

**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 following the appointment, as applicable:

2 (a) an appointment made while the senate is not in session if the term to which the appointee is  
3 appointed expires prior to the next legislative session, regardless of the time of the appointment in relation to  
4 the candidate filing deadlines for the office; and

5 (b) an appointment made while the senate is not in session if a general election will be held prior to  
6 the next legislative session and the appointment is made prior to the candidate filing deadline for primary  
7 elections under 13-10-201~~(7)~~(8), in which case the position is subject to election at the next primary and  
8 general elections.

9 (3) A nomination is not effective unless a vacancy in office occurs."  
10

10

11 **Section 2.** Section 13-1-101, MCA, is amended to read:

12 **"13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the  
13 following definitions apply:

14 (1) "Active elector" means an elector whose name has not been placed on the inactive list due to  
15 failure to respond to confirmation notices pursuant to 13-2-220 or 13-19-313.

16 (2) "Active list" means a list of active electors maintained pursuant to 13-2-220.

17 (3) "Anything of value" means any goods that have a certain utility to the recipient that is real and  
18 that is ordinarily not given away free but is purchased.

19 (4) "Application for voter registration" means a voter registration form prescribed by the secretary  
20 of state that is completed and signed by an elector, is submitted to the election administrator, and contains  
21 voter registration information subject to verification as provided by law.

22 (5) "Ballot" means a paper ballot counted manually or a paper ballot counted by a machine, such  
23 as an optical scan system or other technology that automatically tabulates votes cast by processing the paper  
24 ballots.

25 (6) (a) "Ballot issue" or "issue" means a proposal submitted to the people at an election for their  
26 approval or rejection, including but not limited to an initiative, referendum, proposed constitutional amendment,  
27 recall question, school levy question, bond issue question, or ballot question.

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1 (b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by  
2 the proper official that the legal procedure necessary for its qualification and placement on the ballot has been  
3 completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the  
4 secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

5 (7) "Ballot issue committee" means a political committee specifically organized to support or  
6 oppose a ballot issue.

7 (8) "Candidate" means:

8 (a) an individual who has filed a declaration of candidacy, declaration for nomination, or petition for  
9 nomination, acceptance of nomination, selection to advance, or appointment as a candidate for public office as  
10 required by law;

11 (b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and  
12 retained contributions, made expenditures, or given consent to an individual, organization, political party, or  
13 committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure  
14 nomination, selection to advance, or election to any office at any time, whether or not the office for which the  
15 individual will seek nomination or election is known when the:

16 (i) solicitation is made;

17 (ii) contribution is received and retained; or

18 (iii) expenditure is made; or

19 (c) an officeholder who is the subject of a recall election.

20 (9) "Certificate of selection" means a certificate awarded to the individuals authorized by law to  
21 advance for a top two primary election and appear on the general election ballot.

22 ~~(9)(10)~~ (a) "Contribution" means:

23 (i) the receipt by a candidate or a political committee of an advance, gift, loan, conveyance,  
24 deposit, payment, or distribution of money or anything of value to support or oppose a candidate or a ballot  
25 issue;

26 (ii) an expenditure, including an in-kind expenditure, that is made in coordination with a candidate  
27 or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution;

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- 1 (iii) the receipt by a political committee of funds transferred from another political committee; or
- 2 (iv) the payment by a person other than a candidate or political committee of compensation for the
- 3 personal services of another person that are rendered to a candidate or political committee.
- 4 (b) The term does not mean:
- 5 (i) services provided without compensation by individuals volunteering a portion or all of their time
- 6 on behalf of a candidate or political committee;
- 7 (ii) meals and lodging provided by individuals in their private residences for a candidate or other
- 8 individual;
- 9 (iii) the use of a person's real property for a fundraising reception or other political event; or
- 10 (iv) the cost of a communication not for distribution to the general public by a religious organization
- 11 exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held
- 12 religious beliefs or practices.
- 13 (c) This definition does not apply to Title 13, chapter 37, part 6.
- 14 ~~(10)~~(11) "Coordinated", including any variations of the term, means made in cooperation with, in
- 15 consultation with, at the request of, or with the express prior consent of a candidate or political committee or an
- 16 agent of a candidate or political committee.
- 17 ~~(11)~~(12) "De minimis act" means an action, contribution, or expenditure that is so small that it does not
- 18 trigger registration, reporting, disclaimer, or disclosure obligations under Title 13, chapter 35 or 37, or warrant
- 19 enforcement as a campaign practices violation under Title 13, chapter 37.
- 20 (13) "Declaration for nomination" means the document filed by a candidate for an office that
- 21 requires a partisan primary held under Title 13, chapter 10, part 2, or nonpartisan primary under Title 13,
- 22 chapter 14.
- 23 (14) "Declaration of candidacy" means the document filed by a candidate for an office that requires
- 24 a top two primary be used to narrow the number of candidates for the general election.
- 25 ~~(12)~~(15) "Disability" means a temporary or permanent mental or physical impairment such as:
- 26 (a) impaired vision;
- 27 (b) impaired hearing;

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1 (c) impaired mobility. Individuals having impaired mobility include those who require use of a  
2 wheelchair and those who are ambulatory but are physically impaired because of age, disability, or disease.

3 (d) impaired mental or physical functioning that makes it difficult for the person to participate in the  
4 process of voting.

5 ~~(13)~~(16) "Election" means a general, special, or primary election held pursuant to the requirements of  
6 state law, regardless of the time or purpose.

7 ~~(14)~~(17) (a) "Election administrator" means, except as provided in subsection ~~(14)~~ ~~(b)~~ (17)(b), the  
8 county clerk and recorder or the individual designated by a county governing body to be responsible for all  
9 election administration duties, except that with regard to school elections not administered by the county, the  
10 term means the school district clerk.

11 (b) As used in chapter 2 regarding voter registration, the term means the county clerk and recorder  
12 or the individual designated by a county governing body to be responsible for all election administration duties  
13 even if the school election is administered by the school district clerk.

14 ~~(15)~~(18) (a) "Election communication" means the following forms of communication to support or  
15 oppose a candidate or ballot issue:

- 16 (i) a paid advertisement broadcast over radio, television, cable, or satellite;  
17 (ii) paid placement of content on the internet or other electronic communication network;  
18 (iii) a paid advertisement published in a newspaper or periodical or on a billboard;  
19 (iv) a mailing; or  
20 (v) printed materials.

21 (b) The term does not mean:

22 (i) an activity or communication for the purpose of encouraging individuals to register to vote or to  
23 vote, if that activity or communication does not mention or depict a clearly identified candidate or ballot issue;

24 (ii) a communication that does not support or oppose a candidate or ballot issue;

25 (iii) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any  
26 broadcasting station, newspaper, magazine, internet website, or other periodical publication of general  
27 circulation;

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1 (iv) a communication by any membership organization or corporation to its members, stockholders,  
2 or employees;

3 (v) a communication not for distribution to the general public by a religious organization exempt  
4 from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious  
5 beliefs or practices; or

6 (vi) a communication that the commissioner determines by rule is not an election communication.

