



AN ACT GENERALLY REVISING ELECTION LAWS RELATED TO ABSENTEE AND MAIL BALLOTS; REVISING THE TIMELINES FOR HANDLING ABSENTEE AND MAIL BALLOTS; ALLOWING ELECTION ADMINISTRATORS IN CERTAIN COUNTIES TO VERIFY THE VALIDITY OF CERTAIN BALLOTS UP TO 3 BUSINESS DAYS BEFORE ELECTION DAY; ALLOWING TABULATION OF CERTAIN BALLOTS TO BEGIN 1 DAY BEFORE ELECTION DAY; ELIMINATING THE REQUIREMENT THAT BOARDS COUNTING CERTAIN BALLOTS BE SEQUESTERED; PROVIDING RESTRICTIONS ON THE RELEASE OF VOTE TALLIES; PROVIDING PENALTIES; REVISING ABSENTEE BALLOT RETURN PROVISIONS; AMENDING SECTIONS 13-13-232, 13-13-241, 13-15-101, 13-15-104, 13-15-105, 13-15-207, 13-19-106, 13-19-312, AND 13-35-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 13-13-232, MCA, is amended to read:

"13-13-232. Delivery of ballots and secrecy envelopes to election judges -- ballots to be rejected.

(1) If an absentee ballot is received prior to delivery of the official ballots to the election judges, the election administrator shall process it according to 13-13-241 and then, unless the early preparation process in 13-13-241(7) was followed, deliver the unopened secrecy envelope to the judges at the same time that the ballots are delivered.

(2) If an absentee ballot is received after the official ballots are delivered to the election judges but prior to the close of the polls, the election administrator shall process it according to 13-13-241 and shall then immediately deliver the unopened secrecy envelope to the judges.

(3) If the election administrator receives an absentee ballot for which an application or request was not made or received as required by this part, the election administrator shall endorse upon the elector's envelope the date and exact time of receipt and the words "to be rejected". Absentee ballots endorsed in this manner must be handled in the same manner as provided in 13-15-108(1)."

Section 2. Section 13-13-241, MCA, is amended to read:

"13-13-241. Examination of absentee ballot signature envelopes -- deposit of absentee and unvoted ballots -- rulemaking. (1) (a) Upon receipt of each absentee ballot signature envelope, an election administrator shall compare the signature of the elector or elector's agent on the absentee ballot request or on the elector's voter registration form with the signature on the signature envelope.

(b) If the elector is legally registered and the signature on the signature envelope matches the signature on the absentee ballot application or on the elector's voter registration form, the election administrator or an election judge shall handle the ballot as a regular ballot.

(c) (i) If the elector is provisionally registered and the signature on the signature envelope matches the signature on the absentee ballot application or on the elector's voter registration form, the election administrator or an election judge shall open the outer signature envelope and determine whether the elector's voter identification and eligibility information, if enclosed pursuant to 13-13-201, is sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.

(ii) If the voter identification and eligibility information is sufficient to legally register the elector, the ballot must be handled as a regular ballot.

(iii) If voter identification or eligibility information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.

(2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes. If an unvoted party ballot is not received, the election administrator shall process the voted party ballot as if the unvoted party ballot had been received.

(4) If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector as provided in 13-13-245.

(5) If the signature on the absentee ballot signature envelope does not match the signature on the absentee ballot request form or on the elector's voter registration form or if there is no signature on the absentee ballot signature envelope, the election administrator shall notify the elector as provided in 13-13-245.

(6) If at any point there is a question concerning the validity of a particular ballot, the question must be resolved as provided in 13-13-245.

(7) (a) ~~After~~ Except as provided in subsection (8), after receiving an absentee ballot secrecy envelope and if the validity of the ballot is confirmed pursuant to 13-13-245, then no sooner than ~~4~~ 3 business ~~day~~ days before election day, the election official may, ~~in the presence of a poll watcher,~~ open the secrecy envelope and place the ballot in the proper, secured ballot box until tabulation occurs ~~on election day~~. Automatic tabulation using a vote-counting machine may not begin sooner than 1 day before election day. Tabulation using a manual count may not begin until election day.

(b) An election official may not conduct the process described in subsection (7)(a) on a Saturday or a Sunday.

