

1 HOUSE BILL NO. 405

2 INTRODUCED BY J. HAMILTON

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS PERTAINING TO CANDIDATE
 5 REPORTING AND DISCLOSURE; REQUIRING THE COMMISSIONER OF POLITICAL PRACTICES TO
 6 REVIEW A BUSINESS DISCLOSURE STATEMENT BEFORE FILING AND TO EXTEND CERTAIN
 7 CANDIDATE DISCLOSURE FILING DEADLINES UNDER CERTAIN CIRCUMSTANCES; DISQUALIFYING A
 8 CANDIDATE FROM THE BALLOT UNDER CERTAIN CIRCUMSTANCES; PROHIBITING PARTIES FROM
 9 REPLACING DISQUALIFIED PARTISAN CANDIDATES ON THE BALLOT UNDER CERTAIN
 10 CIRCUMSTANCES; REQUIRING CERTAIN NOTICE PROVISIONS WHEN A CANDIDATE DECLARES OR
 11 PETITIONS FOR A POSITION; AND AMENDING SECTIONS 2-2-106, 13-10-201, 13-10-204, 13-10-211, 13-
 12 10-326, 13-10-327, 13-10-501, 13-37-124, AND 13-37-126, MCA."

13

14 WHEREAS, the holding of public office is a public trust; and

15 WHEREAS, candidate compliance with the business disclosure and campaign finance disclosure
 16 requirements constitutes a commitment to upholding transparency and the public trust; and

17 WHEREAS, the refusal to fully and timely file business disclosure and campaign finance disclosures
 18 constitutes violations of the very public trust that a candidate seeks to protect by becoming an elected official.

19

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

21

22 **Section 1.** Section 2-2-106, MCA, is amended to read:

23 **"2-2-106. Disclosure.** (1) (a) Prior to December 15 of each even-numbered year, each state officer,
 24 holdover senator, supreme court justice, and district court judge shall file with the commissioner of political
 25 practices a business disclosure statement on a form provided by the commissioner. An individual filing pursuant
 26 to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a) during the same period.

27 (b) Each candidate for a statewide or a state office elected from a district shall, within ~~5 days~~ 1 day of
 28 the time that the candidate files for office, ~~file electronically~~ transmit a completed business disclosure statement

1 ~~with~~to the commissioner of political practices on a form provided by the commissioner. However, the
2 commissioner, in the commissioner's discretion, may grant a waiver to the requirement that the business
3 disclosure statement be filed electronically.

4 (c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b) is
5 required to file the business disclosure statement at the earlier of the time of submission of the person's name
6 for confirmation or the assumption of the office.

7 (2) Except as provided in subsection ~~(4)~~ (5), the statement must provide the following information:

8 (a) the name, address, and type of business of the individual;

9 (b) each present or past employing entity from which benefits, including retirement benefits, are
10 currently received by the individual;

11 (c) each business, firm, corporation, partnership, and other business or professional entity or trust in
12 which the individual holds an interest;

13 (d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual is an officer or
14 director, regardless of whether or not the entity is organized for profit; and

15 (e) all real property, other than a personal residence, in which the individual holds an interest. Real
16 property may be described by general description.

17 (3) (a) Within 10 days of receiving the business disclosure statement from a candidate required to file
18 a business disclosure statement under subsection (1)(b), but no later than 3 days after the deadline for the
19 candidate to file for office, the commissioner shall accept or reject the business disclosure statement for filing.
20 The commissioner may not evaluate the substantive merit of the responses under this review, but the
21 commissioner shall reject the business disclosure statement if it is unresponsive to the requirements of
22 subsection (2). If the commissioner rejects the filing, the commissioner shall promptly inform the candidate of
23 the rejection and give the candidate 1 day to correct the rejected filing.

24 (b) If the candidate does not submit a business disclosure statement sufficient for acceptance by the
25 commissioner by the deadline in subsection (1)(b) or, if a filing was rejected, by the deadline provided pursuant
26 to subsection (3)(a), the candidate is disqualified from appearing on the official ballot. If the candidate is
27 disqualified under this section, the commissioner shall prepare the notification provided for in 13-37-126 that the
28 candidate's name may not appear on the official ballot.

