the same order.
5 (6) Each elector must receive a set of ballots that includes the party, nonpartisan, and ballot issue
6 choices."
7
8 **Section 9.** Section 13-10-211, MCA, is amended to read:
9 **"13-10-211. Declaration of intent for write-in candidates.** (1) ~~A~~ Except as provided in subsection (7),
10 a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The
11 declaration of intent must be filed with the secretary of state or election administrator, depending on where a
12 declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district
13 clerk for a school district office. Except as provided in subsections (2) and (3), the declaration must be filed no
14 later than 5 p.m. on the 15th day before the election and must contain:
15 (a) (i) the candidate's first and last names;
16 (ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the
17 candidate's last name;
18 (iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and
19 (iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;
20 (b) the candidate's mailing address;
21 (c) a statement declaring the candidate's intention to be a write-in candidate;
22 (d) the title of the office sought;
23 (e) the date of the election;
24 (f) the date of the declaration; and
25 (g) the candidate's signature.
26 (2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than
27 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office
28 that the write-in candidate is seeking:
29 (a) dies;
30 (b) withdraws from the election; or

(c) is charged with a felony offense.

(3) A person seeking to become a write-in candidate for a trustee position on a school board shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

(4) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(5) A declaration of intent may be sent by facsimile transmission~~,~~ if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state.

(6) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the secretary of state or the election administrator.

(7) The requirements in subsection (1) do not apply ~~to a write-in candidate who is qualified for and seeks election to an office for which no other candidate has filed a declaration or petition for nomination or a declaration of intent.~~ IF:

(A) AN ELECTION IS HELD;

(B) A PERSON'S NAME IS WRITTEN IN ON THE BALLOT;

(C) THE PERSON IS QUALIFIED FOR AND SEEKS ELECTION TO THE OFFICE FOR WHICH THE PERSON'S NAME WAS WRITTEN IN; AND

(D) NO OTHER CANDIDATE HAS FILED A DECLARATION OR PETITION FOR NOMINATION OR A DECLARATION OF INTENT."

Section 10. Section 13-10-302, MCA, is amended to read:

"13-10-302. Write-in votes for previously nominated candidates. (1) Subject to subsection (2), if an elector casts a write-in vote for a candidate on a primary party ballot when the candidate's name also appears for the same office on another party's ballot, the write-in vote counts only with respect to the party on whose ballot the write-in vote was cast and the write-in votes and the votes cast for the candidate on the other party's ballots may not be added together.

(2) A write-in vote ~~may~~ must be counted ~~only if the vote identifies the individual by any of the designations filed pursuant to 13-10-211(1)(a)(i) through (1)(a)(iv)~~ as provided in ~~13-15-206(5)~~ 13-15-206~~(4)~~ (5)."

Section 11. Section 13-13-212, MCA, is amended to read:

"13-13-212. Application for absentee ballot -- special provisions. (1) An elector may apply for an absentee ballot~~,~~ by using ~~only~~ a standardized form provided by rule by the secretary of state~~,~~ or by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (2) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator."

Section 12. Section 13-13-301, MCA, is amended to read:

"13-13-301. Challenges ~~on election day~~. (1) An elector's right to vote may be challenged ~~on election day~~ at any time by any registered elector by ~~orally~~ THE CHALLENGER FILLING OUT AND SIGNING AN AFFIDAVIT stating the grounds of the challenge AND PROVIDING ANY EVIDENCE SUPPORTING THE CHALLENGE to the election administrator or, on election day, to an election ~~judges~~ judge ~~the grounds of the challenge~~.

(2) ~~An individual offering to vote may be orally challenged by any elector of the county upon on the following~~ A CHALLENGE MAY BE MADE ON THE grounds that the elector:

(a) ~~that the elector~~ is of unsound mind, as determined by a court;

(b) ~~that the elector~~ has voted before in that election; ~~or~~

(c) ~~that the elector~~ has been convicted of a felony and is serving a sentence in a penal institution;

1 (d) is not registered as required by law;

2 (e) is not 18 years of age or older;

3 (f) has not been, for at least 30 days, a resident of the county in which the elector is offering to vote; or

4 (g) is a provisionally registered elector whose status has not been changed to a legally registered voter.

