

SENATE BILL NO. 262  
INTRODUCED BY PERRY, FACEY

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING APPOINTMENT BY COUNTY COMMISSIONERS TO A VACANCY IN THE LEGISLATURE; CLARIFYING THE ROLE OF THE COUNTY CENTRAL COMMITTEE; REVISING THE TIMEFRAME FOR NOTIFICATIONS AND APPOINTMENT; CLARIFYING THE BEGINNING OF A TERM OF OFFICE FILLED BY AN APPOINTMENT; ALLOWING AN APPOINTMENT PRIOR TO AN ELECTION IF A SPECIAL LEGISLATIVE SESSION IS CALLED; AMENDING SECTIONS 5-2-402, 5-2-403, 5-2-404, 5-2-406, 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 -- county central committee role -- timeframes.** (1) ~~When~~ Except as provided in subsection (5) or as otherwise provided by law, whenever 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) (a) Whenever a vacancy is within a single county, the board of county commissioners shall make the appointment as described in 5-2-403, 5-2-404, or 5-2-406.

~~(2)(b)~~ Whenever a vacancy is within a multicounty district, the boards of county commissioners shall sit as one appointing board; The selection of an individual to fill the vacancy must be as follows:

~~(a)(i)~~ 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 shall act as the presiding officer of~~ preside at the meeting.

~~(b)(ii)~~ 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;

(B) B is the total votes cast for that person in the legislative district; and

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

determined.

(iii) The person selected to fill the vacancy is the one who receives the highest number above 50 that results from the calculation in subsection (2)(b)(ii). If 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. If neither vote results in a candidate receiving a number higher than 50 from the calculation provided in subsection (2)(b)(ii), then 5-2-404 applies.

(c) If a vacancy occurs in a holdover senate seat after holdover senators have been assigned to new districts under each reapportionment, the formula in subsection (2)(b)(ii) 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 Only the number of votes shall 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 may be counted. The secretary of state shall provide an estimate of the number of votes ~~so~~ cast; for each party by county or portion thereof of a county. The selection process is the same as provided in subsection (2)(b)(iii).

~~(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 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 process to fill a vacant legislative seat under this section must take place within 15 days after the vacancy occurs. is as follows:~~

(a) Within 7 days of being notified of a vacancy as described in 2-16-501, the secretary of state shall notify the board of county commissioners and the county central committee of the county where the vacating legislator is a resident, if the legislative seat is within one county, or the boards of county commissioners and the corresponding county central committees if the legislative seat is in a multicounty district. If the legislator is an independent or belongs to a party for which there is no county central committee, the notification of county commissioners suffices.

(b) The county central committee or committees, upon receipt of notification of a vacancy, have 45 days to propose a list of prospective appointees, pursuant to 5-2-403(1). The county central committee or the county central committees, acting together, shall forward the list of names to the appointing board within the 45 days.

(c) The appointing board shall make and confirm an appointment and notify the secretary of state within 15 days:

(i) after receiving the list of prospective appointees from the county central committee or committees;

(ii) after 45 days have expired after the notification of vacancy if the county central committee or committees have not provided a list of prospective appointees; or

(iii) after notification of a vacancy if the legislator vacating the seat is an independent.

(4) If the legislature is in session, the notification process in subsection (3)(a) must be followed WITHIN 5 DAYS. The process described in subsection (3)(b) must take place in 5 days. The process described in subsection (3)(c) must take place in 5 days.

(5) Notwithstanding subsection (6), if a vacancy occurs prior to a primary election, 13-10-326 applies. If a vacancy occurs after a primary and prior to a general election, 13-10-327 applies.

(6) If the legislature is called into special session within 85 days of a general election, a person must be appointed to fill a legislative vacancy pursuant to subsections (1) through (4)."

**Section 2.** Section 5-2-403, MCA, is amended to read:

**"5-2-403. Appointee to be of same political party.** (1) Whenever ~~his~~ an appointee's predecessor served as a member of a political party, the appointee named under 5-2-402 ~~shall~~ must be a member of the same political party and ~~shall~~ must be selected from a list of three individuals provided:

(a) by the county central committee in a district within a single county; or

(b) by the county central committees, acting together, in a multicounty district, as described in 5-2-402 of the counties wherein a portion of the senate district lies.

(2) Whenever the appointing board is unable to elect an appointee from the submitted list, it ~~the~~ the appointing board shall request a second list of three names from the county central committee or committees. The second list may not contain any of the names submitted on the first list. The appointing board shall then select an appointee from the individuals named on both lists.

~~(2)~~(3) The provisions of this section do not apply if ~~his~~ the predecessor served as an independent."

**Section 3.** Section 5-2-404, MCA, is amended to read:

**"5-2-404. Procedure upon failure of one candidate to receive majority vote.** In the event that a decision cannot be made by the appointing board because of failure of any candidate to receive a majority of the votes, the final decision may be made by lot from the first and second lists of candidates as provided by 5-2-403~~(4)~~ or from a list of three individuals if the predecessor served as an independent, in accordance with rules of selection adopted by the appointing board."

**Section 4.** Section 5-2-406, MCA, is amended to read:

**"5-2-406. Elections to fill vacancies in senate.** (1) Whenever a vacancy occurs 85 days or more before the general election held during the second year of the term, an individual may be appointed, pursuant to 5-2-402, if the legislature is called into special session. However, the appointment may run only until a person shall be ~~is~~ elected to complete the term at ~~that~~ the upcoming general election and sworn into office. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 75 days or more prior to the primary election during the second year, the same procedure as is used for senators who will be elected to full 4-year terms at that general election ~~shall~~ must be utilized.

(b) Whenever the vacancy occurs on or after the 75th day prior to the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-10-327 and 13-38-204. A political party shall notify the secretary of state of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate ~~shall~~ must be filed with the secretary of state on or before the 85th day prior to the general election.

(2) Whenever a vacancy occurs on or after the 85th day prior to the general election held during the second year of the term, the person appointed by the board under 5-2-402 shall serve until the end of the term."

**Section 5.** 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~~ the legislator 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~~ term of office ~~occurs~~ commences on the first day of the term to which his predecessor was elected ~~on which the appointee takes the oath of office.~~

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

(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 6. Effective date.** [This act] is effective on passage and approval.

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