1 ~~(3)~~(4) An individual may not assume or continue to exercise the powers and duties of the office to
2 which that individual has been elected or appointed until the statement has been filed as provided in subsection
3 (1).

4 ~~(4)~~(5) An individual required to file a business disclosure statement may certify that the information
5 required by subsection (2) has not changed from the most recent statement filed by the individual. The
6 commissioner shall provide a certification form.

7 ~~(5)~~(6) The commissioner of political practices shall make the business disclosure statements and
8 certification forms available to any individual upon request."
9

10 **Section 2.** Section 13-10-201, MCA, is amended to read:

11 "**13-10-201. Declaration for nomination -- term limitations.** (1) Each candidate in the primary
12 election, except nonpartisan candidates filing under the provisions of Title 13, chapter 14, shall file a declaration
13 for nomination with the secretary of state or election administrator. Except for a candidate under 13-38-201(4)
14 or a candidate covered under 7-1-205, a candidate may not file for more than one public office. Each candidate
15 for governor shall file a joint declaration for nomination with a candidate for lieutenant governor.

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

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

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

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

26 (4) The declaration for nomination must include an oath of the candidate that includes wording
27 substantially as follows: "I hereby affirm that I possess, or will possess within constitutional and statutory
28 deadlines, the qualifications prescribed by the Montana constitution and the laws of the United States and the

1 state of Montana." The candidate affirmation included in this oath is presumed to be valid unless proven
2 otherwise in a court of law.

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

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

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

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

14 (7) Except as provided in 13-10-211, a candidate's declaration for nomination must be filed no sooner
15 than 145 days before the election in which the office first appears on the ballot and no later than 5 p.m., 85
16 days before the date of the primary election.

17 (8) A properly completed and signed declaration for nomination form may be sent by facsimile
18 transmission, electronically mailed, delivered in person, or mailed to the election administrator or to the
19 secretary of state.

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

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

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

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

28 (10) A declaration for nomination must prominently display a statement substantially as follows:

1 "A candidate is subject to removal from the ballot and fines for failure to file a required campaign
2 finance disclosure report pursuant to [section 10] and 13-37-126 and the business disclosure statement, if
3 applicable, pursuant to 2-2-106."
4

5 **Section 3.** Section 13-10-204, MCA, is amended to read:

6 **"13-10-204. Write-in nominations.** (1) An individual nominated by having the individual's name
7 written in and counted as provided in 13-15-206(5) or otherwise placed on the primary ballot and desiring to
8 accept the nomination may not have the individual's name appear on the general election ballot unless the
9 individual:

10 (a) received at least 5% of the total votes cast for the successful candidate for the same office at the
11 last general election;

12 (b) files with the secretary of state or election administrator, no later than 10 days after the official
13 canvass, a written declaration indicating acceptance of the nomination; and

14 (c) complies with the provisions of 13-37-126.

15 (2) A write-in candidate who was exempt from filing a declaration of intent under 13-10-211 shall, at
16 the time of filing the declaration of acceptance, pay the filing fee specified in 13-10-202 or, if indigent, file the
17 appropriate documents described in 13-10-203.

18 (3) The written declaration in subsection (1)(b) must prominently display a statement substantially as
19 follows:

20 "A candidate is subject to removal from the ballot and fines for failure to file a required campaign
21 finance disclosure report pursuant to [section 10] and 13-37-126 and the business disclosure statement, if
22 applicable, pursuant to 2-2-106."
23

24 **Section 4.** Section 13-10-211, MCA, is amended to read:

25 **"13-10-211. Declaration of intent for write-in candidates.** (1) Except as provided in subsection (7),
26 a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent.
27 Except for a candidate under 13-38-201(4) or a candidate covered under 7-1-205, a candidate may not file for
28 more than one public office. The declaration of intent must be filed with the secretary of state or election

