

1 SENATE BILL NO. 132

2 INTRODUCED BY G. JERGSON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING DATES FOR FILLING VACANCIES IN COUNTY
5 ELECTED OFFICES; REQUIRING NOTIFICATION OF THE COUNTY ELECTION ADMINISTRATOR RATHER
6 THAN THE CLERK AND RECORDER; AND AMENDING SECTIONS 3-10-201, 3-10-206, 7-4-2106, AND
7 7-4-2206, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 **Section 1.** Section 3-10-201, MCA, is amended to read:
12 **"3-10-201. Election.** (1) ~~Each~~ Except as provided in 3-10-206, each justice of the peace must be elected
13 by the qualified electors of the county at the general state election immediately preceding the expiration of the
14 term of office of the justice of the peace's predecessor.
15 (2) A justice of the peace must be nominated and elected on the nonpartisan judicial ballot in the same
16 manner as judges of the district court.
17 (3) Each judicial office must be a separate and independent office for election purposes, each office must
18 be numbered by the county commissioners, and each candidate for justice of the peace shall specify the number
19 of the office for which the candidate seeks to be elected. A candidate may not file for more than one office.
20 (4) Section 13-35-231, prohibiting political party endorsement for judicial officers, applies to justices of
21 the peace."

22
23 **Section 2.** Section 3-10-206, MCA, is amended to read:
24 **"3-10-206. Vacancies.** ~~# Subject to the residency requirements provided in 3-10-204 and the election~~
25 ~~requirements provided in 3-10-201(2) through (4), a vacancy occurs in the office of a justice of the peace, the~~
26 ~~county commissioners of the county must appoint an eligible person to hold the office until the next general~~
27 ~~election and must be filled pursuant to 7-4-2206 until a successor is elected and qualified."~~

28
29 **Section 3.** Section 7-4-2106, MCA, is amended to read:
30 **"7-4-2106. Vacancy on board of county commissioners -- resigning member not to participate in**

1 **filling pending vacancy.** (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in
2 2-16-501.

3 (2) Whenever a vacancy occurs in the board of county commissioners from a failure to elect or
4 otherwise, the remaining county commissioners shall fill the vacancy and the appointee shall hold office until the
5 next general election unless otherwise provided in subsection (3) or (4). The procedure to be used to fill the
6 vacancy is as follows:

7 (a) If the former incumbent represented a party eligible for a primary election under 13-10-601, the
8 county central committee of that party shall submit to the remaining commissioners three names of people who
9 have lived in the unrepresented district for at least 2 years preceding the day the vacancy occurs. The remaining
10 commissioners shall appoint one of these three to fill the vacancy. Whenever the remaining commissioners are
11 unable to elect an appointee from the submitted list, they shall request a second list of three names from the
12 county central committee. The second list may not contain any of the names submitted on the first list. The
13 remaining commissioners shall then select an appointee from the individuals named on both lists.

14 (b) If the former incumbent was independent or was originally nominated by a party that does not meet
15 the requirements of 13-10-601 or if the vacancy occurs from a failure to elect, the remaining commissioners shall
16 invite applications for the vacancy in a notice published as provided in 13-1-108 and shall accept an application
17 from any person who has lived in the unrepresented district for at least 2 years preceding the day the vacancy
18 occurs. The remaining commissioners shall appoint one of these applicants to fill the vacancy.

19 (3) Whenever a vacancy occurs ~~75 days or more~~ prior to August 1 before the general election held
20 during the second or fourth year of the term, an individual must be elected to complete the term at that general
21 election. The election procedure to be used to elect the successor is as follows:

22 (a) Whenever the vacancy occurs ~~75 days or more~~ prior to March 1 before the primary election during
23 the second or fourth year of the term, the same procedure must be used as is used to elect county commissioners
24 to full 6-year terms.

25 (b) Whenever the vacancy occurs on or after the 75th day March 1 preceding the primary election, any
26 political party desiring to enter a candidate in the general election shall select a candidate as provided in
27 13-38-204. A political party shall notify the ~~clerk and recorder~~ county election administrator of the party nominee.
28 A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and
29 13-10-502. The petition for an independent candidate must be filed with the ~~clerk and recorder~~ on or before the
30 ~~75th day~~ county election administrator prior to August 1 before the general election. A candidate for a nonpartisan

1 office shall file as provided in Title 13, chapter 14.

