

HOUSE BILL NO. 186

INTRODUCED BY F. MANDEVILLE

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CANDIDATE FILING LAWS RELATED TO INDEPENDENT CANDIDATES; REVISING THE TERMS USED TO DESCRIBE INDEPENDENT CANDIDATES; ELIMINATING THE REQUIREMENT FOR AN INDEPENDENT CANDIDATE TO SUBMIT SIGNATURES WITH A PETITION FOR NOMINATION; AND AMENDING SECTIONS 5-2-402, 5-2-403, 5-2-404, 5-2-406, 7-4-2106, 7-4-2206, 13-10-211, 13-10-305, 13-10-501, 13-10-502, 13-10-504, 13-10-507, 13-10-602, AND 13-25-205, MCA."

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) Except as provided in subsection (5) or as otherwise provided by law, whenever a vacancy occurs in the legislature, the vacancy 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.

(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:

(i) The 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 shall preside at the meeting.

(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 the vacating person was not 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



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

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

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

15 (3) The appointment process to fill a vacant legislative seat under this section is as follows:

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

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

26 (c) The appointing board shall make and confirm an appointment and notify the secretary of state within  
27 15 days:

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

1 (iii) after notification of a vacancy if the legislator vacating the seat ~~is an independent~~ has no party  
2 affiliation.

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

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

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

10

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

12 **"5-2-403. Appointee to be of same political party.** (1) Whenever an appointee's predecessor served  
13 as a member of a political party, the appointee named under 5-2-402 must be a member of the same political  
14 party and must be selected from a list of three individuals provided:

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

16 (b) by the county central committees, acting together, in a multicounty district, as described in 5-2-402.

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

21 (3) The provisions of this section do not apply if the predecessor served ~~as an independent~~ with no party  
22 affiliation."

23

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

25 **"5-2-404. Procedure upon failure of one candidate to receive majority vote.** In the event that a  
26 decision cannot be made by the appointing board because of failure of any candidate to receive a majority of the  
27 votes, the final decision may be made by lot from the first and second lists of candidates as provided by 5-2-403  
28 or from a list of three individuals if the predecessor served ~~as an independent~~ with no party affiliation, in  
29 accordance with rules of selection adopted by the appointing board."

30

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

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

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

9           (b) Whenever the vacancy occurs on or after the 85th day prior to the primary election, any political party  
10 desiring to enter a candidate in the general election shall select a candidate as provided in 13-10-327 and  
11 13-38-204. A political party shall notify the secretary of state of the party nominee. A person desiring to be a  
12 candidate ~~as an independent~~ with no party affiliation shall follow the procedures provided in 13-10-501 ~~and~~  
13 ~~13-10-502~~. The petition for ~~an independent~~ a candidate with no party affiliation must be filed with the secretary  
14 of state on or before the 85th day prior to the general election.

15           (2) Whenever a vacancy occurs on or after the 85th day prior to the general election held during the  
16 second year of the term, the person appointed by the board under 5-2-402 shall serve until the end of the term."  
17

18           **Section 5.** Section 7-4-2106, MCA, is amended to read:

19           **"7-4-2106. Vacancy on board of county commissioners -- resigning member not to participate in**  
20 **filling pending vacancy.** (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in  
21 2-16-501.

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

26           (a) If the former incumbent represented a party eligible for a primary election under 13-10-601, the  
27 county central committee of that party shall submit to the remaining commissioners three names of people who  
28 have lived in the unrepresented district for at least 2 years immediately preceding the day the vacancy occurs.  
29 The remaining commissioners shall appoint one of these three to fill the vacancy. Whenever the remaining  
30 commissioners are unable to elect an appointee from the submitted list, they shall request a second list of three

1 names from the county central committee. The second list may not contain any of the names submitted on the  
2 first list. The remaining commissioners shall then select an appointee from the individuals named on both lists.

3 (b) If the former incumbent had no party affiliation, or was independent, nonpartisan; or originally  
4 nominated by a party that does not meet the requirements of 13-10-601, or if the vacancy occurs from a failure  
5 to elect, the remaining commissioners shall invite applications for the vacancy in a notice published as provided  
6 in 13-1-108 and shall accept an application from any person who has lived in the unrepresented district for at  
7 least 2 years immediately preceding the day the vacancy occurs. The remaining commissioners shall appoint one  
8 of these applicants to fill the vacancy.

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

12 (a) Whenever the vacancy occurs prior to March 1 before the primary election during the second or  
13 fourth year of the term, the same procedure must be used as is used to elect county commissioners to full 6-year  
14 terms.

15 (b) Whenever the vacancy occurs on or after March 1 preceding the primary election, any political party  
16 desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political  
17 party shall notify the county election administrator of the party nominee. A person desiring to be a candidate as  
18 ~~an independent~~ with no party affiliation shall follow the procedures provided in 13-10-501 ~~and 13-10-502~~. The  
19 petition for ~~an independent~~ a candidate with no party affiliation must be filed with the county election administrator  
20 prior to August 1 before the general election. A candidate for a nonpartisan office shall file as provided in Title  
21 13, chapter 14.