7 ~~(16)~~(19) "Election judge" means a person who is appointed pursuant to Title 13, chapter 4, part 1, to  
8 perform duties as specified by law.

9 ~~(17)~~(20) (a) "Electioneering communication" means a paid communication that is publicly distributed by  
10 radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other  
11 distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does  
12 not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the  
13 district voting on the candidate or ballot issue, and that:

14 (i) refers to one or more clearly identified candidates in that election;

15 (ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that  
16 election; or

17 (iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.

18 (b) The term does not mean:

19 (i) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any  
20 broadcasting station, newspaper, magazine, internet website, or other periodical publication of general  
21 circulation unless the facilities are owned or controlled by a candidate or political committee;

22 (ii) a communication by any membership organization or corporation to its members, stockholders,  
23 or employees;

24 (iii) a commercial communication that depicts a candidate's name, image, likeness, or voice only in  
25 the candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy;

26 (iv) a communication that constitutes a candidate debate or forum or that solely promotes a  
27 candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum;

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1 (v) a communication not for distribution to the general public by a religious organization exempt  
2 from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious  
3 beliefs or practices; or

4 (vi) a communication that the commissioner determines by rule is not an electioneering  
5 communication.

6 ~~(18)(21)~~ "Elector" means an individual qualified to vote under state law.

7 ~~(19)(22)~~ (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge,  
8 or gift of money or anything of value:

9 (i) made by a candidate or political committee to support or oppose a candidate or a ballot issue;

10 (ii) made by a candidate while the candidate is engaging in campaign activity to pay child-care  
11 expenses as provided in 13-37-220; or

12 (iii) used or intended for use in making independent expenditures or in producing electioneering  
13 communications.

14 (b) The term does not mean:

15 (i) services, food, or lodging provided in a manner that they are not contributions under subsection  
16 ~~(9)~~ (10);

17 (ii) except as provided in subsection ~~(19)(a)(ii)~~ (22)(a)(ii), payments by a candidate for personal  
18 travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

19 (iii) the cost of any bona fide news story, commentary, blog, or editorial distributed through the  
20 facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general  
21 circulation;

22 (iv) the cost of any communication by any membership organization or corporation to its members  
23 or stockholders or employees;

24 (v) the use of a person's real property for a fundraising reception or other political event; or

25 (vi) the cost of a communication not for distribution to the general public by a religious organization  
26 exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held  
27 religious beliefs or practices.



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1 (c) This definition does not apply to Title 13, chapter 37, part 6.

2 ~~(20)~~(23) "Federal election" means an election in even-numbered years in which an elector may vote for  
3 individuals for the office of president of the United States or for the United States congress.

4 ~~(21)~~(24) "General election" means an election that is held for offices that first appear on a primary  
5 election ballot, unless the primary is cancelled as authorized by law, and that is held on a date specified in 13-  
6 1-104.

7 ~~(22)~~(25) "Inactive elector" means an individual who failed to respond to confirmation notices and  
8 whose name was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

9 ~~(23)~~(26) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

10 ~~(24)~~(27) (a) "Incidental committee" means a political committee that is not specifically organized or  
11 operating for the primary purpose of supporting or opposing candidates or ballot issues but that may  
12 incidentally become a political committee by receiving a contribution or making an expenditure.

13 (b) For the purpose of this subsection ~~(24)~~ (27), the primary purpose is determined by the  
14 commissioner by rule and includes criteria such as the allocation of budget, staff, or members' activity or the  
15 statement of purpose or goal of the person or individuals that form the committee.

16 ~~(25)~~(28) "Independent committee" means a political committee organized for the primary purpose of  
17 receiving contributions and making expenditures that is not controlled either directly or indirectly by a candidate  
18 and that does not coordinate with a candidate in conjunction with the making of expenditures except pursuant  
19 to the limits set forth in 13-37-216(1).

20 ~~(26)~~(29) "Independent expenditure" means an expenditure for an election communication to support or  
21 oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue  
22 committee.

23 ~~(27)~~(30) "Individual" means a human being.

24 ~~(28)~~(31) "Legally registered elector" means an individual whose application for voter registration was  
25 accepted, processed, and verified as provided by law.

26 ~~(29)~~(32) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by  
27 mailing ballots to all active electors.

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1            ~~(33)~~ "Nonpartisan primary" means a primary election that is conducted under Title 13, chapter 14.

2            ~~(34)~~ (a) "Partisan primary" means a primary election conducted under Title 13, chapter 10, for local,  
3 county, legislative, district, statewide, presidential preference primary, or political party precinct committee  
4 offices.

5            ~~(b)~~ The term does not include a primary election for U.S. senator.

6            ~~(30)(35)~~ "Person" means an individual, corporation, association, firm, partnership, cooperative,  
7 committee, including a political committee, club, union, or other organization or group of individuals or a  
8 candidate as defined in subsection (8).

9            ~~(34)(36)~~ "Place of deposit" means a location designated by the election administrator pursuant to 13-  
10 19-307 for a mail ballot election conducted under Title 13, chapter 19.

11            ~~(32)(37)~~ (a) "Political committee" means a combination of two or more individuals or a person other  
12 than an individual who receives a contribution or makes an expenditure:

13            (i)        to support or oppose a candidate or a committee organized to support or oppose a candidate  
14 or a petition for nomination;

15            (ii)        to support or oppose a ballot issue or a committee organized to support or oppose a ballot  
16 issue; or

17            (iii)       to prepare or disseminate an election communication, an electioneering communication, or an  
18 independent expenditure.

19            (b)        Political committees include ballot issue committees, incidental committees, independent  
20 committees, and political party committees.

21            (c)        A candidate and the candidate's treasurer do not constitute a political committee.

22            (d)        A political committee is not formed when a combination of two or more individuals or a person  
23 other than an individual makes an election communication, an electioneering communication, or an  
24 independent expenditure of \$250 or less.

25            (e)        A joint fundraising committee is not a political committee.

26            ~~(33)(38)~~ "Political party committee" means a political committee formed by a political party organization  
27 and includes all county and city central committees.

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1           ~~(34)~~(39) "Political party organization" means a political organization that:

2           (a)       was represented on the official ballot in either of the two most recent statewide general  
3 elections; or

4           (b)       has met the petition requirements provided in Title 13, chapter 10, part 5.

5           ~~(35)~~(40) "Political subdivision" means a county, consolidated municipal-county government,  
6 municipality, special purpose district, or any other unit of government, except school districts, having authority  
7 to hold an election.

