STATE ADMINISTRATION

Exhibit No. 3

Date 1/14/09

Bill No. SB 124

HJR 46: Study of Election Laws
Absentee Ballots/Death of Candidate/Vacancies in Office

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for the State Administration and Veterans' Affairs Interim Committee
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Background

The death of a candidate for political office is a rare occurrence, particularly a death that would occur after ballots have been printed and an election is imminent. But because an increasing number of Montana voters are opting to cast absentee ballots, the situation now exists in which a candidate could die less than a month before the election and a significant number of ballots may already be cast for that candidate before a replacement candidate is named. Absentee ballots may be mailed out 30 days before an election; statewide, 29% of the voters in the 2006 general election voted by absentee ballot.

While state law (13-15-106, MCA) specifies how to handle absentee ballots when the candidate who dies is on a joint ticket for governor and lieutenant governor, no similar guidance exists for candidates for other offices.

Options for Other Offices

Montana election officials say that the law is not clear on whether, in elections for other offices, election administrators should count or discard absentee votes that were cast for a candidate who died after the ballot was returned but before the election was held. Not counting the votes could create a situation in which the candidate's opponent could win an election simply because those absentee votes were not counted for any candidate, while counting the votes may result in a deceased candidate winning a majority of the votes or in a race in which votes are split among at least three people – the deceased candidate, the replacement candidate, and the candidate of the other party.

The State Administration and Veterans' Affairs Interim Committee requested draft legislation in February 2008 to amend 13-13-204, MCA, which allows a person who has voted absentee to vote a different ballot in person if the absentee ballot contains printing errors or omissions. This law currently states that the death of a candidate after ballots are printed does not constitute an error or omission in the ballot. The requested bill draft, LC 59, would change that provision and allow an absentee voter to request and vote a new ballot if a candidate dies.

However, unless everyone who had cast an absentee ballot for a deceased candidate requested a new ballot, election administrators would still be faced with the question of how to handle any ballots that were cast for that candidate and never re-voted.

Potential legislative solutions to this situation, along with their benefits and drawbacks, include:

- Allowing the absentee ballots cast for the deceased candidate to be counted for the deceased candidate.
  - This change would allow votes for the deceased candidate to be counted, thus eliminating a perceived advantage that may exist for other candidates if the votes were not counted at all. It also could result in a situation in which the deceased candidate would win a majority of the votes. In this instance, the office would be considered vacant, and the vacancy would be filled according to guidelines already established in law. Those guidelines vary by the type of office for which an election is held.

- Allowing the absentee ballots to be counted for the replacement candidate.
  - This change would allow votes for the deceased candidate to be counted for someone else, thus eliminating a perceived advantage that may exist for candidates of other political parties if the votes were not counted at all. However, it also assumes that voters would support – based solely on party affiliation – the person selected to replace the candidate for whom they originally voted.

- Specifying that the absentee ballots cast for a deceased candidate will not be counted.
  - Current law is not clear on this practice, but election officials believe this is how absentee ballots voted for a deceased candidate generally would be handled. This change would provide statutory guidance to all election administrators on how to handle the ballots. This option also may give an advantage to the other candidate(s) in the race, because some of the votes already cast would no longer count.

If no changes are made, current statutes may still leave room for interpretation by different election administrators on how to handle the ballots.

Current Laws on Vacancies in Office and on the Ballot

If absentee ballots were counted for a deceased candidate and that candidate ended up with the highest number of votes, it would result in a vacancy in the office or on the general election ballot, if the absentee ballots were cast during the primary election.

Vacancies that occur after the primary but before the general election are handled as follows:

Type of Office	Method of Selecting Replacement Candidate
Statewide	State central committee appoints
District	Committee named by the county central committees of the district appoints
City or County	County central committee rules determine appointee
Nonpartisan	Candidate with second-highest number of votes advances

If the deceased candidate is elected in a general election, then a vacancy would occur in that office and be filled in one of the following ways:

Type of Office	Method of Appointment
U.S. Senate	Governor appoints a replacement to serve until the next general election
U.S. House	Governor orders a special election unless the vacancy occurs between the primary and general election
Statewide/PSC	Governor appoints a replacement to serve until the next general election
Legislative	Board of county commissioner(s) appoints a replacement from among prospective appointees nominated by the county central committee(s)
County or City	Board of county commissioners or city councils/commissions generally appoint a replacement
Supreme Court or District Court	Governor appoints a replacement from among a list of prospective appointees recommended by the Judicial Nomination Commission