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

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

29 (b) If vacancies occur at different times but, because appointments have not yet been made, a quorum  
30 cannot be established, the county compensation board shall, subject to subsection (5)(c), appoint enough

1 commissioners to allow for a quorum to be established. The county compensation board shall appoint each  
2 commissioner in the order that the vacancy occurred.

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

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

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

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

14 (6) If a member of the board of county commissioners has submitted the member's resignation as  
15 provided in 2-16-502 or if proceedings have begun to remove the member from office under 2-16-501, that  
16 member may not be considered to be a remaining member of the commission as provided in this section and may  
17 not participate in filling the vacancy to be created when the resignation becomes effective."  
18

19 **Section 6.** Section 7-4-2206, MCA, is amended to read:

20 **"7-4-2206. Vacancies -- appointment of interim officer.** (1) For the purposes of this part, "vacancy"  
21 has the same meaning as prescribed in 2-16-501.

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

26 (b) The commissioners may appoint a person to serve as an interim officer for the time period between  
27 occurrence of the vacancy and the date on which the vacancy is filled pursuant to this section. A person  
28 appointed as an interim officer must have the qualifications required under this chapter for the office to which the  
29 person has been appointed. Upon appointment, the interim officer is authorized to perform the duties assigned  
30 by law to that office.

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

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

6 (b) Whenever the vacancy occurs on or after March 1 before the primary election, any political party  
 7 desiring to enter a candidate in a partisan election in the general election shall select a candidate as provided  
 8 in 13-38-204. A political party shall notify the county election administrator of the party nominee. A person desiring  
 9 to be a candidate ~~as an independent~~ with no party affiliation shall follow the procedures provided in 13-10-501  
 10 ~~and 13-10-502~~. The petition for ~~an independent~~ a candidate with no party affiliation must be filed with the county  
 11 election administrator prior to August 1 before the general election. A candidate for a nonpartisan office shall file  
 12 as provided in Title 13, chapter 14.

13 (4) Whenever a vacancy occurs on or after July 31 before the general election held during the second  
 14 year of the term, the person appointed by the commissioners under subsection (2) shall serve until the end of the  
 15 term."

16

17 **Section 7.** Section 13-10-211, MCA, is amended to read:

18 **"13-10-211. Declaration of intent for write-in candidates.** (1) Except as provided in subsection (7),  
 19 a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent.  
 20 Except for a candidate under 13-38-201(4), a candidate may not file for more than one public office. The  
 21 declaration of intent must be filed with the secretary of state or election administrator, depending on where a  
 22 declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district  
 23 clerk for a school district office. When a county election administrator is conducting the election for a school  
 24 district, the school district clerk or school district office that receives the declaration of intent shall notify the county  
 25 election administrator of the filing. Except as provided in 20-3-305(3)(b) and subsection (2) of this section, the  
 26 declaration must be filed no later than 5 p.m. on the 10th day before the date established under 13-13-205 on  
 27 which a ballot must be available for absentee voting for the election and must contain:

28 (a) the candidate's name, including:

29 (i) the candidate's first and last names;

30 (ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the

- 1 candidate's last name;
- 2 (iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and
- 3 (iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;
- 4 (b) the candidate's mailing address;
- 5 (c) a statement declaring the candidate's intention to be a write-in candidate;
- 6 (d) the title of the office sought;
- 7 (e) the date of the election;
- 8 (f) the date of the declaration; and
- 9 (g) the candidate's signature.
- 10 (2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than
- 11 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office
- 12 that the write-in candidate is seeking dies or is charged with a felony offense and if the election has not been
- 13 canceled as provided by law.
- 14 (3) The secretary of state shall notify each election administrator of the names of write-in candidates who
- 15 have filed a declaration of intent with the secretary of state. Each election administrator shall notify the election
- 16 judges in the county or district of the names of write-in candidates who have filed a declaration of intent.
- 17 (4) A properly completed and signed declaration of intent may be provided to the election administrator
- 18 or secretary of state:
- 19 (a) by facsimile transmission;
- 20 (b) in person;
- 21 (c) by mail; or
- 22 (d) by electronic mail.
- 23 (5) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the
- 24 secretary of state or the election administrator.
- 25 (6) A write-in candidate who files a declaration of intent for a general election may not file with a partisan;
- 26 ~~or nonpartisan, or independent designation~~ or with a designation of no party affiliation.
- 27 (7) Except as provided in 13-38-201(4)(b), the requirements in subsection (1) do not apply if:
- 28 (a) an election is held;
- 29 (b) a person's name is written in on the ballot;
- 30 (c) the person is qualified for and seeks election to the office for which the person's name was written



1 in; and

2 (d) no other candidate has filed a declaration or petition for nomination or a declaration of intent."