8           ~~(36)~~(41) "Polling place election" means an election primarily conducted at polling places rather than by  
9 mail under the provisions of Title 13, chapter 19.

10          ~~(37)~~(42) "Primary" or "primary election" means an election held on a date specified in 13-1-107 to:

11          (a)       nominate candidates using a partisan primary or a nonpartisan primary for offices filled at a  
12 general election; or

13          (b)       narrow the number of candidates using a top two primary for offices filled at a general election.

14          ~~(38)~~(43) "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has  
15 not been verified as provided by law.

16          ~~(39)~~(44) "Provisionally registered elector" means an individual whose application for voter registration  
17 was accepted but whose identity or eligibility has not yet been verified as provided by law.

18          ~~(40)~~(45) "Public office" means a state, county, municipal, school, or other district office that is filled by  
19 the people at an election.

20          ~~(41)~~(46) "Random-sample audit" means an audit involving a manual count of ballots from designated  
21 races and ballot issues in precincts selected through a random process as provided in 13-17-503.

22          ~~(42)~~(47) "Registrar" means the county election administrator and any regularly appointed deputy or  
23 assistant election administrator.

24          ~~(43)~~(48) "Regular school election" means the school trustee election provided for in 20-20-105(1).

25          ~~(44)~~(49) "Religious organization" means a house of worship with the major purpose of supporting  
26 religious activities, including but not limited to a church, mosque, shrine, synagogue, or temple. The organic  
27 documents of the organization must list a formal code of doctrine and discipline, and the organization must

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1 spend the majority of its money on religious activities such as regular religious services, educational  
2 preparation for its ministers, development and support of its ministers, membership development, outreach and  
3 support, and the production and distribution of religious literature developed by the organization.

4 ~~(45)~~(50) "School election" has the meaning provided in 20-1-101.

5 ~~(46)~~(51) "School election filing officer" means the filing officer with whom the declarations for  
6 nomination for school district office were filed or with whom the school ballot issue was filed.

7 ~~(47)~~(52) "School recount board" means the board authorized pursuant to 20-20-420 to perform recount  
8 duties in school elections.

9 (53) "Selection to advance" or "selected to advance" means the status given to an individual  
10 authorized by law to advance from a top two primary election and appear on the general election ballot.

11 ~~(48)~~(54) "Signature envelope" means an envelope that contains a secrecy envelope and ballot and  
12 that is designed to:

13 (a) allow election officials, upon examination of the outside of the envelope, to determine that the  
14 ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

15 (b) allow it to be used in the United States mail.

16 ~~(49)~~(55) "Special election" means an election held on a day other than the day specified for a primary  
17 election, general election, or regular school election.

18 ~~(50)~~(56) "Special purpose district" means an area with special boundaries created as authorized by  
19 law for a specialized and limited purpose.

20 ~~(51)~~(57) "Statewide voter registration list" means the voter registration list established and maintained  
21 pursuant to 13-2-107 and 13-2-108.

22 ~~(52)~~(58) "Support or oppose", including any variations of the term, means:

23 (a) using express words, including but not limited to "vote", "oppose", "support", "elect", "defeat", or  
24 "reject", that call for the nomination, election, or defeat of one or more clearly identified candidates, the election  
25 or defeat of one or more political parties, or the passage or defeat of one or more ballot issues submitted to  
26 voters in an election; or

27 (b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or

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1 ballot issues in a manner that is susceptible of no reasonable interpretation other than as a call for the  
2 nomination, election, or defeat of the candidate in an election, the election or defeat of the political party, or the  
3 passage or defeat of the ballot issue or other question submitted to the voters in an election.

4 (59) "Top two primary" means the primary election process to narrow the number of candidates for  
5 U.S. senator to two candidates who, irrespective of political party preference, receive the highest number of  
6 votes cast in the race for the office of U.S. senator.

7 ~~(53)~~(60) "Valid vote" means a vote that has been counted as valid or determined to be valid as  
8 provided in 13-15-206.

9 ~~(54)~~(61) "Voted ballot" means a ballot that is:

- 10 (a) deposited in the ballot box at a polling place;  
11 (b) received at the election administrator's office; or  
12 (c) returned to a place of deposit.

13 ~~(55)~~(62) "Voter interface device" means a voting system that:

- 14 (a) is accessible to electors with disabilities;  
15 (b) communicates voting instructions and ballot information to a voter;  
16 (c) allows the voter to select and vote for candidates and issues and to verify and change

17 selections; and

- 18 (d) produces a paper ballot that displays electors' choices so the elector can confirm the ballot's  
19 accuracy and that may be manually counted.

20 ~~(56)~~(63) "Voting system" or "system" means any machine, device, technology, or equipment used to  
21 automatically record, tabulate, or process the vote of an elector cast on a paper ballot."

22

23 **Section 3.** Section 13-1-103, MCA, is amended to read:

24 **"13-1-103. Determination of winner.** (1) The individual receiving the highest number of valid votes  
25 for any office at an a general election, nonpartisan primary, or partisan primary election is elected or nominated  
26 to that office.

27 (2) The two individuals receiving the most votes in a top two primary are selected to advance."

1

2           **Section 4.** Section 13-1-403, MCA, is amended to read:

3           **"13-1-403. Election deadlines for candidate filing, write-in candidacy, and withdrawal -- election**  
4 **cancellation -- election by acclamation.** (1) Consistent with the candidate filing deadline in 13-10-201(~~7~~)(8)  
5 for primary elections and except as provided in subsection (2) for a write-in candidate, the candidate filing  
6 deadline for election to a local government office is no sooner than 145 days and no later than 85 days before  
7 the election.

8           (2) A declaration of intent to be a write-in candidate must be filed with the election administrator by  
9 5 p.m. on the 65th day before the date of the election.

10           (3) Consistent with the withdrawal deadline in 13-10-325 for primary elections, a candidate may  
11 not withdraw after the candidate filing deadline provided in subsection (1).

12           (4) Except as provided in subsection (5)(b) and unless otherwise specifically provided by law, if the  
13 number of candidates filing for election is equal to or less than the number of positions to be filled, the election  
14 administrator shall notify the governing body of the local government in writing that the election is not necessary  
15 and the governing body may by resolution cancel the election.

16           (5) (a) If an election has been canceled and there is only one candidate for a position, the  
17 governing body of the local government shall declare the candidate elected to the position by acclamation.