5 ~~(3) An elector challenged under this section m ay cast a provisional ballot, which m ust be handled as~~

6 ~~a provisional ballot under 13-15-107.~~

7 (3) WHEN A CHALLENGE HAS BEEN MADE UNDER THIS SECTION:

8 (A) PRIOR TO THE CLOSE OF REGISTRATION UNDER 13-2-301, THE ELECTION ADMINISTRATOR SHALL QUESTION

9 THE CHALLENGER AND THE CHALLENGED ELECTOR AND MAY QUESTION OTHER PERSONS TO DETERMINE WHETHER THE

10 CHALLENGE IS SUFFICIENT OR INSUFFICIENT TO CANCEL THE ELECTOR'S REGISTRATION UNDER 13-2-402; OR

11 (B) AFTER THE CLOSE OF REGISTRATION OR ON ELECTION DAY, THE ELECTION ADMINISTRATOR OR, ON ELECTION

12 DAY, THE ELECTION JUDGE SHALL ALLOW THE CHALLENGED ELECTOR TO CAST A PROVISIONAL PAPER BALLOT, WHICH

13 MUST BE HANDLED AS PROVIDED IN 13-15-107.

14 (4) (A) IN RESPONSE TO A CHALLENGE, THE CHALLENGED ELECTOR MAY FILL OUT AND SIGN AN AFFIDAVIT TO

15 REFUTE THE CHALLENGE AND SWEAR THAT THE ELECTOR IS ELIGIBLE TO VOTE.

16 (B) IF THE CHALLENGE WAS NOT MADE IN THE PRESENCE OF THE ELECTOR BEING CHALLENGED, THE ELECTION

17 ADMINISTRATOR OR ELECTION JUDGE SHALL NOTIFY THE CHALLENGED ELECTOR AS SOON AS POSSIBLE OF WHO MADE THE

18 CHALLENGE AND THE GROUNDS OF THE CHALLENGE AND EXPLAIN WHAT INFORMATION THE ELECTOR MAY PROVIDE TO

19 RESPOND TO THE CHALLENGE. THE ELECTION ADMINISTRATOR OR, ON ELECTION DAY, THE ELECTION JUDGE SHALL ALSO

20 PROVIDE TO THE CHALLENGED ELECTOR A COPY OF THE CHALLENGER'S AFFIDAVIT AND ANY SUPPORTING EVIDENCE

21 PROVIDED. IF THE CHALLENGE IS MADE MORE THAN 5 DAYS BEFORE AN ELECTION, "AS SOON AS POSSIBLE", AS USED IN

22 THIS SUBSECTION (4)(B), MEANS NO LATER THAN 5 DAYS AFTER THE CHALLENGE.

23 (5) THE SECRETARY OF STATE SHALL ADOPT RULES TO IMPLEMENT THE PROVISIONS OF THIS SECTION AND SHALL

24 PROVIDE STANDARDIZED AFFIDAVIT FORMS FOR CHALLENGERS AND CHALLENGED ELECTORS."

25

26 **Section 13.** Section 13-14-112, MCA, is amended to read:

27 **"13-14-112. Declarations for nomination -- fee.** (1) Nonpartisan candidates shall file declarations for

28 nomination as required by the primary election laws in a form prescribed by the secretary of state except as

29 provided in 13-14-113. A candidate m ay not file for more than one public office.

