

HOUSE BILL NO. 91  
INTRODUCED BY T. FACEY

A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING CERTAIN TIMEFRAMES FOR APPOINTMENT OF A LEGISLATOR TO FILL A VACANCY; CLARIFYING THE BEGINNING OF A TERM OF OFFICE FILLED BECAUSE OF A VACANCY; AMENDING SECTIONS 5-2-402 AND 5-2-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 5-2-402, MCA, is amended to read:

**"5-2-402. Appointment by board of county commissioners.** (1) When a vacancy occurs in the legislature, the vacancy ~~shall~~ must be filled by appointment by the board of county commissioners or, in the event of a multicounty district, the boards of county commissioners of the counties comprising the district sitting as one appointing board.

(2) Whenever boards of county commissioners sit as one appointing board, selection of an individual to fill the vacancy must be as follows:

(a) The ~~chairman~~ presiding officer of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the legislature, and ~~he~~ the presiding officer shall ~~act as the presiding officer of~~ preside at the meeting.

(b) (i) Each commissioner's vote is determined by the following formula: 100 multiplied by (A divided by B) multiplied by (1 divided by C), where:

(A) A is the total votes cast in the respective county for the person vacating the legislative seat or, if ~~such~~ the vacating person was not ~~himself~~ elected, the votes cast for the last person to be elected for the current term;<sub>1</sub>

(B) B is the total votes cast for that person in the legislative district;<sub>1</sub> and

(C) C is the number of authorized commissioners on the board of the commissioner whose vote is being determined.

(ii) If a vacancy occurs in a holdover senate seat after holdover senators have been assigned to new districts under each reapportionment, the formula must be applied using the votes cast for the senatorial candidates at the last election in which ~~such~~ votes were cast for a senate candidate. ~~Such~~ The votes ~~shall~~ may include only those cast by electors residing in the new senate district for senate candidates of the party to which

the person vacating the seat belonged. The secretary of state shall provide an estimate of the number of votes ~~so~~ cast; by county or portion ~~thereof~~ of a county.

(c) The person selected to fill the vacancy is the one who receives the highest number above 50 that results from the calculation required by this subsection (2). If ~~no candidate receives~~ none of the candidates receives a number higher than 50 from that calculation, the selection board shall cast its votes again in the same manner for the persons receiving the two highest numbers.

(3) The appointment of a legislator under this section must take place;

(a) within 15 days after the vacancy occurs or has been declared pursuant to 2-16-501 if the legislature is in session or if a special session of the legislature has been called; or

(b) within 45 days if the legislature is not in session or has not been called into special session."

**Section 2.** Section 5-2-407, MCA, is amended to read:

**"5-2-407. Anticipated vacancy.** (1) Whenever it appears that a vacancy will exist in the legislature because of the inability of an elected legislator to take office at the commencement of the term to which ~~he was~~ elected, an appointee may be selected in advance of the commencement of the term under the provisions of 5-2-402 through 5-2-406.

(2) For purposes of determining the term of office of the appointee ~~and the 15-day period of 5-2-402(3),~~ the ~~vacancy occurs~~ term of office begins on the first day of the term to which ~~his~~ the appointee's predecessor was elected.

(3) An appointee under this section may take office only if the vacancy in fact exists at the commencement of the term of office."

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

- END -