18           (b) If an election has been canceled and there are no regular or declared write-in candidates for a  
19 position, the governing body of the local government shall fill the position by appointment. The term of an  
20 appointed member must be the same as if the member were elected."  
21

22           **Section 5.** Section 13-1-502, MCA, is amended to read:

23           **"13-1-502. Deadlines for candidate filing, write-in candidacy, and withdrawal -- election**  
24 **cancellation -- election by acclamation.** (1) Consistent with the candidate filing deadline in 13-10-201(~~7~~)(8)  
25 for primary elections and except as provided in subsection (3) for a write-in candidate, the candidate filing  
26 deadline for election to a special purpose district office is no sooner than 145 days and no later than 85 days  
27 before the election.

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1 (2) Consistent with the withdrawal deadline in 13-10-325 for primary elections, a candidate may  
2 not withdraw after the candidate filing deadline provided in subsection (1).

3 (3) A declaration of intent to be a write-in candidate must be filed with the election administrator by  
4 5 p.m. on the 65th day before the date of the election.

5 (4) (a) Except as provided in subsection (4)(b), if by the write-in candidate deadline in subsection  
6 (3) the number of candidates is equal to or less than the number of positions to be filled at the election, the  
7 election administrator shall cancel the election and, pursuant to 13-1-304, immediately notify the governing  
8 body of the local government in writing of the cancellation. However, the governing body of the local  
9 government may by resolution require that the election be held.

10 (b) For an election of conservation district supervisors held in conjunction with a federal primary or  
11 federal general election, if by the candidate filing deadline under subsection (1) the number of candidates is  
12 equal to or less than the number of positions to be filled at the election, the election administrator shall cancel  
13 the election and immediately notify the governing body of the conservation district in writing of the cancellation.  
14 However, the governing body of the conservation district may, by no later than 10 days after the candidate filing  
15 deadline, pass a resolution to require that the election be held.

16 (5) (a) If an election has been canceled and there is only one candidate for a position, the  
17 governing body of the local government or, if appropriate, of the conservation district shall declare the  
18 candidate elected to the position by acclamation.

19 (b) Except as otherwise provided by law:

20 (i) if an election has been canceled and there are no regular or declared write-in candidates for a  
21 position, the governing body of the local government or, if appropriate, of the conservation district shall fill the  
22 position by appointment;

23 (ii) an appointed member shall serve the same term as if the member were elected."  
24

25 **Section 6.** Section 13-10-201, MCA, is amended to read:

26 **"13-10-201. Declaration for nomination -- declaration of candidacy -- term limitations.** (1) (a)

27 Each candidate in the a partisan primary election, ~~except nonpartisan candidates filing under the provisions of~~

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1 ~~Title 13, chapter 14,~~ shall file a declaration for nomination with the secretary of state or election administrator.

2 (b) Each candidate in a top two primary election shall file a declaration of candidacy with the  
3 secretary of state.

4 (c) Except for a candidate under 13-38-201(4) or a candidate covered under 7-1-205, a candidate  
5 may not file for more than one public office. Each candidate for governor shall file a joint declaration for  
6 nomination with a candidate for lieutenant governor.

7 (2) A declaration for nomination or a declaration of candidacy must be filed in the office of:

8 (a) the secretary of state for placement of a name on the ballot for the presidential preference  
9 primary; a congressional office, the office of U.S. representative, a state or district office to be voted for in more  
10 than one county other than the office of U.S. senate, a member of the legislature, or a judge of the district court;  
11 or

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

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

18 (4) The declaration for nomination and the declaration of candidacy must include an oath of the  
19 candidate that includes wording substantially as follows: "I hereby affirm that I possess, or will possess within  
20 constitutional and statutory deadlines, the qualifications prescribed by the Montana constitution and the laws of  
21 the United States and the state of Montana." The candidate affirmation included in this oath is presumed to be  
22 valid unless proven otherwise in a court of law.

23 (5) (a) In a top two primary, each candidate may state the candidate's political party preference on  
24 the declaration of candidacy. A candidate may not declare a preference for more than one party. When  
25 identifying a political party preference, a candidate is not restricted to identifying an established party and may  
26 use a limited number of characters, according to rules adopted by the secretary of state, to identify a political  
27 party preference.



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1            (b) In a top two primary, a declaration of political party preference is not evidence that the  
2 candidate has been nominated or endorsed by the political party or that the political party approves of or  
3 associates with that candidate.

4            ~~(5)~~(6) The declaration for nomination, when filed, is conclusive evidence that the elector is a  
5 candidate for nomination by the elector's party. For a partisan election, an elector may not file a declaration for  
6 more than one party's nomination.

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

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

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

15            ~~(7)~~(8) Except as provided in 13-10-211, a candidate's declaration for nomination or declaration of  
16 candidacy must be filed no sooner than 145 days before the election in which the office first appears on the  
17 ballot and no later than 5 p.m., 85 days before the date of the primary election.

18            ~~(8)~~(9) A properly completed and signed declaration for nomination or declaration of candidacy form  
19 may be sent by facsimile transmission, electronically mailed, delivered in person, or mailed to the election  
20 administrator or to the secretary of state.

21            ~~(9)~~(10) For the purposes of implementing Article IV, section 8, of the Montana constitution, the  
22 secretary of state shall apply the following conditions:

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

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

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

3

4 **Section 7.** Section 13-10-202, MCA, is amended to read:

5 **"13-10-202. Filing fees.** Filing fees are as follows:

6 (1) for offices having an annual salary of \$2,500 or less and candidates for the legislature, \$15;

7 (2) for county offices having an annual salary of more than \$2,500, 0.5% of the total annual salary;

8 (3) for president in a presidential preference primary, an amount equivalent to the filing fee

9 required for a United States senate candidate;

10 ~~(4)~~ for the United States senate, 1.1% of the total annual salary;

11 ~~(4)(5)~~ for other offices having an annual salary of more than \$2,500, 1% of the total annual salary;

12 ~~(5)(6)~~ for offices in which compensation is paid in fees, \$10;

13 ~~(6)(7)~~ for officers of political parties, presidential electors, and officers who receive no salary or fees,

14 no filing fee is required."