30 (2) Declarations may not indicate political affiliation. The candidate may not state in the declaration any

1 principles or measures that the candidate advocates or any slogans.
2 (3) Each individual filing a declaration shall pay the fee prescribed by law for the position that the
3 individual seeks.
4 (4) Declarations must be filed in the office of the secretary of state or the appropriate election
5 administrator as provided in 13-10-201. Time of filing must be the same as provided in 13-10-201."
6
7 **Section 14.** Section 13-14-113, MCA, is amended to read:
8 **"13-14-113. Filing for offices without salary or fees.** (1) Candidates for nonpartisan offices for which
9 a salary or fees are not paid shall file with the appropriate official a petition for nomination containing the same
10 information and the oath of the candidate required for a declaration of nomination in a form prescribed by the
11 secretary of state.
12 (2) The petition must contain the signatures of registered electors of the election district in which the
13 office will be on the ballot. The number of signatures must be equal to 5% of the total vote cast for the successful
14 candidate for that office at the last general election, but may not be less than five signatures.
15 (3) The number of signatures necessary for a petition for nomination for an office not previously on the
16 ballot or for which the election district boundaries have changed since the last general election must be
17 determined by the secretary of state.
18 (4) Petitions for nomination must be filed at the same time provided in 13-10-201 for other candidates
19 and offices.
20 (5) A candidate may not file for more than one public office."
21
22 SECTION 15. SECTION 13-15-107, MCA, IS AMENDED TO READ:
23 **"13-15-107. Handling and counting provisional and challenged ballots.** (1) To verify eligibility to
24 vote, an elector who casts a provisional ballot in person shall provide information to the election administrator
25 as listed below:
26 (a) present in person at the office of the election administrator by 5 p.m. on the day after the election
27 a photo identification or other identifying document as described in 13-13-114(1)(a);
28 (b) send by facsimile or electronic mail by 5 p.m. on the day after the election a copy or scanned
29 document that meets the identification requirements of 13-13-114(1)(a); ~~or~~
30 (c) mail a copy or nonreturnable original document described in 13-13-114(1)(a) in a self-addressed

return envelope provided by the election administrator. If the elector mails a document, the postmark on the envelope must be for the day of the election or the day following the election.

(d) if applicable, the information to respond to a challenge under 13-13-301.

(2) The election administrator shall determine prior to an election whether an absentee voter has provided sufficient identification to allow a ballot to be counted. If the information is insufficient, the election administrator shall follow procedures described in 13-13-241 to allow an absentee elector who failed to provide proper identifying information in the outer return envelope to verify eligibility to vote. An absentee elector whose ballot is determined to be provisional has until 5 p.m. on the day after the election to provide valid identification information either in person, by facsimile, by electronic mail, or by mail postmarked on the day of the election or the day after the election.

(3) A provisional ballot must be counted if the election administrator verifies the elector's eligibility pursuant to rules adopted under 13-13-603. However, a provisional ballot may not be counted if the election administrator cannot verify the elector's eligibility under the rules. If the ballot is provisional because of a challenge and the challenge was made on the grounds that the elector is of unsound mind or serving a felony sentence in a penal institution, the elector's provisional ballot must be counted unless the challenger provides documentation by 5 p.m. the day after the election that a court has established that the elector is of unsound mind or that the elector has been convicted and sentenced and is still serving a felony sentence in a penal institution.

(4) The election administrator shall provide an elector who cast a provisional ballot but whose ballot was not counted with the reasons why the ballot was not counted.

(5) A provisional ballot cast by an elector whose voter information is verified before 5 p.m. on the day after the election must be removed from its provisional envelope, grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other ballot."

Section 16. Section 13-15-111, MCA, is amended to read:

"13-15-111. Write-in elections -- general election. (1) An individual elected by having the individual's name written in at the general election and receiving the largest number of votes counted as provided in ~~13-15-206(5)~~ 13-15-206~~(4)~~ (5) shall:

(a) file with the secretary of state or election administrator, not later than 10 days after the official canvass, a written declaration indicating the individual's acceptance of the position for which elected;

(b) comply with the provisions of 13-37-225; and

(c) pay the required filing fee or, if indigent, comply with 13-10-203.

(2) If an individual fails to comply with the requirements in subsection (1), the individual may not assume the position for which elected."

