

1 SENATE BILL NO. 566  
2 INTRODUCED BY G. HERTZ  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ELECTION LAWS TO PROVIDE FOR A  
5 TOP TWO PRIMARY FOR CERTAIN OFFICES; REQUIRING THAT THE TWO CANDIDATES WHO RECEIVE  
6 THE MOST VOTES IN PRIMARY ELECTIONS FOR A U.S. SENATE OFFICE ADVANCE TO THE GENERAL  
7 ELECTION IRRESPECTIVE OF PARTY AFFILIATION; RAISING THE FILING FEE FOR U.S. SENATE  
8 CANDIDATES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 3-1-906, 13-1-101, 13-1-  
9 103, 13-1-403, 13-1-502, 13-10-201, 13-10-202, 13-10-203, 13-10-204, 13-10-208, 13-10-209, 13-10-211, 13-  
10 10-301, 13-10-302, 13-10-303, 13-10-325, 13-10-326, 13-10-327, 13-10-405, 13-10-501, 13-10-505, 13-10-  
11 601, 13-10-605, 13-12-201, 13-12-202, 13-12-203, 13-12-205, 13-12-207, 13-13-214, 13-13-241, 13-14-112,  
12 13-14-113, 13-15-205, 13-15-206, 13-15-507, 13-16-211, 13-16-412, 13-16-418, 13-16-419, 13-16-501, 13-17-  
13 103, 13-25-201, 13-25-205, 13-27-401, 13-35-106, 13-35-205, 13-35-206, 13-35-207, 13-35-214, 13-35-218,  
14 13-35-221, 13-35-226, 13-36-101, 13-36-102, 13-36-103, 13-36-104, 13-36-201, 13-36-202, 13-36-203, 13-36-  
15 206, 13-36-207, 13-36-209, 13-36-210, 13-36-211, 13-36-212, 13-37-127, AND 13-37-234, MCA; AND  
16 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

17  
18 WHEREAS, two-thirds of Montana voters passed term limits in 1992 for many elective offices, including  
19 U.S. Senate; and

20 WHEREAS, U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995), prevented Montana from  
21 enforcing term limits on its federal officials who serve in the U.S. Senate; and

22 WHEREAS, since Montana adopted term limits in 1992, three of the ten elections for U.S. Senate have  
23 been won by candidates with less than a majority of Montana voters (1996, 2006, 2012); and

24 WHEREAS, seats for the U.S. Senate are the only statewide federal officeholders in Montana and  
25 terms for the U.S. Senate are set at 6 years and do not give voters the same opportunity to hold elected  
26 officials accountable as those officials in 2-year terms for the U.S. House; and

27 WHEREAS, in the absence of enforceable term limits on federal officials, the Legislature desires that  
28 winners of Montana's U.S. Senate contests garner a majority of voters to ensure our federal elected officials

1 appropriate documents described in 13-10-203."

2

3 **Section 10.** Section 13-10-208, MCA, is amended to read:

4 **"13-10-208. Certification of candidate names and ballot issues for ballot -- preparing ballot. (1)**

5 Ten days after the close of candidate filing under 13-10-201~~(7)~~(8) for a primary election, the secretary of state  
6 shall certify to the election administrators the names and designations of candidates who have filed with the  
7 secretary of state, subject to 13-37-126, and any ballot issues as shown in the official records of the secretary  
8 of state's office in the manner provided in 13-10-209 and Title 13, chapter 12, part 2.

9 (2) On receiving the secretary of state's certification pursuant to subsection (1), the county election  
10 administrator shall certify the names and designations of all candidates whose names are entitled to appear on  
11 the ballot, subject to 13-37-126, and any ballot issues as shown in the official record of the county election  
12 administrator's office and shall have the official ballots prepared in the manner provided in 13-10-209 and Title  
13 13, chapter 12, part 2.

14 (3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana  
15 constitution to seek the office for which the candidate has filed because the candidate has changed residence,  
16 the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-  
17 325."

18

19 **Section 11.** Section 13-10-209, MCA, is amended to read:

20 **"13-10-209. Arrangement and preparing of primary ballots. (1) (a)** Ballots for a primary election  
21 must be arranged and prepared in the same manner and number as provided in chapter 12 for general election  
22 ballots, except that:

23 (i) for a partisan primary, there must be separate ballots for each political party entitled to  
24 participate. The name of the political party must appear at the top of the separate ballot for that party and need  
25 not appear with each candidate's name.