15

16 **Section 8.** Section 13-10-203, MCA, is amended to read:

17 **"13-10-203. Indigent candidates.** If an individual is unable to pay a filing fee, the filing officer shall  
18 accept the following documents in lieu of a filing fee:

19 (1) from a successful write-in candidate, a statement that the candidate is unable to pay the filing  
20 fee;

21 (2) from a candidate for nomination or a candidate in a top two primary, a statement that the  
22 candidate is unable to pay the filing fee and a written petition for nomination as a candidate that meets the  
23 following requirements:

24 (a) the petition contains the name of the office to be filled and the candidate's name and residence  
25 address;

26 (b) the petition contains signatures numbering 5% or more of the total vote cast for the successful  
27 candidate for the same office at the last general election;

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1 (c) the signatures are those of electors residing within the political subdivision of the state in which  
2 the candidate petitions for nomination; and

3 (d) the signatures have been submitted to the appropriate election administrator at least 1 week  
4 prior to the applicable deadline in 13-10-201(7)(8) and have been certified by the appropriate election  
5 administrator by the procedure provided in 13-27-303 and 13-27-304."  
6

7 **Section 9.** Section 13-10-204, MCA, is amended to read:

8 **"13-10-204. Write-in nominations.** (1) An individual nominated in a partisan primary or receiving the  
9 highest or second-highest number of votes in a top two primary by having the individual's name written in and  
10 counted as provided in 13-15-206(5) or otherwise placed on the primary ballot and desiring to accept the  
11 nomination or selection to advance may not have the individual's name appear on the general election ballot  
12 unless the individual:

13 (a) if the individual is nominated in a partisan primary, received at least 5% of the total votes cast  
14 for the successful candidate for the same office at the last general election;

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

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

18 (2) A write-in candidate who was exempt from filing a declaration of intent under 13-10-211 shall,  
19 at the time of filing the declaration of acceptance, pay the filing fee specified in 13-10-202 or, if indigent, file the  
20 appropriate documents described in 13-10-203."  
21

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

23 **"13-10-208. Certification of candidate names and ballot issues for ballot -- preparing ballot.** (1)  
24 Ten days after the close of candidate filing under 13-10-201(7)(8) for a primary election, the secretary of state  
25 shall certify to the election administrators the names and designations of candidates who have filed with the  
26 secretary of state, subject to 13-37-126, and any ballot issues as shown in the official records of the secretary  
27 of state's office in the manner provided in 13-10-209 and Title 13, chapter 12, part 2.

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1           (2)     On receiving the secretary of state's certification pursuant to subsection (1), the county election  
2 administrator shall certify the names and designations of all candidates whose names are entitled to appear on  
3 the ballot, subject to 13-37-126, and any ballot issues as shown in the official record of the county election  
4 administrator's office and shall have the official ballots prepared in the manner provided in 13-10-209 and Title  
5 13, chapter 12, part 2.

6           (3)     If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana  
7 constitution to seek the office for which the candidate has filed because the candidate has changed residence,  
8 the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-  
9 325."

10

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

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

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

18           (ii) in a top two primary, the political party preference declared by the candidate on the declaration  
19 of candidacy under 13-10-201 must appear with the candidate's name on the ballot. The word "preference"  
20 must follow the candidate's preferred party, if any. If a candidate has not declared a preference for a political  
21 party, the words "no party preference" must appear on the ballot with the candidate's name. Nothing in a top  
22 two primary portion of the ballot may indicate whether a candidate has been endorsed or nominated by a  
23 political party. The top two primary portion or portions of a ballot must clearly and conspicuously state that  
24 candidates in that section are not necessarily nominees or members of or endorsed by or otherwise associated  
25 with the candidate's political party preference. Information must be printed on the ballot and in the voter  
26 information pamphlet provided for in 13-27-401 to inform voters that in the top two primary the two candidates  
27 who receive the most votes for the office will advance to the general election regardless of either candidate's

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1 political party preference.

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

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

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

8 (ii) THE TOP TWO PRIMARY PORTION OF A BALLOT MUST CLEARLY AND CONSPICUOUSLY STATE THAT THE  
9 CANDIDATES IN THAT SECTION ARE NOT NECESSARILY NOMINEES OR MEMBERS OF OR ENDORSED BY OR OTHERWISE  
10 ASSOCIATED WITH THE CANDIDATE'S POLITICAL PARTY PREFERENCE.

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

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

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

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

19 (4) If, pursuant to subsection (2), in a primary election held in an even-numbered year a primary  
20 ballot for a political party is not prepared, the secretary of state shall certify that a primary election is  
21 unnecessary for that party and shall instruct the election administrator to certify the names of the candidates for  
22 that party for the general election ballot only.

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

27 (6) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan

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1 ballot, the top two primary ballot, or a separate ballot. A separate ballot may have a different appearance than  
2 the other ballots in the election but must be numbered in the same order.

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

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

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

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

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

13 ~~(7)(8)(7)~~ Each elector must receive a set of ballots that includes the party partisan primary, top  
14 two primary, nonpartisan, and ballot issue choices."

15  
16 **Section 12.** Section 13-10-211, MCA, is amended to read:

17 **"13-10-211. Declaration of intent for write-in candidates.** (1) Except as provided in subsection (7),  
18 a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent.  
19 Except for a candidate under 13-38-201(4) or a candidate covered under 7-1-205, a candidate may not file for  
20 more than one public office. The declaration of intent must be filed with the secretary of state or election  
21 administrator, depending on where a declaration of for nomination or declaration of candidacy for the desired  
22 office is required to be filed under 13-10-201, or with the school district clerk for a school district office. When a  
23 county election administrator is conducting the election for a school district, the school district clerk or school  
24 district office that receives the declaration of intent shall notify the county election administrator of the filing.  
25 Except as provided in 13-1-403, 13-1-503, 20-3-305(3)(b), and subsection (2) of this section, the declaration  
26 must be filed no later than 5 p.m. on the 10th day before the earliest date established under 13-13-205 on  
27 which a ballot must be available and must contain:

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- 1 (a) the candidate's name, including:
- 2 (i) the candidate's first and last names;
- 3 (ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the
- 4 candidate's last name;
- 5 (iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name;
- 6 and
- 7 (iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last
- 8 name;
- 9 (b) the candidate's mailing address;
- 10 (c) a statement declaring the candidate's intention to be a write-in candidate;
- 11 (d) the title of the office sought;
- 12 (e) the date of the election;
- 13 (f) the date of the declaration; and
- 14 (g) the candidate's signature.
- 15 (2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later
- 16 than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the
- 17 office that the write-in candidate is seeking dies or is charged with a felony offense and if the election has not
- 18 been canceled as provided by law.
- 19 (3) The secretary of state shall notify each election administrator of the names of write-in
- 20 candidates who have filed a declaration of intent with the secretary of state. Each election administrator shall
- 21 notify the election judges in the county or district of the names of write-in candidates who have filed a
- 22 declaration of intent.
- 23 (4) A properly completed and signed declaration of intent may be provided to the election
- 24 administrator or secretary of state:
- 25 (a) by facsimile transmission;
- 26 (b) in person;
- 27 (c) by mail; or

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1 (d) by electronic mail.

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

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

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

7 (a) an election is held;

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

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

11 (d) no other candidate has filed a declaration or petition for nomination, a declaration of candidacy,  
12 or a declaration of intent."

13

14 **Section 13.** Section 13-10-301, MCA, is amended to read:

15 **"13-10-301. Casting of ballot.** (1) Unless otherwise provided by law, the conduct of the primary  
16 election, the voting procedure, the counting, tallying, and return of ballots and all election records and supplies,  
17 the canvass of votes, the certification and notification of nominees or candidates who are selected to advance,  
18 recounts, procedures upon tie votes, and any other necessary election procedures must be at the same times  
19 and in the same manner as provided for in the laws for the general election.

