

**Amendment - 1st Reading/2nd House-blue - Requested by: Greg Hertz - (H) State Administration**

- 2023

68th Legislature 2023

Drafter: Rachel Weiss, 406-444-5367

SB0566.002.001

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

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1 winners of Montana's U.S. Senate contests garner a majority of voters to ensure our federal elected officials  
2 have broad support in the absence of term limits and due to the longer terms in office; and

3 WHEREAS, a top-two primary for federal offices to determine which candidate has majority support is  
4 preferable to a costly run-off election following the general election; and

5 WHEREAS, as recognized by the U.S. Supreme Court in the top two primary case of Washington State  
6 *Grange v. Washington State Republican Party*, 552 U.S. 442 (2008), and authored by Justice Clarence  
7 Thomas, states possess a "broad power to prescribe the "Times, Places and Manner of holding Elections for  
8 Senators and Representatives" under Article 1, Section 4, Clause 1, of the U.S. Constitution; and

9 WHEREAS, Article IV, section 3, of the Montana Constitution, gives the authority to administer federal  
10 elections in Montana to the Montana Legislature; and

11 WHEREAS, the 2023 Legislature proposes a top two primary for U.S. Senate in 2024 with ~~a sunset~~  
12 ~~provision to allow~~ the intent that the 2025 Legislature ~~to~~ review the election process and make revisions  
13 according to its constitutional authority ~~and determine future to expand the~~ applicability of the top two primary in  
14 Montana to the U.S. House seats in 2026 and to statewide races in 2028.

15

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

17

18 **Section 1.** Section 3-1-906, MCA, is amended to read:

19 **"3-1-906. Senate confirmation -- exception -- nomination in interim -- appointment contingent**

20 **on vacancy.** (1) (a) Except as provided in subsection (2):

21 (i) each appointment must be confirmed by the senate; and

22 (ii) an appointment made while the senate is not in session is effective until the end of the next  
23 special or regular legislative session.

24 (b) If the appointment is subject to senate confirmation under subsection (1)(a) and is not  
25 confirmed, the office is vacant and another selection of nominees and appointment must be made.

26 (2) The following appointments are not subject to senate confirmation, and there must be an  
27 election for the office at the general election immediately preceding the scheduled expiration of the term or

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1 (2) Filing fees paid by the candidate may not be refunded."

2

3 **Section 17.** Section 13-10-326, MCA, is amended to read:

4 **"13-10-326. Vacancy prior to primary election.** (1) Vacancies that occur prior to a partisan primary  
5 must be filled as follows:

6 (a) If a candidate for nomination for a partisan office dies or withdraws before the candidate filing  
7 deadline established in 13-10-201(7)(8), the affected political party may appoint someone to replace the  
8 candidate by the procedure provided in 13-10-327.

9 (2)(b) Except as provided in subsection (3) (1)(c), if a candidate for nomination for a partisan office  
10 dies after the candidate filing deadline established in 13-10-201(7)(8), or is disqualified pursuant to 13-37-126  
11 from having the candidate's name appear on the primary election ballot, the affected political party shall appoint  
12 a candidate after the primary election as provided in 13-10-327 if a candidate for that office for that party was  
13 not nominated at the primary election.

14 (3)(c) A political party may not appoint a candidate for an office if no candidate for nomination by that  
15 party filed for the office before the primary election or if the deadline for certifying candidate names for the ballot  
16 pursuant to 13-10-208 has passed.

17 (2) Vacancies that occur prior to a top two primary due to death, disqualification, or withdrawal of a  
18 candidate may not be filled."

19

20 **Section 18.** Section 13-10-327, MCA, is amended to read:

21 **"13-10-327. Vacancy after primary and prior to general election.** (1) Except as provided in 13-10-  
22 328 for a vacancy in the candidacy of either governor or lieutenant governor caused by the death of a candidate  
23 and in subsection (2) for a candidate selected to advance in a top two primary, if a party candidate dies or  
24 withdraws after the primary and before the general election, or if a candidate is disqualified pursuant to 13-37-  
25 126 from having the candidate's name appear on a general election ballot, the affected political party shall  
26 appoint someone to replace the candidate in one of the following ways:

27 (a) For Except as provided in subsection (2), offices to be filled by the state at large, the state

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1 central committee shall make the appointment as provided by the rules of the party.

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

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

7 (2) Vacancies that occur after a top two primary but before the general election ~~due to death,~~  
8 ~~disqualification, or withdrawal of a candidate may not be filled. If a candidate entitled to appear on the general~~  
9 ~~election ballot following a top two primary dies, the name of that candidate must appear on the general election~~  
10 ~~ballot and any votes cast for that candidate must be counted in determining the results of the election for that~~  
11 ~~office. If the deceased candidate receives a majority of the votes cast for the office, the candidate is considered~~  
12 ~~elected to that office and the office is considered vacant at the beginning of the term for which the candidate~~  
13 ~~was elected. Vacancies following an election of a deceased candidate for an office filled using a top two primary~~  
14 ~~must be filled as provided in 13-25-206 for any reason must be filled as follows:~~

15 (a) If the vacancy occurs before the 85th day before the general election, the vacancy must be  
16 filled by the candidate next in rank in number of votes received in the primary election.

