

## 1 HOUSE BILL NO. 222

2 INTRODUCED BY M. MILLER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE ELIGIBILITY OF CANDIDATES TO BE  
5 INVESTIGATED BY THE COMMISSIONER OF POLITICAL PRACTICES; PROVIDING FOR REMOVAL OF AN  
6 INELIGIBLE CANDIDATE FROM THE BALLOT; ~~RESTRICTING PARTIES FROM REPLACING INELIGIBLE~~  
7 ~~CANDIDATES IN THE GENERAL ELECTION~~; AND AMENDING SECTIONS 13-10-201, 13-10-327, 13-37-111,  
8 AND 13-37-126, MCA."

9

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

11

12 **Section 1.** Section 13-10-201, MCA, is amended to read:

13 **"13-10-201. Declaration for nomination -- term limitations.** (1) Each candidate in the primary election,  
14 except nonpartisan candidates filing under the provisions of Title 13, chapter 14, shall file a declaration for  
15 nomination with the secretary of state or election administrator. Except for a candidate who files under 13-38-201,  
16 a candidate may not file for more than one public office. Each candidate for governor shall file a joint declaration  
17 for nomination with a candidate for lieutenant governor.

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

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

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

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

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

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

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

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

9 (6) (a) Except as provided in 13-10-211 and subsection (6)(b) of this section, a candidate's declaration  
10 for nomination must be filed no sooner than 135 days before the election in which the office first appears on the  
11 ballot and no later than 5 p.m., 75 days before the date of the primary election.

12 (b) For an election held pursuant to 13-1-104(1)(a) or 13-1-107(1) or for a political subdivision that holds  
13 an election on the date of either of those elections, a candidate's declaration for nomination must be filed no  
14 sooner than 145 days before the election in which the office first appears on the ballot and no later than 5 p.m.,  
15 85 days before the date of the primary election.

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

19 (8) For the purposes of implementing Article IV, section 8, of the Montana constitution, the secretary of  
20 state shall apply the following conditions:

21 (a) A term of office for an official serving in the office or a candidate seeking the office is considered to  
22 begin on January 1 of the term for which the official is elected or for which the candidate seeks election and end  
23 on December 31 of the term for which the official is elected or for which the candidate seeks election.

24 (b) A year is considered to start on January 1 and end on the following December 31.

25 (c) "Current term", as used in Article IV, section 8, of the Montana constitution, has the meaning provided  
26 in 2-16-214.

27 ~~(9) A candidate shall certify on~~ ON the declaration, in a form prescribed by the secretary of state, that  
28 THE CANDIDATE SHALL:

29 (a) AFFIRM THAT the candidate is eligible for the office; AND

30 (b) ACKNOWLEDGE THE CANDIDATE UNDERSTANDS THAT if the candidate is found ineligible for the office

1 PURSUANT TO AN INVESTIGATION UNDER 13-37-111, the secretary of state shall remove the candidate's name from  
 2 the ballot; and

3 ~~—— (c) in a general election, the party may not replace a candidate determined to be ineligible."~~

4

5 **Section 2.** Section 13-10-327, MCA, is amended to read:

6 **"13-10-327. Vacancy after primary and prior to general election.** (1) Except as provided in 13-10-328  
 7 for a vacancy in the candidacy of either governor or lieutenant governor caused by the death of a candidate and  
 8 except as provided in 13-37-126, if a party candidate dies or withdraws after the primary and before the general  
 9 election, the affected political party shall appoint someone to replace the candidate in one of the following ways:

10 (a) For offices to be filled by the state at large, the state central committee shall make the appointment  
 11 as provided by the rules of the party.

12 (b) For offices to be filled in districts including more than one county, a committee appointed by the  
 13 county central committees of all counties in the district shall make the appointment. Procedures for the  
 14 appointment of the committee and making the appointment must be provided in party rules.

15 (c) For offices to be filled in counties, municipalities, or districts wholly within a county, the appointment  
 16 must be made under rules adopted by the county central committee.

17 (2) Except as provided in this section, appointments to fill vacancies must be made no later than 76 days  
 18 before the election. A candidate may not officially withdraw 85 days or less before a general election. However,  
 19 if a candidate for partisan office dies OR IS DETERMINED TO BE INELIGIBLE PURSUANT TO AN INVESTIGATION UNDER  
 20 13-37-111 less than 85 days before the general election, the affected political party shall appoint a candidate  
 21 within 5 days after being notified of the vacancy. One of the procedures provided in 13-12-204 must be used to  
 22 place the name of the appointee on the ballot if necessary.

23 (3) The appointing committee shall send a certificate to the officer with whom a declaration for  
 24 nomination for the office would be filed, with the information required on a declaration for nomination and the  
 25 name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed and  
 26 acknowledged acceptance of the appointment and the filing fee for the office.

27 (4) The officer receiving the certificate of appointment, accompanied by a statement of acceptance and  
 28 the filing fee, shall certify the name of the appointee for the ballot."

29

30 **Section 3.** Section 13-37-111, MCA, is amended to read:

1           **"13-37-111. Investigative powers and duties -- recusal.** (1) Except as provided in 13-35-240, the  
2 commissioner is responsible for investigating all of the alleged violations of the election laws contained in chapter  
3 35 of this title or this chapter and in conjunction with the county attorneys is responsible for enforcing these  
4 election laws.