20 (2) At a primary election, the elector shall cast votes on only one of the party partisan primary  
21 ballots, preparing the ballot as provided in 13-13-117. After casting votes on any other ballots received other  
22 than the party ballots, the elector shall ensure the proper disposition of the ballots in accordance with  
23 instructions provided pursuant to 13-13-112.

24 (3) The elector's ballot must be handled as prescribed in 13-13-117."

25

26 **Section 14.** Section 13-10-302, MCA, is amended to read:

27 **"13-10-302. Write-in votes for previously nominated candidates.** (1) Subject to subsection (2), if



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1 an elector casts a write-in vote for a candidate on a ~~primary~~ party ballot in a partisan primary when the  
2 candidate's name also appears or is written in for the same office on another party's ballot, the write-in vote  
3 counts only with respect to the party on whose ballot the write-in vote was cast and the write-in votes, if on  
4 multiple parties' ballots, and the votes cast for the candidate on the other party's ballots may not be added  
5 together.

6 (2) A write-in vote must be counted as provided in 13-15-206(5)."  
7

8 **Section 15.** Section 13-10-303, MCA, is amended to read:

9 **"13-10-303. Nominations by more than one party.** If an individual is nominated by more than one  
10 party in a partisan primary, the individual shall, not later than 10 days after the election, file written notification  
11 with the secretary of state or election administrator indicating the party under which the individual's name is to  
12 appear upon the ballot for the general election. If the individual fails to notify the proper officers, the individual's  
13 name must appear under the party with whom the declaration for nomination was filed if a declaration was filed.  
14 If an individual did not file a declaration or acceptance of nomination and fails to notify the proper officers, the  
15 individual's name must appear on the ballot without a party designation."  
16

17 **Section 16.** Section 13-10-325, MCA, is amended to read:

18 **"13-10-325. Withdrawal from nomination.** (1) (a) A candidate for nomination, a candidate for an  
19 office in which candidates are selected to advance in a top two primary, or a candidate for election to an office  
20 may withdraw from the election by sending a statement of withdrawal to the officer with whom the candidate's  
21 declaration, petition, or acceptance of nomination, or selection to advance was filed. The statement must  
22 contain all information necessary to identify the candidate and the office sought. Unless filed electronically with  
23 the secretary of state, the statement of withdrawal from nomination or selection to advance must be  
24 acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the  
25 filing is made.

26 (b) A candidate may not withdraw after the candidate filing deadline established in 13-10-  
27 201~~(7)~~(8).

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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 office that uses a partisan primary election by an independent candidate or a political party that does not meet  
2 the requirements of 13-10-601 may be made by a petition for nomination.

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

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

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

9 (5) Each sheet of a petition must contain signatures of electors residing in only one county."  
10

10

11 **Section 22.** Section 13-10-505, MCA, is amended to read:

12 "**13-10-505. Applicability.** The provisions of 13-10-501 through 13-10-504 shall may not be used to  
13 fill vacancies or to nominate candidates in nonpartisan elections or candidates for offices for which candidates  
14 are selected to advance in a top two primary except for nominations to fill a vacancy as provided in 13-25-205."  
15

15

16 **Section 23.** Section 13-10-601, MCA, is amended to read:

17 "**13-10-601. Parties eligible for partisan primary election -- petitions by minor parties.** (1) Each  
18 political party that had a candidate for a statewide office other than U.S. senator in either of the last two general  
19 elections who received a total vote that was 5% or more of the total votes cast for the most recent successful  
20 candidate for governor shall nominate its candidates for public office, except for presidential electors and the  
21 office of U.S. senator, by a partisan primary election as provided in this chapter.

22 (2) After certification of a petition by the secretary of state under 13-10-610(1), a political party that  
23 does not qualify to hold a primary election under subsection (1) shall nominate its candidates for public office by  
24 partisan primary election. However, this section may not be construed to prohibit an election administrator from  
25 not preparing a partisan primary election ballot pursuant to 13-10-209."  
26

26

27 **Section 24.** Section 13-10-605, MCA, is amended to read:

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1           **"13-10-605. Qualifying minor political parties -- reports required.** (1) A person who spends or  
2 receives money to support or oppose an effort to qualify a minor political party for partisan primary elections  
3 using the petitions described in 13-10-606 shall comply with the provisions of Title 13, chapter 37, part 6.

4           (2) For the purposes of this section, "support or oppose" has the meaning as provided in 13-37-  
5 601."

6  
7           **Section 25.** Section 13-12-201, MCA, is amended to read:

8           **"13-12-201. Certification of candidate names and ballot issues for general election ballot.** (1)

9 Seventy-five days before a general election, the secretary of state shall certify to the election administrators the  
10 name and party, party preference, or other designation of each candidate who filed with the secretary of state  
11 and whose name is entitled to appear on the ballot, subject to 13-37-126, and the ballot issues as shown in the  
12 official records of the secretary of state's office.

13           (2) On certification from the secretary of state's office pursuant to subsection (1), the election  
14 administrator shall certify the name and party, party preference, or other designation of each candidate whose  
15 name is entitled to appear on the ballot, subject to 13-37-126, and the ballot issues as shown in the official  
16 records of the election administrator's office, and shall have the official ballots prepared.

17           (3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana  
18 constitution to seek the office for which the candidate has filed because the candidate has changed residence,  
19 the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-  
20 325."

21  
22           **Section 26.** Section 13-12-202, MCA, is amended to read:

23           **"13-12-202. Ballot form and uniformity.** (1) The secretary of state shall adopt statewide uniform  
24 rules that prescribe the ballot form for each type of ballot used in this state. The rules must conform to the  
25 provisions of this title unless the voting system used clearly requires otherwise. At a minimum, the rules must  
26 address:

27           (a) the manner in which each type of ballot may be corrected under 13-12-204;

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- 1 (b) what provisions must be made on the ballot for write-in candidates;
- 2 (c) the size and content of stubs on paper ballots, except as provided in 13-19-106(1);
- 3 (d) how unvoted ballots must be handled;
- 4 (e) how the number of individuals voting and the number of ballots cast must be recorded; ~~and~~
- 5 (f) the order and arrangement of voting system ballots; and
- 6 (g) to promote clarity for voters, how a ballot must be designed so that there is a difference in
- 7 appearance between a party preference designation in a top two primary and a party designation in a partisan
- 8 primary.

9 (2) The names of all candidates that appear on the face of a ballot must appear in the same font

10 size and style.

11 (3) Notwithstanding 13-19-106(1) and except as provided in 13-3-208, when the stubs are

12 detached, it must be impossible to distinguish any one of the ballots from another ballot for the same office or

13 issue.