(c) Ballot preparation as described in this subsection (7) is open to the public. Tabulation is open to the public as provided in 13-15-101.

(d) Access to an electronic system containing early tabulation results is limited to the election administrator and the election administrator's designee. Results may not be released except as provided in [section 9].

(8) For a county with fewer than 8,000 registered electors or fewer than 5,000 absentee electors at the close of regular registration, the ballot preparation process described in subsection (7)(a) may not begin sooner than 1 business day before election day.

~~(9)~~(9) The election administrator shall safely and securely keep the absentee ballots in the election administrator's office until delivered by the election administrator to the election judges.

~~(9)~~(10) The secretary of state shall develop administrative rules to establish the process and procedures to be used during the early preparation of ballots to ensure the security of the ballots and the secrecy of the votes during the early preparation period. The rules must include but are not limited to:

- (a) the allowable distance from the observers to the judges and ballots;
- (b) the security in the observation area;
- (c) secrecy of votes during the preparation of the ballots; and
- (d) security of the secured ballot boxes in storage until tabulation procedures begin ~~on election day~~."

Section 3. Section 13-15-101, MCA, is amended to read:

"13-15-101. Votes to be publicly counted -- return forms. (1) Any official vote count must be open to public observation and ~~continue without adjournment until completed and the result is publicly declared.~~

(2) Immediately after all the ballots are counted by precinct, the election judges shall copy the total votes cast for each candidate and for and against each proposition on the return forms furnished by the election administrator.

(3) The election judges shall immediately display one of the return forms at the place of counting and return a copy to the election administrator. Both forms must be signed by all the election judges completing the count."

Section 4. Section 13-15-104, MCA, is amended to read:

"13-15-104. Absentee ballot counting board. (1) The election administrator shall:

(a) give special instructions to any absentee ballot counting board appointed under 13-15-112 on the proper procedures for counting the absentee ballots; and

(b) provide the forms and supplies necessary for the board to perform its duties.

(2) The absentee ballot counting board shall:

(a) be ~~sequestered~~ in a room separate from where ballots are being cast;

(b) at any time prior to the closing of the polls but ~~not before the polls open~~ no sooner than 1 day before election day, start the count of the absentee votes cast; and

(c) follow the procedures outlined in 13-13-241 and 13-15-207 for the counting of the votes cast.

(3) An election judge or other individual having access to any results of early counting ~~may not disclose the information while the polls are open and must remain sequestered until the closing of the polls~~ is subject to [section 9].

(4) The absentee ballot counting board shall take the oath and sign the affirmation specified in 13-15-207(4)."

Section 5. Section 13-15-105, MCA, is amended to read:

"13-15-105. Notices relating to absentee ballot counting board. (1) Not more than 10 days or less than 2 days before an election, the election administrator shall broadcast on radio or television, as provided in 2-3-105 through 2-3-107, or publish in a newspaper of general circulation in the county a notice indicating the method that will be used for counting absentee ballots and the place and time that the absentee ballots will be counted ~~on election day~~.

(2) If the count will begin ~~while the polls are open~~ before the polls close, the notice required under subsection (1) must inform the public that any person observing the procedures of the count ~~must be sequestered with the board until the polls are closed~~ and is required to take the oath provided in 13-15-207(4) and is subject to [section 9]."

Section 6. Section 13-15-207, MCA, is amended to read:

"13-15-207. Counting board procedures. (1) After ballots have been prepared pursuant to 13-15-201, the election administrator may arrange for the vote count to begin ~~prior to the close of the polls~~ no sooner than 1 day before election day, or immediately upon the closure of the polls, in the manner prescribed in this section.

(2) ~~(a)~~ When a count is conducted after the polls have closed, the counting board shall:

(a) meet at a place designated by the election administrator;

~~(b) The board must be sequestered until the count is complete.~~

~~(c) The board shall continue counting until the votes cast for all candidates and issues are counted; and~~

~~(d)~~(c) ~~Votes must be counted~~ count votes as prescribed in 13-15-206.

