

SENATE BILL NO. 127

INTRODUCED BY M. MOE, J. SESSO

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PUBLIC OFFICE VACANCY LAWS; PROVIDING THAT AN OFFICE BECOMES VACANT ON THE EFFECTIVE DATE STIPULATED IN THE OFFICIAL RESIGNATION OF AN INCUMBENT; PROVIDING THAT RESIGNATIONS MUST STIPULATE AN EFFECTIVE DATE; CLARIFYING LEGISLATOR APPOINTMENT LAWS REGARDING VACANCY AND RESIGNATION; AND AMENDING SECTIONS 2-16-501, 2-16-502, 5-2-402, AND 5-2-406, MCA."

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

**Section 1.** Section 2-16-501, MCA, is amended to read:

**"2-16-501. Vacancies created.** An office becomes vacant on the ~~happening~~ occurrence of any one of the following events before the expiration of the term of the incumbent:

- (1) the death of the incumbent;
- (2) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent suffers from a mental disorder and is in need of commitment;
- (3) the effective date stipulated in the resignation of the incumbent becoming effective;
- (4) removal of the incumbent from office;
- (5) the incumbent's ceasing to be a resident of the state or, if the office is local, of the district, city, county, town, or township for which the incumbent was chosen or appointed or within which the duties of the incumbent's office are required to be discharged;
- (6) except as provided in 10-1-1008, absence of the incumbent from the state, without the permission of the legislature, beyond the period allowed by law;
- (7) the incumbent's ceasing to discharge the duty of the incumbent's office for the period of 3 consecutive months, except when prevented by sickness, when absent from the state by permission of the legislature, or as provided in 10-1-1008;
- (8) conviction of the incumbent of a felony or of an offense involving moral turpitude or a violation of the incumbent's official duties;
- (9) the incumbent's refusal or neglect to file the incumbent's official oath or bond within the time

1 prescribed;

2 (10) the decision of a competent tribunal declaring void the incumbent's election or appointment."

3

4 **Section 2.** Section 2-16-502, MCA, is amended to read:

5 **"2-16-502. Resignations.** (1) Resignations must be in writing, must stipulate an effective date, and  
6 ~~made~~ must be submitted as follows:

7 (a) by the governor and lieutenant governor, to the legislature if it is in session and, if not, then to the  
8 secretary of state;

9 (b) by all officers commissioned by the governor, to the governor;

10 (c) by senators and members of the house of representatives, if the legislature is not in session, to the  
11 secretary of state and, if it is in session, to the presiding officer of the branch to which the member belongs, who  
12 must immediately transmit the same to the secretary of state;

13 (d) by all county and township officers not commissioned by the governor, to the clerk of the board of  
14 commissioners of their respective counties;

15 (e) by all other appointed officers, to the body or officer that appointed them;

16 (f) by all trustees of school districts, to the clerk of the respective school district, provided for in 20-3-325;

17 (g) in all cases not otherwise provided for, by filing the resignation in the office of the secretary of state.

18 (2) A resignation is ~~effective~~ official 72 hours after its submission in the manner provided for in subsection  
19 (1) unless the resignation is withdrawn during that 72-hour period by the resigner through written notification of  
20 withdrawal made in the same manner as provided in subsection (1) for resignations."

21

22 **Section 3.** Section 5-2-402, MCA, is amended to read:

23 **"5-2-402. Appointment by board of county commissioners -- county central committee role --**  
24 **timeframes.** (1) Except as provided in subsection (5) or as otherwise provided by law, whenever a vacancy  
25 occurs in the legislature, the vacancy must be filled by appointment by the board of county commissioners or,  
26 in the event of a multicounty district, the boards of county commissioners of the counties comprising the district  
27 sitting as one appointing board.

28 (2) (a) Whenever a vacancy or resignation is within a single county, the board of county commissioners  
29 shall make the appointment as described in 5-2-403, 5-2-404, or 5-2-406.

30 (b) Whenever a vacancy or resignation is within a multicounty district, the boards of county

1 commissioners shall sit as one appointing board. The selection of an individual to fill the current or anticipated  
2 vacancy must be as follows:

3 (i) The presiding officer of the board of county commissioners of the county in which the person resided  
4 whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the legislature and  
5 shall preside at the meeting.

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

8 (A) A is the total votes cast in the respective county for the person vacating the legislative seat or, if the  
9 vacating person was not elected, the votes cast for the last person to be elected for the current term;

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

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

13 (iii) The person selected to fill the vacancy is the one who receives the highest number above 50 that  
14 results from the calculation in subsection (2)(b)(ii). If none of the candidates receives a number higher than 50  
15 from that calculation, the selection board shall cast its votes again in the same manner for the persons receiving  
16 the two highest numbers. If neither vote results in a candidate receiving a number higher than 50 from the  
17 calculation provided in subsection (2)(b)(ii), then 5-2-404 applies.

18 (c) If a vacancy or resignation occurs in a holdover senate seat after holdover senators have been  
19 assigned to new districts under each reapportionment, the formula in subsection (2)(b)(ii) must be applied using  
20 the votes cast for the senatorial candidates at the last election in which votes were cast for a senate candidate.  
21 Only the number of votes cast by electors residing in the new senate district for senate candidates of the party  
22 to which the person vacating the seat belonged may be counted. The secretary of state shall provide an estimate  
23 of the number of votes cast for each party by county or portion of a county. The selection process is the same  
24 as provided in subsection (2)(b)(iii).

25 (3) The appointment process to fill a ~~vacant legislative seat~~ current or anticipated vacancy in the  
26 legislature under this section is as follows:

27 (a) Within 7 days of being notified of a vacancy or resignation as described in 2-16-501, the secretary  
28 of state shall notify the board of county commissioners and the state party that is responsible for notifying the  
29 county central committee of the county where the vacating legislator is a resident, if the legislative seat is within  
30 one county, or the boards of county commissioners and the corresponding county central committees if the

1 legislative seat is in a multicounty district. If the legislator is an independent or belongs to a party for which there  
2 is no county central committee, the notification of county commissioners suffices.

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

7 (c) The appointing board shall make and confirm an appointment and notify the secretary of state within  
8 15 days:

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

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

12 (iii) after notification of a current or anticipated vacancy if the legislator vacating the seat is an  
13 independent.

14 (4) If the legislature is in session, the notification process in subsection (3)(a) must be followed within  
15 5 days. The process described in subsection (3)(b) must take place in 5 days. The process described in  
16 subsection (3)(c) must take place in 5 days.

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

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

21

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

23 **"5-2-406. Elections to fill vacancies in senate.** (1) Whenever a current or anticipated vacancy occurs  
24 85 days or more before the general election held during the second year of the term, an individual must be  
25 appointed pursuant to 5-2-402. The appointment continues until a person is elected to complete the term at the  
26 upcoming general election and is sworn into office. The election procedure to be used to elect the successor is  
27 as follows:

28 (a) Whenever the current or anticipated vacancy occurs 85 days or more prior to the primary election  
29 during the second year, the same procedure as is used for senators who will be elected to full 4-year terms at  
30 that general election must be utilized.

1           (b) Whenever the current or anticipated vacancy occurs on or after the 85th day prior to the primary  
2 election, any political party desiring to enter a candidate in the general election shall select a candidate as  
3 provided in 13-10-327 and 13-38-204. A political party shall notify the secretary of state of the party nominee. A  
4 person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and  
5 13-10-502. The petition for an independent candidate must be filed with the secretary of state on or before the  
6 85th day prior to the general election.

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

10

- END -