1 administrator, depending on where a declaration of nomination for the desired office is required to be filed
 2 under 13-10-201, or with the school district clerk for a school district office. When a county election
 3 administrator is conducting the election for a school district, the school district clerk or school district office that
 4 receives the declaration of intent shall notify the county election administrator of the filing. Except as provided in
 5 13-1-403, 13-1-503, 20-3-305(3)(b), and subsection (2) of this section, the declaration must be filed no later
 6 than 5 p.m. on the 10th day before the earliest date established under 13-13-205 on which a ballot must be
 7 available and must contain:

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

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

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

12 (iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and

13 (iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;

14 (b) the candidate's mailing address;

15 (c) a statement declaring the candidate's intention to be a write-in candidate;

16 (d) the title of the office sought;

17 (e) the date of the election;

18 (f) the date of the declaration; ~~and~~

19 (g) the candidate's signature; and

20 (h) a statement substantially as follows:

21 "A candidate is subject to removal from the ballot and fines for failure to file a required campaign
 22 finance disclosure report pursuant to [section 10] and 13-37-126 and the business disclosure statement, if
 23 applicable, pursuant to 2-2-106."

24 (2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later
 25 than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the
 26 office that the write-in candidate is seeking dies or is charged with a felony offense and if the election has not
 27 been canceled as provided by law.

28 (3) The secretary of state shall notify each election administrator of the names of write-in candidates

1 who have filed a declaration of intent with the secretary of state. Each election administrator shall notify the
 2 election judges in the county or district of the names of write-in candidates who have filed a declaration of
 3 intent.

4 (4) A properly completed and signed declaration of intent may be provided to the election
 5 administrator or secretary of state:

6 (a) by facsimile transmission;

7 (b) in person;

8 (c) by mail; or

9 (d) by electronic mail.

10 (5) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the
 11 secretary of state or the election administrator.

12 (6) A write-in candidate who files a declaration of intent for a general election may not file with a
 13 partisan, nonpartisan, or independent designation.

14 (7) Except as provided in 13-38-201(4)(b), the requirements in subsection (1) do not apply if:

15 (a) an election is held;

16 (b) a person's name is written in on the ballot;

17 (c) the person is qualified for and seeks election to the office for which the person's name was written
 18 in; and

19 (d) no other candidate has filed a declaration or petition for nomination or a declaration of intent."
 20

21 **Section 5.** Section 13-10-326, MCA, is amended to read:

22 "**13-10-326. Vacancy prior to primary election.** (1) If a candidate for nomination for a partisan office
 23 dies or withdraws before the candidate filing deadline established in 13-10-201(7), the affected political party
 24 may appoint someone to replace the candidate by the procedure provided in 13-10-327.

25 (2) Except as provided in subsection ~~(3)~~ (4), if a candidate for nomination for a partisan office dies
 26 after the candidate filing deadline established in 13-10-201(7), or is disqualified pursuant to 13-37-126(1)(a)
 27 from having the candidate's name appear on the primary election ballot, the affected political party shall appoint
 28 a candidate after the primary election as provided in 13-10-327 if a candidate for that office for that party was

1 not nominated at the primary election.

2 (3) If a candidate for nomination for a partisan office is disqualified from having the candidate's name
 3 appear on the primary election ballot pursuant to 13-37-126(1)(b), the affected political party may not appoint a
 4 replacement candidate unless the candidate is a candidate for governor or lieutenant governor.

5 ~~(3)~~(4) A political party may not appoint a candidate for an office if no candidate for nomination by that
 6 party filed for the office before the primary election or if the deadline for certifying candidate names for the ballot
 7 pursuant to 13-10-208 has passed."

8

9 **Section 6.** Section 13-10-327, MCA, is amended to read:

10 **"13-10-327. Vacancy after primary and prior to general election.** (1) Except as provided in 13-10-
 11 328 for a vacancy in the candidacy of either governor or lieutenant governor caused by the death of a candidate
 12 or as provided in subsection (2)(a) of this section, if a party candidate dies or withdraws after the primary and
 13 before the general election, or if a candidate is disqualified pursuant to 13-37-126(1)(a) from having the
 14 candidate's name appear on a general election ballot, the affected political party shall appoint someone to
 15 replace the candidate in one of the following ways:

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

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

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

23 (2) (a) If a candidate for election for a partisan office is disqualified from having the candidate's name
 24 appear on the general election ballot pursuant to 13-37-126(1)(b) or [section 10(1)(b)], the affected political
 25 party may not appoint a replacement candidate unless the candidate is a candidate for governor or lieutenant
 26 governor.