Section 17. Section 13-15-206, MCA, is amended to read:

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

(2) A manual count OR RECOUNT of votes cast on a paper ballot must be conducted as follows:

(a) One election judge on the board shall read the ballot while the two other judges on the board shall each record on an official tally sheet the number of valid votes cast for each individual or ballot issue. Write-in votes must be counted in accordance with rules adopted pursuant to subsection ~~(7)~~ ~~(6)~~ (7). If a vote has not been cast according to instructions, THE VOTE MUST BE CONSIDERED QUESTIONABLE AND the ~~entire ballot must be set aside and counted as provided in subsection (4)~~ ~~VOTE MAY NOT BE COUNTED~~ ENTIRE BALLOT MUST BE SET ASIDE AND VOTES ON THE BALLOT MUST BE HANDLED AS PROVIDED IN SUBSECTION (4).

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

(ii) If the two tallies match, the judges shall record in the pollbook :

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

(B) the offices for which individuals received votes;

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

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

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

(3) (a) ~~Except as provided in subsection (3)(b)~~ WHEN A VOTING SYSTEM IS TABULATING A VOTE CAST ON A NONPAPER BALLOT:

(i) if a vote ~~on a paper ballot or nonpaper ballot~~ is recognized and counted by the system, it is a valid vote;

(ii) if a vote ~~on a paper ballot or nonpaper ballot is not recognized and counted by the system~~ IS

~~DETERMINED BY THE SYSTEM TO BE AN OVERVOTE OR UNDERVOTE~~ NOT RECOGNIZED AND COUNTED BY THE SYSTEM, it is not a valid vote;

(iii) write-in votes must be counted in accordance with rules adopted pursuant to subsection ~~(7)~~ ~~(6)~~ (7).

(b) ~~(i) If a paper ballot being counted by a voting system is rejected by the system or if the system records an overvote or undervote on a ballot, the ballot must be set aside and counted as provided in subsection (4).~~ WHEN A VOTING SYSTEM IS TABULATING A VOTE CAST ON A PAPER BALLOT:

(I) IF THE VOTING SYSTEM RECOGNIZES AND COUNTS THE VOTE, IT IS A VALID VOTE;

(II) IF THE VOTING SYSTEM CANNOT PROCESS THE BALLOT BECAUSE OF THE BALLOT'S CONDITION OR IF THE VOTING SYSTEM REGISTERS AN OVERVOTE OR UNDERVOTE, WHICH MUST BE CONSIDERED A QUESTIONABLE VOTE, THE ENTIRE BALLOT MUST BE SET ASIDE AND THE VOTES ON THE BALLOT MUST BE COUNTED AS PROVIDED IN SUBSECTION (4).

~~(ii)~~ (C) If an election administrator ~~determines~~ OR THE COUNTING BOARD HAS REASON TO BELIEVE that a voting system is not functioning correctly, the election administrator shall follow the procedures prescribed in ~~13-16-414~~ [SECTION 1].

~~(c)~~ (D) After all valid votes have been counted and totaled pursuant to ~~subsection (4) and~~ SUBSECTION (4) AND this subsection (3), the judges shall record in the pollbook the information specified in subsection (2)(b)(ii).

~~(4) (a) Each questionable vote on a paper ballot set aside under subsection (2)(a) or (3)(b) must be counted if the voter's intent can be clearly determined and agreed upon by a majority of the election judges on the counting board in accordance with rules adopted pursuant to subsection (7).~~

~~(b) After each questionable vote on a ballot set aside under subsection (2)(a) or (3)(b) has been determined to be a valid vote, an invalid vote, or an intentional nonvote, the valid votes must be counted manually or automatically tabulated by the voting system. If the votes are to be counted manually, the votes must be tallied as provided in subsection (2). If the votes are to be counted using a voting system, all valid votes must be transferred to a ballot that will be accepted by the voting system and tabulated as provided in subsection (3).~~

~~(c) Votes counted pursuant to this subsection (4) and the votes initially counted under subsections (2) and (3) must be totaled.~~

(4) (A) (I) BEFORE BEING COUNTED, EACH QUESTIONABLE VOTE ON A PAPER BALLOT SET ASIDE UNDER (2)(A) OR (3)(B) MUST BE REVIEWED BY THE COUNTING BOARD. THE COUNTING BOARD SHALL EVALUATE EACH QUESTIONABLE VOTE ACCORDING TO RULES ADOPTED BY THE SECRETARY OF STATE.