14 (4) The ballots must contain the name of each candidate whose nomination or selection to

15 advance is certified under law for an office and no other names, except that the names of candidates for

16 president and vice president of the United States must appear on the ballot as provided in 13-25-101(5)."

17

18 **Section 27.** Section 13-12-203, MCA, is amended to read:

19 **"13-12-203. Appearance of candidate's name and party designation on ballot.** (1) Subject to 13-

20 12-202 and except as provided in 13-10-209 for nonpartisan offices and 13-10-303 for certain other

21 candidates;

22 (a) in partisan elections, candidates' names must appear under the title of the office sought, with

23 the name of the party in not more than three words appearing opposite or below the name;

24 (b) (i) in elections for which candidates are selected to advance in a top two primary, the

25 candidate's political party preference in not more than three words must appear opposite or below the name;

26 and

27 (ii) if the candidate has not declared a political party, the words "no party preference" must appear

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1 on the ballot with the candidate's name.

2 (2) Subject to 13-12-202, in nonpartisan general elections, the candidates' names must appear  
3 under the title of the office sought, with no description or designation appearing with the name unless partisan  
4 and nonpartisan offices appear on the same ballot. In such a case, the names of nonpartisan candidates must  
5 appear with the word "Nonpartisan".

6 (3) Except as otherwise provided by this section, information about the candidate other than the  
7 candidate's name may not appear on the ballot, including a title, accomplishment, award, or degree."

8

9 **Section 28.** Section 13-12-205, MCA, is amended to read:

10 **"13-12-205. Arrangement of names -- rotation on ballot.** (1) The candidates' names must be  
11 arranged alphabetically on the ballot according to surnames under the title of the respective offices and rotated  
12 as provided in this section.

13 (2) (a) If two or more individuals are candidates for nomination, candidates for selection to  
14 advance, or election to the same office, the election administrator shall divide the ballot forms into sets equal in  
15 number to the greatest number of candidates for any office. The candidates for nomination to an office by each  
16 political party must be considered separately in determining the number of sets necessary for a primary  
17 election.

18 (b) The election administrator shall begin with a form arranged alphabetically and rotate the names  
19 of the candidates so that each candidate's name will be at the top of the list for each office on substantially an  
20 equal number of ballots. If it is not numerically possible to place each candidate's name at the top of the list, the  
21 names must be rotated in groups so that each candidate's name is as near the top of the list as possible on  
22 substantially an equal number of ballots.

23 (c) If the county contains more than one legislative district, the election administrator may rotate  
24 each candidate's name so that it will be at or near the top of the list for each office on substantially an equal  
25 number of ballots in each house district.

26 (d) For purposes of rotation, the offices of president and vice president and of governor and  
27 lieutenant governor must be considered as a group.



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1 (e) No more than one of the sets may be used in preparing the ballot for use in any one precinct,  
2 and all ballots furnished for use in any precinct must be identical."  
3

4 **Section 29.** Section 13-12-207, MCA, is amended to read:

5 **"13-12-207. Order of placement.** (1) The order on the ballot for state and federal offices must be as  
6 follows:

7 (a) If the election is in a year in which a president of the United States is to be elected, in spaces  
8 separated from the balance of the party tickets or ballot by a line must be the names and spaces for voting for  
9 candidates for president and vice president. The names of candidates for president and vice president for each  
10 political party must be grouped together.

11 (b) United States senator;

12 (c) United States representative;

13 (d) governor and lieutenant governor;

14 (e) secretary of state;

15 (f) attorney general;

16 (g) state auditor;

17 (h) state superintendent of public instruction;

18 (i) public service commissioners;

19 (j) clerk of the supreme court;

20 (k) chief justice of the supreme court;

21 (l) justices of the supreme court;

22 (m) district court judges;

23 (n) state senators;

24 (o) members of the Montana house of representatives.

25 (2) The following order of placement must be observed for county offices:

26 (a) clerk of the district court;

27 (b) county commissioner;

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- 1 (c) county clerk and recorder;
- 2 (d) sheriff;
- 3 (e) coroner;
- 4 (f) county attorney;
- 5 (g) county superintendent of schools;
- 6 (h) county auditor;
- 7 (i) public administrator;
- 8 (j) county assessor;
- 9 (k) county treasurer;
- 10 (l) surveyor;
- 11 (m) justice of the peace.

12 (3) The secretary of state shall designate the order for placement on the ballot of any offices not  
13 on the above lists, except that the election administrator shall designate the order of placement for municipal,  
14 charter, or consolidated local government offices and district offices when the district is part of only one county.

15 (4) Constitutional amendments must be placed before statewide referendum and initiative  
16 measures. Ballot issues for a county, municipality, school district, or other political subdivision must follow  
17 statewide measures in the order designated by the election administrator.

18 (5) If any offices are not to be elected they may not be listed, but the order of the offices to be filled  
19 must be maintained.

20 (6) If there is a short-term and a long-term election for the same office, the long-term office must  
21 precede the short-term."

22

23 **Section 30.** Section 13-13-214, MCA, is amended to read:

24 **"13-13-214. Mailing absentee ballot to elector -- delivery to person other than elector.** (1) (a)  
25 Except as provided in 13-13-213 and in subsection (1)(c) of this section, the election administrator shall mail,  
26 postage prepaid, to each legally registered elector and provisionally registered elector from whom the election  
27 administrator has received a valid absentee ballot application under 13-13-211 and 13-13-212 whatever official

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1 ballots are necessary in a manner that conforms to postal regulations to require the return rather than  
2 forwarding of ballots.

3 (b) The election administrator shall mail the ballots in a manner that conforms to the deadlines  
4 established for ballot availability in 13-13-205.

5 (c) The election administrator may deliver a ballot in person to an individual other than the elector  
6 if:

7 (i) the elector has designated the individual, either by a signed letter or by making the designation  
8 on the application form in a manner prescribed by the secretary of state or pursuant to 13-1-116;

9 (ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt  
10 of the ballot;

11 (iii) the election administrator believes that the individual receiving the ballot is the designated  
12 person; and

13 (iv) the designated person has not previously picked up ballots for four other electors.

14 (2) The election administrator shall enclose with the ballots:

15 (a) a secrecy envelope, free of any marks that would identify the voter; and

16 (b) a signature envelope for the return of the ballot. The signature envelope must be self-  
17 addressed by the election administrator and an affirmation in the form prescribed by the secretary of state must  
18 be printed on the back of the signature envelope.

19 (3) The election administrator shall ensure that the ballots provided to an absentee elector are  
20 marked as provided in 13-13-116 and shall remove the stubs from the ballots, keeping the stubs in numerical  
21 order with the application for absentee ballots, if applicable, or in a precinct envelope or container for that  
22 purpose.