27 (b) If the vacancy on the ballot created by a candidate disqualified under 13-37-126(1)(b) or [section
 28 10(1)(b)] causes no candidate to be elected, the position must be filled by a new election or by appointment as

1 may be provided by law regarding vacancies in the office.

2 ~~(2)~~(3) Except as provided in this section, appointments to fill vacancies must be made no later than 76
3 days before the election. A candidate may not officially withdraw 85 days or less before a general election.
4 However, if a candidate for partisan office dies less than 85 days before the general election, the affected
5 political party shall appoint a candidate within 5 days after being notified of the vacancy. One of the procedures
6 provided in 13-12-204 must be used to place the name of the appointee on the ballot if necessary.

7 ~~(3)~~(4) The appointing committee shall send a certificate to the officer with whom a declaration for
8 nomination for the office would be filed, with the information required on a declaration for nomination and the
9 name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed and
10 acknowledged acceptance of the appointment and the filing fee for the office.

11 ~~(4)~~(5) The officer receiving the certificate of appointment, accompanied by a statement of acceptance
12 and the filing fee, shall certify the name of the appointee for the ballot."
13

14 **Section 7.** Section 13-10-501, MCA, is amended to read:

15 **"13-10-501. Petition for nomination by independent candidates or political parties not eligible**
16 **to participate in primary election.** (1) Except as provided in 13-10-504, nominations for public office by an
17 independent candidate or a political party that does not meet the requirements of 13-10-601 may be made by a
18 petition for nomination.

19 (2) The petition must contain the same information ~~and~~, the oath of the candidate required for a
20 declaration for nomination, and the statement required by 13-10-201(10).

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

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

25 (5) Each sheet of a petition must contain signatures of electors residing in only one county."
26

27 **Section 8.** Section 13-37-124, MCA, is amended to read:

28 **"13-37-124. Consultation and cooperation with county attorney.** (1) Except as provided in 13-35-

1 240 and [section 10], whenever the commissioner determines that there appears to be sufficient evidence to
 2 justify a civil or criminal prosecution under chapter 35 of this title or this chapter, the commissioner shall notify
 3 the county attorney of the county in which the alleged violation occurred and shall arrange to transmit to the
 4 county attorney all information relevant to the alleged violation. If the county attorney fails to initiate the
 5 appropriate civil or criminal action within 30 days after receiving notification of the alleged violation, the
 6 commissioner may then initiate the appropriate legal action.

7 (2) A county attorney may, at any time prior to the expiration of the 30-day time period specified in
 8 subsection (1), waive the right to prosecute, and the waiver authorizes the commissioner to initiate the
 9 appropriate civil or criminal action.

10 (3) The provisions of subsection (1) do not apply to a situation in which the alleged violation has been
 11 committed by the county attorney of a county. In this instance, the commissioner is authorized to directly
 12 prosecute any alleged violation of chapter 35 of this title or this chapter.

13 (4) If a prosecution is undertaken by the commissioner, all court costs associated with the prosecution
 14 must be paid by the state of Montana, and all fines and forfeitures imposed pursuant to a prosecution by the
 15 commissioner, except those paid to or imposed by a justice's court, must be deposited in the state general
 16 fund."

17

18 **Section 9.** Section 13-37-126, MCA, is amended to read:

19 **"13-37-126. Names not to appear on ballot.** (1) The name of a candidate may not appear on the
 20 official ballot for an election if the candidate or a treasurer for a candidate fails to file:

21 (a) any statement or report as required by 2-2-106 or this chapter; or

22 (b) the business disclosure statement as provided in 2-2-106 by the deadline specified in 2-2-

23 106(1)(b) or, if a filing was rejected, by the deadline provided in 2-2-106(3)(b).