(II) IF A MAJORITY OF THE COUNTING BOARD MEMBERS AGREE THAT UNDER THE RULES THE VOTER'S INTENT CAN

1 BE 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
3 CLEARLY DETERMINED UNDER THE RULES, THE VOTE IS NOT VALID AND MAY NOT BE COUNTED.
4 (B) IF A BALLOT WAS SET ASIDE UNDER (3)(B) BECAUSE IT COULD NOT BE PROCESSED BY THE VOTING SYSTEM
5 DUE TO THE BALLOT'S CONDITION, THE COUNTING BOARD SHALL TRANSFER ALL VALID VOTES TO A NEW BALLOT THAT CAN
6 BE PROCESSED BY THE VOTING SYSTEM.
7 ~~(5)(4)~~ (5) A write-in vote may be counted ~~only~~ if:
8 (a) the write-in vote identifies an individual by a designation filed pursuant to 13-10-211(1)(a) ; or
9 (b) 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.
11 ~~(6)(5)~~ (6) A vote is not valid and may not be counted if the elector's choice cannot be determined as
12 provided in this section.
13 ~~(7)(6)~~ (7) The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each
14 type of ballot and for each type of voting system used in the state. The rules must provide a sufficient guarantee
15 that all votes are treated equally among jurisdictions using similar ballot types and voting systems.
16 ~~(8)(7)~~ (8) Local election administrators shall adopt policies to govern local processes that are consistent
17 with the provisions of this title and that provide for:
18 (a) the security of the counting process against fraud;
19 (b) the place and time and public notice of each count or recount;
20 (c) public observance of each count or recount, including observance by representatives authorized
21 under 13-16-411;
22 (d) the recording of objections to determinations on the validity of an individual vote or to the entire
23 counting process; and
24 (e) the keeping of a public record of count or recount proceedings.
25 ~~(9)(8)~~ (9) For purposes of this section:
26 (a) "overvote" means an elector's vote that has been interpreted by the voting system as an elector
27 casting more votes than allowable for a particular office or ballot issue; and
28 (b) "undervote" means an elector's vote that has been interpreted by the voting system as a nonvote."
29
30 ~~**Section 16. Section 13-16-412, MCA, is amended to read:**~~

1 ~~"13-16-412. Procedure for recounting ballots. (1) To conduct a recount of paper ballots not tabulated~~
2 ~~by a voting system:~~
3 ~~(a) the election administrator shall provide to the recount board, unopened, each sealed package or~~
4 ~~envelope received from the election judges of the precinct or precincts in which a recount is ordered, containing~~
5 ~~all the paper ballots voted in the precinct or precincts;~~
6 ~~(b) a member of the recount board shall open each sealed package or envelope and remove the ballots,~~
7 ~~and the board shall count the votes on each ballot in the manner provided in 13-15-206(2); and~~
8 ~~(c) the recount must be tallied on previously prepared tally sheets. The tally sheets must show the~~
9 ~~names of the respective candidates, the office or offices for which a recount is made, and the number of each~~
10 ~~election precinct.~~
11 ~~(2) To prepare for a recount of ballots cast using a nonpaper-based voting system, the election~~
12 ~~administrator and election judges shall proceed as provided in rules adopted pursuant to 13-17-211 and the~~
13 ~~recount board shall conduct the recount as provided in 13-16-414."~~
14
15 ~~**Section 17.** Section 13-16-414, MCA, is amended to read:~~
16 ~~**"13-16-414. Recount of votes using voting system.** (1) (a) Before a voting system may be used to~~
17 ~~automatically recount votes, the recount board shall test the automatic tabulating equipment in accordance with~~
18 ~~rules adopted pursuant to 13-17-211.~~
19 ~~(b) If the test does not show any errors, the votes cast for the candidates or on the issues for which a~~
20 ~~recount is ordered must be recounted by the tabulating equipment as provided in 13-15-206(3).~~
21 ~~(c) (i) If any errors are found in the test or if any questions remain as to the accuracy of the voting~~
22 ~~system, the board shall have the system checked by a qualified individual who did not participate in the original~~
23 ~~preparation of the system.~~
24 ~~(ii) If the errors are corrected, the recount must proceed as provided in 13-15-206(3).~~
25 ~~(iii) If the errors are not corrected, the recount must be conducted as provided in subsection (3).~~
26 ~~(2) The board may order a recount, which must be conducted as provided in subsection (3), if the board~~
27 ~~unanimously agrees that a recount is necessary to resolve all questions relating to the election.~~
28 ~~(3) (a) A recount of paper ballots not tabulated by a voting system under this subsection (3) must be~~
29 ~~conducted manually as provided in 13-15-206(2).~~
30 ~~(b) A recount of ballots cast using a nonpaper-based system must be conducted as provided in rules~~