(3) When votes are counted prior to the close of the polls:

(a) the election administrator shall make provisions for the delivery of voted ballots to the counting center at any time prior to the closing of the polls;

(b) the board must be ~~sequestered~~ located in a room separate from the room where ballots are being cast;

~~(c) anyone observing the count must be sequestered with the board until the polls close;~~

~~(d)~~(c) the ballots may be processed and counted as they are received;

~~(e)~~(d) an election judge or other individual having access to early count results ~~may not disclose that information to the public while the polls are open~~ is subject to [section 9]; and

~~(f)~~(e) votes must be counted as prescribed in 13-15-206.

(4) (a) When votes are being counted prior to the close of the polls, in addition to the official oath taken and subscribed to by the election judges, the members of the counting board and observers shall complete and sign the following affirmation: "I, _____, will not discuss the results of the early counting of votes ~~while the polls are open~~ at any time prior to the closing of the polls on election day."

(b) The election administrator or chief election judge shall witness and sign the affirmation in subsection

(4)(a)."

Section 7. Section 13-19-106, MCA, is amended to read:

"13-19-106. General requirements for mail ballot election. A mail ballot election must be conducted substantially as follows:

(1) Subject to 13-12-202, official mail ballots must be prepared and all other initial procedures followed as provided by law, except that mail ballots must be paper ballots and are not required to have stubs.

(2) An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

(3) Each signature envelope must contain a form that is the same as the form for absentee ballot signature envelopes and that is prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.

(4) The elector shall mark the ballot and place it in a secrecy envelope.

(5) (a) The elector shall then place the secrecy envelope containing the elector's ballot in a signature envelope and mail it or deliver it in person to a place of deposit designated by the election administrator.

(b) Except as provided in 13-21-206 and 13-21-226, the voted ballot must be received before 8 p.m. on election day.

(6) Election officials shall first qualify the voted ballot by examining the signature envelope to determine whether it is submitted by a qualified elector who has not previously voted in the election.

(7) If the voted ballot qualifies and is otherwise valid, officials shall then open the signature envelope and remove the secrecy envelope, which must be deposited unopened in an official ballot box pursuant to the timeline specified in 13-13-241(7).

(8) Except as provided in 13-19-312, ~~after the close of voting on election day~~, voted ballots must be counted and canvassed as provided in Title 13, chapter 15."

Section 8. Section 13-19-312, MCA, is amended to read:

"13-19-312. Preparation for count and counting procedure. (1) The preparation for counting ballots must be as provided in 13-15-201.

(2) Except as provided in subsection (3), after the close of voting on election day, the counting board appointed pursuant to 13-15-112 shall:

(a) open the official ballot boxes;

(b) if the process authorized under 13-13-241(7) was not used, open each secrecy envelope, removing the voted ballot; and

(c) proceed to count the votes as provided in Title 13, chapter 15.

(3) ~~On election day, the~~ The election administrator may begin the procedures described in subsection (2) ~~before the polls close~~ no sooner than 1 day before election day if the election administrator complies with the procedures described in 13-15-207(3)."

Section 9. Release of vote tally -- penalty. (1) A person may not make public the results of a vote tally from a precinct until after the polls close as provided in 13-1-106.

(2) (a) A person who knowingly violates subsection (1) shall be imprisoned in the state prison for a term not to exceed 2 years or be fined an amount not less than \$100,000 and not more than \$500,000, or both.

(b) For the purposes of this section "knowingly" has the meaning specified in 45-2-101.

Section 10. Section 13-35-704, MCA, is amended to read:

"13-35-704. Record of delivery. An individual permitted to collect and convey a ballot under 13-35-703(2)(c) through (2)(f) shall sign a registry when delivering the ballot to the polling place, a place of deposit, or the election administrator's office. In addition to the signature requirement, the individual collecting and conveying the ballot shall provide the following information:

(1) the individual's name, address, and phone number;

(2) the voter's name and address; and

(3) the individual's relationship to the voter required to collect and convey a ballot pursuant to 13-35-703(2)(c) through (2)(f)."

Section 11. Codification instruction. [Section 9] is intended to be codified as an integral part of Title 13, chapter 35, part 2, and the provisions of Title 13, chapter 35, part 2, apply to [section 9].

Section 12. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 0162, originated in the Senate.

President of the Senate

Signed this _____ day
of _____, 2019.

Secretary of the Senate

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 162
INTRODUCED BY R. WEBB

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