24 (2) A vacancy on an official ballot under this section that may be filled in the manner as otherwise
 25 provided by law, but may not be filled by the same candidate.

26 (3) (a) In carrying out the mandate of this section, the commissioner shall, by a written statement,
 27 notify the secretary of state and the election administrator conducting an election when a candidate or a
 28 candidate's treasurer has not complied with 2-2-106 or the provisions of this chapter, and that the candidate's

1 name may not appear on the official ballot, and, if the candidate was disqualified under subsection (1)(b) of this
2 section or [section 10(1)(b)], whether the candidate's vacancy on the official ballot may be filled.

3 (b) The commissioner shall provide the notification:

4 (i) 2 calendar days before the certification deadline provided in 13-10-208 for statewide primary
5 elections and 20-20-401 for school district elections; and

6 (ii) 7 days before the certification deadline provided in 13-12-201 for general elections."
7

8 **NEW SECTION. Section 10. Late candidate reports -- warning -- removal from ballot -- civil fine.**

9 (1) (a) (i) If a candidate fails to timely file a report required under 13-37-226(1)(b) in March, April, or June in the
10 year of an election in which the candidate participates, within 5 days of the filing date, the commissioner shall
11 promptly notify the candidate of the omission and that the candidate may make a written request to the
12 commissioner for relief from the filing date deadline. Notification by the commissioner may be accomplished by
13 written or electronic communication or by telephone. If the commissioner receives a written request from the
14 candidate, the commissioner shall grant an extension until 20 days after the report's original filing deadline.

15 (ii) An extension may not be granted for a report required under 13-37-226(1)(b) in May in the year of
16 an election in which the candidate participates.

17 (b) In addition to any other penalty provided by law, if the candidate twice fails to file a mandatory
18 report required under 13-37-226(1)(b) in March, April, May, or June in the year of an election in which the
19 candidate participates by the reporting deadline or, if an extension was granted, before the extension provided
20 pursuant to subsection (1)(a), whichever is later, and the two unfiled reports are for consecutive reporting
21 periods, the candidate is disqualified from appearing on the official general election ballot. If the candidate is
22 disqualified under this section, the commissioner shall prepare the notification as provided in 13-37-126 so that
23 the candidate's name may not appear on the official ballot.

24 (c) Once a mandatory report is filed, the content of the report must be inspected as provided in 13-37-
25 121. Nothing in this section prevents the commissioner from issuing an order of noncompliance pursuant to 13-
26 37-121 concerning the failure to file a report or a report that does not conform to law.

27 (2) (a) In addition to any other penalties established by law, if a candidate fails to timely file a report
28 required under 13-37-226(1)(b) in August, September, October, or November in the year of an election in which

1 the candidate participates, the candidate is subject to a civil penalty of \$50 for each working day that the report
2 is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report. A person
3 against whom a civil penalty is imposed pursuant to this subsection (2) may request a hearing within 10 days of
4 receiving a notice of imposition of a civil penalty. On receipt of a timely request, the commissioner shall grant an
5 informal contested case hearing as provided in Title 2, chapter 4, part 6, before a hearing examiner. On the
6 filing of a timely request for a hearing, the imposition of the daily civil penalty provided for in this section must
7 be suspended until the commissioner issues a decision. At the hearing, the hearings examiner shall consider
8 any factors or circumstances in mitigation and may reduce or waive the civil penalty.

9 (b) The penalty imposed in subsection (2)(a) is not subject to the procedural requirements contained
10 in 13-37-124.

11 (c) All civil penalties imposed pursuant to this section must be deposited in the state general fund.

12 (3) Nothing in this section may be construed to apply to a report other than the reports required under
13 13-37-226(1)(b).

14
15 **NEW SECTION. Section 11. Codification instruction.** [Section 10] is intended to be codified as an
16 integral part of Title 13, chapter 37, part 2, and the provisions of Title 13, chapter 37, part 2, apply to [section
17 10].

18 - END -