~~adopted under 13-17-211."~~

SECTION 18. SECTION 13-16-412, MCA, IS AMENDED TO READ:

"13-16-412. Procedure for recounting PAPER ballots. ~~(1)~~ To conduct a recount of paper ballots:

~~(a)~~(1) the election administrator shall provide to the recount board, unopened, each sealed package or envelope received from the election judges of the precinct or precincts in which a recount is ordered, containing all the paper ballots v oted in the precinct or precincts;

~~(b)~~(2) a member of the recount board shall open each sealed package or envelope and remove the ballots, and the board shall count the v otes on each ballot MANUALLY in the manner provided in 13-15-206(2); and

~~(c)~~(3) the recount must be tallied on previously prepared tally sheets. The tally sheets must show the names of the respective candidates, the office or offices for which a recount is made, and the number of each election precinct.

~~(2) To prepare for a recount of ballots cast using a nonpaper-based voting system, the election administrator and election judges shall proceed as provided in rules adopted pursuant to 13-17-211 and the recount board shall conduct the recount as prov ided in 13-16-414.~~"

{*Internal References to 13-16-412:*
x13-17-211}

SECTION 19. SECTION 13-16-414, MCA, IS AMENDED TO READ:

"13-16-414. Recount of votes ~~using voting system~~ ON A NONPAPER BALLOT. (1) ~~(a)~~ Before a voting system may be used to automatically recount votes ~~or if the election administrator has reason to believe that during a count conducted pursuant to 13-15-206 the voting system may not be tabulating votes properly~~ CAST ON A NONPAPER BALLOT, the ELECTION ADMINISTRATOR OR recount board shall test the ~~automatic tabulating~~ voting system equipment in accordance with rules adopted pursuant to 13-17-211.

~~(b)~~(2) If the test does not show any errors, the votes cast for the candidates or on the issues for which a recount is ordered must be recounted by the ~~tabulating equipment~~ voting system as provided in 13-15-206(3)(A) .

~~(c) (i)~~ (3)(A) If any errors are found in the test or if any questions remain as to the accuracy of the voting system, the board shall have the system checked by a qualified individual who did not participate in the original

preparation of the system.

~~(ii)~~(B) If the errors are corrected, the recount must proceed as provided in 13-15-206(3)(a).

~~(iii)~~ (C) If the errors are not corrected, the recount must be conducted ~~as provided in subsection (3)~~ SUBJECT TO RULES ADOPTED FOR THE SYSTEM UNDER 13-17-211.