5           (2) The commissioner may:

6           (a) investigate all statements filed pursuant to the provisions of chapter 35 of this title or this chapter and  
7 shall investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant  
8 to the provisions of chapter 35 of this title or this chapter or the alleged ineligibility of the candidate. Upon the  
9 submission of a written complaint by any individual, the commissioner shall investigate any other alleged violation  
10 of the provisions of chapter 35 of this title, this chapter, or any rule adopted pursuant to chapter 35 of this title or  
11 this chapter.

12           (b) inspect any records, accounts, or books that must be kept pursuant to the provisions of chapter 35  
13 of this title or this chapter that are held by any political committee or candidate, as long as the inspection is made  
14 during reasonable office hours; and

15           (c) administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and  
16 require the production of any books, papers, correspondence, memoranda, bank account statements of a political  
17 committee or candidate, or other records that are relevant or material for the purpose of conducting any  
18 investigation pursuant to the provisions of chapter 35 of this title or this chapter.

19           (3) If the commissioner determines that considering a matter would give rise to the appearance of  
20 impropriety or a conflict of interest, the commissioner is recused from participating in the matter.

21           (4) (a) If the commissioner is recused pursuant to this section, the commissioner shall appoint a deputy,  
22 subject to subsection (4)(b).

23           (b) The deputy:

24           (i) may not be an employee of the office of the commissioner;

25           (ii) must have the same qualifications as specified for the commissioner in 13-37-107;

26           (iii) with respect to only the specific matter from which the commissioner is recused, has the same  
27 authority, duties, and responsibilities as the commissioner would have absent the recusal; and

28           (iv) may not exercise any powers of the office that are not specifically related to the matter for which the  
29 deputy is appointed.

30           (5) The appointment of the deputy is effectuated by a contract between the commissioner and the

1 deputy. The contract must specify the deputy's term of appointment, which must be temporary, the matter  
 2 assigned to the deputy, the date on which the matter assigned must be concluded by the deputy, and any other  
 3 items relevant to the deputy's appointment, powers, or duties."

4

5 **Section 4.** Section 13-37-126, MCA, is amended to read:

6 **"13-37-126. Names not to appear on ballot.** (1) (a) The name of a candidate may not appear on the  
 7 official ballot for an election if the candidate or a treasurer for a candidate fails to file any statement or report as  
 8 required by this chapter.

9 ~~(2)(b)~~ A vacancy on an official ballot under ~~this section subsection (1)(a)~~ THIS SECTION may be filled in  
 10 the manner provided by law, but not by the name of the same candidate.

11 ~~(3)(c)~~ ~~(a)(i)~~ In carrying out the mandate of this section, the commissioner shall, by a written statement,  
 12 notify the secretary of state or the election administrator that a candidate or a candidate's treasurer has not  
 13 complied with the provisions of this chapter, as described in subsection (1)(a), and that a candidate's name may  
 14 not appear on the official ballot.

15 ~~(b)(ii)~~ The commissioner shall provide the notification:

16 ~~(i)(A)~~ within 8 calendar days after the close of the certification deadline provided in 13-10-208(1) for  
 17 primary elections held pursuant to 13-1-107(1); or

18 ~~(ii)(B)~~ by the earliest date specified under 13-10-208(2) for the county election administrator to certify the  
 19 ballot for primary elections held pursuant to 13-1-107(2) or (3); and

20 ~~(iii)(C)~~ by no later than 7 days before the ballot certification deadline provided in 13-12-201 for general  
 21 elections.

22 (2) (a) A person who does not meet the requirements of the office for which the person has filed a  
 23 petition for nomination must be found ineligible to be a candidate for that office, and the person's name may not  
 24 appear on the general election ballot.

25 ~~—— (b) Except for a candidate for lieutenant governor or governor, a party may not replace an ineligible~~  
 26 ~~candidate on a general election ballot.~~

27 (c)(B) (i) In carrying out the mandate of this section, the commissioner shall, after an investigation  
 28 commenced by a complaint to the commissioner's office, notify the secretary of state or the election administrator  
 29 in writing if a candidate has been declared ineligible as described in subsection (2)(a).

30 (ii) If the candidate has been found ineligible, the commissioner shall additionally notify the secretary of

1 state or the election administrator in writing that:

2 (A) the candidate's name may not appear on the official general election ballot if the candidate's  
3 ineligibility is determined by an investigation completed no later than 7 days before the ballot certification deadline  
4 provided in 13-12-201 for general elections;

5 (B) votes for the candidate may not be counted if the candidate's ineligibility is determined by an  
6 investigation completed after the deadline stated in subsection ~~(2)(c)(ii)(A)~~ (2)(B)(ii)(A) but before the date of the  
7 general election in which the candidate appears; or

8 (C) the election of a candidate is invalid if the investigation is completed on or after the date of the  
9 general election in which the candidate appears. If another candidate received votes in the election, the  
10 certification of the candidate receiving the next highest number of votes must commence as if the ineligible  
11 candidate's name did not appear on the ballot. If no other candidate received votes in the election, the vacancy  
12 must be treated as if no election occurred."

13 - END -