26 (ii) in a top two primary, the political party preference declared by the candidate on the declaration  
27 of candidacy under 13-10-201 must appear with the candidate's name on the ballot. The word "preference"  
28 must follow the candidate's preferred party, if any. If a candidate has not declared a preference for a political

1 party, the words "no party preference" must appear on the ballot with the candidate's name. Nothing in a top  
2 two primary portion of the ballot may indicate whether a candidate has been endorsed or nominated by a  
3 political party. The top two primary portion or portions of a ballot must clearly and conspicuously state that  
4 candidates in that section are not necessarily nominees or members of or endorsed by or otherwise associated  
5 with the candidate's political party preference. Information must be printed on the ballot and in the voter  
6 information pamphlet provided for in 13-27-401 to inform voters that in the top two primary the two candidates  
7 who receive the most votes for the office will advance to the general election regardless of either candidate's  
8 political party preference.

9 (b) (i) Nonpartisan offices, offices in which candidates are selected to advance in a top two  
10 primary, and ballot issues may be prepared on separate ballots or may appear on the same ballot as partisan  
11 offices if:

12 (i)(A) each section is clearly identified as separate; and

13 (i)(B) the nonpartisan offices, offices in which candidates are selected to advance in a top two  
14 primary, and ballot issues appear on each party's ballot.

15 (ii) The top two primary portion of a ballot must clearly and conspicuously state that the candidates  
16 in that section are not necessarily nominees or members of or endorsed by or otherwise associated with the  
17 candidate's political party preference.

18 (2) Except as provided in subsection (3), an election administrator ~~does~~ is not need required to  
19 prepare a partisan primary ballot for a political party if:

20 (a) the party does not have candidates for more than half of the offices to appear on the ballot; and

21 (b) no more than one candidate files for nomination by that party for any of the offices to appear on  
22 the ballot.

23 (3) Subsection (2) does not apply to elections for precinct committee offices. If more than one  
24 candidate files for a precinct committee office from a party that will not have a primary ballot prepared, that  
25 party shall select the candidate to fill the office.

26 (4) If, pursuant to subsection (2), in a primary election held in an even-numbered year a primary  
27 ballot for a political party is not prepared, the secretary of state shall certify that a primary election is  
28 unnecessary for that party and shall instruct the election administrator to certify the names of the candidates for

1 that party for the general election ballot only.

2 (5) The separate ballots for each party must have the same appearance. Each set of party ballots  
3 must bear the same number. If prepared as a separate ballot, the nonpartisan ballot and the top two primary  
4 ballot may have a different appearance appearances than the party ballots but must be numbered in the same  
5 order as the party ballots.

6 (6) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan  
7 ballot, the top two primary ballot, or a separate ballot. A separate ballot may have a different appearance than  
8 the other ballots in the election but must be numbered in the same order.

9 ~~(7) (a) If a ballot contains both offices in which candidates are nominated through a partisan~~  
10 ~~primary and offices in which candidates are selected to advance in a top two primary, the ballot must contain:~~

11 ~~(i) a clear and conspicuous, segregated area for the elector to mark the political party the elector~~  
12 ~~wishes to affiliate with for the purposes of voting in the partisan primary election;~~

13 ~~(ii) an option for the elector to mark "none of the above" with respect to party affiliation; and~~

14 ~~(iii) a clear and conspicuous statement that only electors who mark a political party affiliation may~~  
15 ~~vote on the partisan primary portion of the ballot.~~

16 ~~(b) A vote cast in a partisan primary may be counted only if the elector has marked an affiliation~~  
17 ~~with one political party, a vote cast in a partisan primary corresponds only to the marked party's primary, and~~  
18 ~~the elector has voted only once for each office.~~

19 ~~(7)(8)(7)~~ Each elector must receive a set of ballots that includes the party partisan primary, top  
20 two primary, nonpartisan, and ballot issue choices."

21

22 **Section 12.** Section 13-10-211, MCA, is amended to read:

23 **"13-10-211. Declaration of intent for write-in candidates.** (1) Except as provided in subsection (7),

24 a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent.

25 Except for a candidate under 13-38-201(4) or a candidate covered under 7-1-205, a candidate may not file for

26 more than one public office. The declaration of intent must be filed with the secretary of state or election

27 administrator, depending on where a declaration ~~of~~ for nomination or declaration of candidacy for the desired

28 office is required to be filed under 13-10-201, or with the school district clerk for a school district office. When a