17 (b) If the vacancy occurs less than 85 days before the general election and a qualified individual is  
18 not elected to the office at the general election, the office is vacant and must be filled as provided by law.

19 ~~(2)~~(3) Except as provided in this section, appointments to fill vacancies must be made no later than  
20 76 days before the election. A candidate may not officially withdraw 85 days or less before a general election.  
21 However, if a candidate for partisan office dies less than 85 days before the general election, the affected  
22 political party shall appoint a candidate within 5 days after being notified of the vacancy. One of the procedures  
23 provided in 13-12-204 must be used to place the name of the appointee on the ballot if necessary.

24 ~~(3)~~(4) The appointing committee shall send a certificate to the officer with whom a declaration for  
25 nomination for the office would be filed, with the information required on a declaration for nomination and the  
26 name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed and  
27 acknowledged acceptance of the appointment and the filing fee for the office.

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1           ~~(4)~~(5) The officer receiving the certificate of appointment, accompanied by a statement of acceptance  
2 and the filing fee, shall certify the name of the appointee for the ballot."  
3

4           NEW SECTION. Section 19. Top two primary elections -- legislative findings -- restrictions --  
5 **exceptions.** (1) The legislature finds that a top two primary may not determine the nominees of a political party  
6 but serves to winnow the candidates for general election to the candidates receiving the highest and second  
7 highest number of votes cast at the primary election.

8           (2) If two or fewer candidates seek advancement to a general election, those candidates shall  
9 immediately advance without appearing on the primary election ballot.

10           (3) The top two primary may not be used as a process for a political party to nominate or endorse  
11 a candidate for a partisan public office. A top two primary election may not be construed as a regulation of how  
12 a political party may nominate or endorse a candidate. A party preference may not be used to limit the voting  
13 options available to a voter.

14           (4) The legislature intends that statutory changes be considered by the 69th and 70th legislatures  
15 to expand the top two primary system first to U.S. House offices and then to all statewide offices.  
16

17           **Section 20.** Section 13-10-405, MCA, is amended to read:

18           "**13-10-405. Submission and verification of petition.** Petitions of nomination for the presidential  
19 preference primary election and the affidavits of circulation required by 13-27-302 must be presented to the  
20 election administrator of the county in which the signatures are gathered at least 1 week before the primary  
21 election filing deadline prescribed in 13-10-201~~(7)~~(8). The election administrator shall verify the signatures in  
22 the manner prescribed in 13-27-303 through 13-27-308 and must forward the petitions to the secretary of state  
23 by the filing deadline prescribed in 13-10-201~~(7)~~(8)."  
24

25           **Section 21.** Section 13-10-501, MCA, is amended to read:

26           "**13-10-501. Petition for nomination by independent candidates or political parties not eligible**  
27 **to participate in partisan primary election.** (1) Except as provided in 13-10-504, nominations for a public

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1 of election as provided by law. A certificate of election may only be issued by the public official responsible for  
2 issuing a certificate or commission of election.

3 (2) In carrying out the mandate of this section, the commissioner ~~must~~ shall, by written statement,  
4 notify the public official responsible for issuing a certificate of nomination, certificate of selection, or election that  
5 a candidate or the candidate's treasurer has complied with the provisions of this chapter as described in  
6 subsection (1) and that a certificate of nomination, certificate of selection, or election may be issued."

7

8 **Section 68.** Section 13-37-234, MCA, is amended to read:

9 **"13-37-234. Religious organization exemptions to be broadly construed.** Pursuant to the first  
10 amendment to the United States constitution and to ensure the consistent application of the law, the  
11 commissioner shall broadly construe the exemptions concerning religious organizations provided in 13-1-  
12 ~~101(9)(b)(iv), (15)(b)(v), (17)(b)(v), and (19)(b)(vi)~~ (10)(b)(iv), (18)(b)(v), (20)(b)(v), and (22)(b)(vi)."

13

14 NEW SECTION. Section 69. Codification instruction. [Section 19] is intended to be codified as an  
15 integral part of Title 13, chapter 10, part 2, and the provisions of Title 13, chapter 10, part 2, apply to [section  
16 19].

17

18 NEW SECTION. Section 70. Severability. If a part of [this act] is invalid, all valid parts that are  
19 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
20 the part remains in effect in all valid applications that are severable from the invalid applications.

21

22 NEW SECTION. Section 71. Effective date. [This act] is effective on passage and approval.

23

24 ~~NEW SECTION. Section 72. Termination. [Sections 1 through 68] terminate June 30, 2025.~~

25

- END -