2 (4) Whenever a vacancy occurs after ~~the 75th day~~ July 31 preceding the general election held during
3 the fourth year of the term, the person appointed by the remaining county commissioners under subsection (2)
4 shall serve until the end of the term.

5 (5) (a) If multiple vacancies occur simultaneously so that a quorum cannot be established, the county
6 compensation board provided for in 7-4-2503 shall, subject to subsection (5)(c) of this section, appoint enough
7 commissioners to allow for a quorum to be established. The vacancies must be filled in the order in which the
8 commissioners' terms would have expired.

9 (b) If vacancies occur at different times but, because appointments have not yet been made, a quorum
10 cannot be established, the county compensation board shall, subject to subsection (5)(c), appoint enough
11 commissioners to allow for a quorum to be established. The county compensation board shall appoint each
12 commissioner in the order that the vacancy occurred.

13 (c) (i) A commissioner appointed under this subsection (5) must meet the residency requirement in
14 7-4-2104(2) and must be from the same district as the commissioner being replaced.

15 (ii) If a commissioner being replaced represented a party eligible for a primary election under 13-10-601,
16 the county central committee of that party shall, within 30 days of the occurrence of the vacancy, submit to the
17 county compensation board three names of people who have lived in the unrepresented district for at least 2
18 years prior to the occurrence of the vacancy. The county compensation board shall appoint each commissioner
19 from the list of names provided by the county central committee.

20 (d) Once a quorum can be established, the county commissioners forming the quorum shall appoint the
21 remaining commissioners as provided in this section.

22 (e) If a county compensation board does not exist, appointments under this subsection (5) must be made
23 by a district judge having jurisdiction in the county.

24 (6) If a member of the board of county commissioners has submitted the member's resignation as
25 provided in 2-16-502 or if proceedings have begun to remove the member from office under 2-16-501, that
26 member may not be considered to be a remaining member of the commission as provided in this section and may
27 not participate in filling the vacancy to be created when the resignation becomes effective."

28

29 **Section 4.** Section 7-4-2206, MCA, is amended to read:

30 **"7-4-2206. Vacancies.** (1) For the purposes of this part, "vacancy" has the same meaning as prescribed

1 in 2-16-501.

2 (2) Vacancies in all county offices, except that of county commissioner, must be filled by appointment
3 by the board of county commissioners. Except as provided in subsections (3) through (5), the appointee holds
4 the office, if elective, until the person elected at the next general election is certified pursuant to 13-15-406. If the
5 office is not elective, the appointee serves at the pleasure of the commissioners.

6 (3) Whenever a vacancy occurs ~~75 days or more~~ prior to August 1 before the general election held
7 during the second year of the term, an individual must be elected to complete the term at that general election.

8 The election procedure to be used to elect the successor is as follows:

9 (a) Whenever the vacancy occurs ~~75 days or more~~ prior to March 1 before the primary election during
10 the second year of the term, the same procedure must be used as is used to elect a person to that office for a
11 full 4-year term.

12 (b) Whenever the vacancy occurs on or after the 75th day ~~March 1~~ before the primary election, any
13 political party desiring to enter a candidate in a partisan election in the general election shall select a candidate
14 as provided in 13-38-204. A political party shall notify the ~~clerk and recorder~~ county election administrator of the
15 party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in
16 13-10-501 and 13-10-502. The petition for an independent candidate must be filed with the ~~clerk and recorder~~
17 county election administrator ~~on or before the 75th day~~ prior to March 1 ~~AUGUST 1~~ before the general election.
18 A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

19 (4) Whenever a vacancy occurs on or after the 75th day ~~July 31~~ before the general election held during
20 the second year of the term, the person appointed by the commissioners under subsection (2) shall serve until
21 the end of the term.

22 ~~————(5) Vacancies occurring in the office of justice of the peace must be filled as provided in Title 3, chapter~~
23 ~~10, part 2."~~

24 - END -