3

4 **Section 8.** Section 13-10-305, MCA, is amended to read:

5 **"13-10-305. Independent Candidate with no party affiliation forfeits place on ballot.** An individual  
6 who has filed as ~~an independent~~ a candidate with no party affiliation forfeits the individual's place on the general  
7 election ballot as ~~an independent~~ a candidate with no party affiliation if the individual accepts a write-in nomination  
8 for an office as provided in 13-10-204."

9

10 **Section 9.** Section 13-10-501, MCA, is amended to read:

11 **"13-10-501. Petition for nomination by independent candidates with no party affiliation or by**  
12 **political parties not eligible to participate in primary election.** (1) Except as provided in 13-10-504,  
13 nominations for public office by ~~an independent~~ a candidate with no party affiliation or by a political party that does  
14 not meet the requirements of 13-10-601 may be made by a petition for nomination.

15 (2) The petition must contain the same information and the oath of the candidate required for a  
16 declaration for nomination.

17 (3) If a petition is filed by a political party, it must contain the party name and, in five words or less, the  
18 principle that the body represents.

19 (4) The form of the petition must be prescribed by the secretary of state, and the secretary of state shall  
20 furnish sample copies to the election administrators and on request to any individual.

21 (5) ~~Each~~ If a petition is filed by a political party, each sheet of a the petition must contain signatures of  
22 electors residing in only one county."

23

24 **Section 10.** Section 13-10-502, MCA, is amended to read:

25 **"13-10-502. Signature requirements for petition.** (1) ~~The~~ A petition for nomination filed by a political  
26 party must be signed by electors residing within the state and district or political subdivision in which the officer  
27 or officers are to be elected. Each signature line must contain spaces for the signature, post-office address, and  
28 printed last name of the signer.

29 (2) The number of signatures must be 5% or more of the total vote cast for the successful candidate for  
30 the same office at the last general election.

1 (3) If the office sought is a new office or the boundaries of the district or political subdivision in which the  
 2 election is to be held have changed since the last election for the office, the officer with whom nominations for  
 3 the office sought are filed shall determine the number of signatures required for a petition of nomination for that  
 4 office."

5

6 **Section 11.** Section 13-10-504, MCA, is amended to read:

7 **"13-10-504. ~~Independent~~ Unaffiliated or minor party candidates for president or vice president.**

8 (1) An individual who desires to run for president or vice president as ~~an independent~~ a candidate with no party  
 9 affiliation or as a candidate of a party not qualified under 13-10-601 shall file a petition for nomination with the  
 10 secretary of state 76 days prior to the date of the general election.

11 (2) The petition and the affidavits of circulation required by 13-27-302 must first be submitted, at least  
 12 1 week before the deadline for filing, to the election administrator in the county where the signer resides for  
 13 verification and certification by the procedures provided in 13-27-303 through 13-27-306.

14 (3) The petition filed by a candidate of a party not qualified under 13-10-601 must have the signatures  
 15 of electors equal to 5% or more of the total votes cast for the successful candidate for governor at the last general  
 16 election or 5,000 electors, whichever is less. The names of the candidates for the required number of presidential  
 17 electors allowable to Montana must be certified to the secretary of state no later than 76 days before the general  
 18 election.

19 (4) A qualified ~~independent~~ presidential candidate with no party affiliation may amend the petition and  
 20 designate or choose a named vice presidential candidate until the filing date provided in 13-25-101."

21

22 **Section 12.** Section 13-10-507, MCA, is amended to read:

23 **"13-10-507. ~~Independent~~ Unaffiliated candidates -- association with political parties not allowed.**

24 (1) A person seeking office as ~~an independent~~ a candidate with no party affiliation may not be associated with  
 25 a political party for 1 year prior to the submission of the person's nomination petition.

26 (2) For the purposes of subsection (1), "associated with a political party" means having run for office in  
 27 Montana as a partisan candidate or having held a public office in Montana or a precinct committee representative  
 28 office in Montana with a political party designation."

29

30 **Section 13.** Section 13-10-602, MCA, is amended to read:

1           **"13-10-602. Use of party name.** (1) A political party and its regularly nominated candidates, members,  
2 and officers have the sole and exclusive right to the use of the party name. A candidate for office may not use  
3 any word of the name of any other political party or organization other than that by which the candidate is  
4 nominated.

5           (2) ~~An independent~~ A candidate with no party affiliation or a nonpartisan candidate may not use any word  
6 of the name of any existing political party or organization in the candidacy."

7

8           **Section 14.** Section 13-25-205, MCA, is amended to read:

9           **"13-25-205. Nominations for special election.** (1) When a special election is ordered to fill a vacancy  
10 in the office of United States senator or United States representative, each political party shall choose a candidate  
11 according to the rules of the party. Nominations by parties must be made no later than 75 days before the date  
12 set for the election.

13           (2) ~~Nominating petitions~~ A nominating petition may be filed by ~~independent candidates~~ a candidate with  
14 no party affiliation for the office up to 5 p.m. of the 75th day before the election."

15

- END -