~~(2) The board may order a recount, which must be conducted as provided in subsection (3), if the board unanimously agrees that a recount is necessary to resolve all questions relating to the election.~~

~~(3) (a) A recount of paper ballots under this subsection (3) must be conducted manually as provided in 13-15-206(2).~~

~~(b) A recount of ballots cast using a nonpaper-based system must be conducted as provided in rules adopted under 13-17-211.~~"

SECTION 20. SECTION 13-17-211, MCA, IS AMENDED TO READ:

"13-17-211. Uniform procedures for using voting systems. (1) For each voting system approved under 13-17-101, the secretary of state shall adopt rules specifying the procedures to be uniformly applied in elections conducted with the voting system.

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

(a) performance certification under 13-17-212;

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

(c) the process to be used to prepare for a vote count under 13-10-311(3) and 13-15-201(2) for nonpaper ballots so that election judges can determine the total number of electors voting in the election compared to the total number of ballots cast;

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

(e) ~~recount procedures under 13-16-412(2);~~

~~(f) voting system tests to correct discrepancies under 13-16-414(1)(a);~~

~~(g) what contingencies must be made for recounts pursuant to 13-16-414(3)(b)~~ HOW TO OPERATE AND TEST THE SYSTEM DURING COUNTS AND RECOUNTS;

~~(h)~~(F) the security measures necessary to secure the voting system before, during, and after an election, including security following a recount under 13-16-417; and

~~(i)~~(G) testing and certification of voting systems pursuant to 13-17-212."

{*Internal References to 13-17-211:*

x13-1-203 x13-10-311 x13-15-201 x13-16-412
x13-16-414 x13-16-414 x13-16-417 x13-17-212}

Section 21. Section 13-21-206, MCA, is amended to read:

"13-21-206. Counting of federal write-in absentee ballots. (1) A federal write-in absentee ballot received by an election administrator may be counted only if:

(a) a valid application was ~~received~~ made by the elector pursuant to 13-21-210;

(b) the election administrator has not received a regular absentee ballot from the elector by 8 p.m. on election day; and

(c) ~~it~~ the ballot is ~~received~~ sent by 8 p.m. on election day AND IS RECEIVED BY 3 P.M. THE MONDAY FOLLOWING THE ELECTION.

(2) Federal write-in absentee ballots received before the close of the polls on election day may not be counted until the polls have closed.

~~(3) A regular absentee ballot received from a United States elector after the polls close may not be counted.~~"

Section 22. Section 13-27-410, MCA, is amended to read:

"13-27-410. Printing and distribution of voter information pamphlet. (1) ~~The~~ At least 110 days before the election, the secretary of state shall arrange with the department of administration by requisition for the printing and delivery of a voter information pamphlet for all ballot issues ~~to be submitted to the people at least 110 days before the election at which they will be submitted~~. The requisition must include a delivery list providing for shipment of the required number of pamphlets to each county and to the secretary of state.

(2) The secretary of state shall estimate the number of copies necessary to furnish one copy to each voter in each county, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The secretary of state shall provide for an extra supply of the pamphlets in determining the number of voter pamphlets to be ordered in the requisition.

(3) The department of administration shall call for bids and contract with the lowest bidder for the printing and delivery of the voter information pamphlet. The contract must require completion of printing and shipment, as specified on the delivery list, of the voter information pamphlets by not later than 45 days before the election at which the ballot issues will be voted on by the people.

1 (4) The county official responsible for voter registration in each county shall mail one copy of the voter
2 information pamphlet to each registered voter in the county who is on the active voter list, except that two or
3 more voters with the same mailing address and the same last name may be counted as one voter. The mailing
4 label may include an address line that addresses the voter or the current resident. The mailing must take place
5 no later than 30 days before the election.
6 (5) Ten copies of the voter information pamphlet must be available at each precinct for use by any voter
7 wishing to read the explanatory information and complete text before voting on the ballot issues."
8
9 NEW SECTION. **SECTION 23. {STANDARD} CODIFICATION INSTRUCTION.** [Section 1] is intended to be
10 codified as an integral part of Title 13, chapter 15, part 2, and the provisions of Title 13, chapter 15, part 2, apply
11 to [section 1].
12 - END -