23 (4) Instructions for voting must be enclosed with the ballots. Instructions for partisan primary  
24 elections must include disposal instructions for unvoted ballots. The instructions must include information  
25 concerning the type or types of writing instruments that may be used to mark the absentee ballot. The  
26 instructions must include information regarding use of the secrecy envelope and use of the signature envelope.  
27 The election administrator shall include a voter information pamphlet with the instructions if:

- 1 (a) a statewide ballot issue appears on the ballot mailed to the elector; and
- 2 (b) the elector requests a voter information pamphlet."

3

4 **Section 31.** Section 13-13-241, MCA, is amended to read:

5 **"13-13-241. Examination of absentee ballot signature envelopes -- deposit of absentee and**

6 **unvoted ballots -- rulemaking.** (1) (a) Upon receipt of each absentee ballot signature envelope, an election  
7 administrator shall compare the signature of the elector or elector's agent on the absentee ballot request or on  
8 the elector's voter registration form with the signature on the signature envelope.

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

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

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

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

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

23 (3) In a partisan primary election, if unvoted party ballots are returned by a voter, they must be  
24 separated and handled pursuant to 13-1-303 and 13-12-202.

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

27 (5) If the signature on the absentee ballot signature envelope does not match the signature on the

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- 1 absentee ballot request form or on the elector's voter registration form or if there is no signature on the  
2 absentee ballot signature envelope, the election administrator shall notify the elector as provided in 13-13-245.
- 3 (6) If at any point there is a question concerning the validity of a particular ballot, the question must  
4 be resolved as provided in 13-13-245.
- 5 (7) (a) Except as provided in subsection (8), after receiving an absentee ballot secrecy envelope  
6 and if the validity of the ballot is confirmed pursuant to 13-13-245, then no sooner than 3 business days before  
7 election day, the election official may open the secrecy envelope and place the ballot in the proper, secured  
8 ballot box until tabulation occurs. Automatic tabulation using a vote-counting machine may not begin sooner  
9 than 1 day before election day. Tabulation using a manual count may not begin until election day.
- 10 (b) An election official may not conduct the process described in subsection (7)(a) on a Saturday  
11 or a Sunday.
- 12 (c) Ballot preparation as described in this subsection (7) is open to the public. Tabulation is open  
13 to the public as provided in 13-15-101.
- 14 (d) Access to an electronic system containing early tabulation results is limited to the election  
15 administrator and the election administrator's designee. Results may not be released except as provided in 13-  
16 35-241.
- 17 (8) For a county with fewer than 8,000 registered electors or fewer than 5,000 absentee electors at  
18 the close of regular registration, the ballot preparation process described in subsection (7)(a) may not begin  
19 sooner than 1 business day before election day.
- 20 (9) The election administrator shall safely and securely keep the absentee ballots in the election  
21 administrator's office until delivered by the election administrator to the election judges.
- 22 (10) The secretary of state shall develop administrative rules to establish the process and  
23 procedures to be used during the early preparation of ballots to ensure the security of the ballots and the  
24 secrecy of the votes during the early preparation period. The rules must include but are not limited to:
- 25 (a) the allowable distance from the observers to the judges and ballots;  
26 (b) the security in the observation area;  
27 (c) secrecy of votes during the preparation of the ballots; and

1 (d) security of the secured ballot boxes in storage until tabulation procedures begin."

2

3 **Section 32.** Section 13-14-112, MCA, is amended to read:

4 **"13-14-112. Declarations for nomination -- fee -- filing.** (1) Nonpartisan candidates shall file  
5 declarations for nomination as required by the primary election laws in a form prescribed by the secretary of  
6 state except as provided in 13-14-113. Except for a candidate covered under 7-1-205, a candidate may not file  
7 for more than one public office.

8 (2) Declarations may not indicate political affiliation. The candidate may not state in the declaration  
9 any principles or measures that the candidate advocates or any slogans.

10 (3) Each individual filing a declaration shall pay the fee prescribed by law for the office that the  
11 individual seeks.

12 (4) Declarations must be filed:

13 (a) in the office of the secretary of state or the appropriate election administrator as provided in 13-10-  
14 201; and

15 (b) within the filing period provided in 13-10-201(~~7~~) (8) for the office that the individual seeks."

16

17 **Section 33.** Section 13-14-113, MCA, is amended to read:

18 **"13-14-113. Filing for offices without salary or fees.** (1) Candidates for nonpartisan offices for  
19 which a salary or fees are not paid shall file with the appropriate official a petition for nomination or a  
20 declaration for nomination containing the information and the oath of the candidate required for a declaration of  
21 nomination in a form prescribed by the secretary of state.

22 (2) Petitions for nomination or declarations for nomination must be filed within the filing period  
23 provided in 13-10-201(~~7~~)(8).

24 (3) Except for a candidate covered under 7-1-205, a candidate may not file for more than one public  
25 office."

26

27 **Section 34.** Section 13-15-205, MCA, is amended to read:

- 1           **"13-15-205. Items to be delivered to election administrator by election judges -- disposition of**  
2 **other items.** (1) Before they adjourn, the election judges shall enclose in a strong envelope or package,  
3 securely fastened:
- 4           (a)     the precinct register;
  - 5           (b)     the list of individuals challenged;
  - 6           (c)     the pollbook;
  - 7           (d)     both of the tally sheets.
- 8           (2)     The election judges shall enclose in a separate container, securely sealed, all unused ballots  
9 with the numbered stubs attached.
- 10          (3)     The election judges shall enclose in a separate container, securely sealed, all ballots voted,  
11 including those not counted or allowed, and detached stubs from all counted or rejected absentee ballots. This  
12 envelope must be endorsed on the outside "ballots voted". At the partisan primary election the unvoted party  
13 ballots must be enclosed in a separate container, securely sealed, and marked on the outside "unvoted ballots".
- 14          (4)     Each election judge shall sign the judge's name across all seals.
- 15          (5)     The return form provided for in 13-15-101 must be returned with the items provided for in this  
16 section but may not be sealed in any of the containers.
- 17          (6)     The containers required by this section must be delivered to the election administrator by the  
18 chief election judge or another judge appointed by the chief judge in the manner ordered by the election  
19 administrator.
- 20          (7)     The election administrator shall instruct the chief election judge in writing on the proper  
21 disposition of all other election materials and supplies."

22

23           **Section 35.** Section 13-15-206, MCA, is amended to read:

24           **"13-15-206. Counting votes -- uniformity -- rulemaking -- definitions.** (1) When conducting vote  
25 counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and  
26 determine the validity of each vote in a uniform manner as provided in this section.

27           (2)     A manual count or recount of votes must be conducted as follows:

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- 1           (a)     One election judge on the board shall read the ballot while the two other judges on the board  
2 shall each record on an official tally sheet the number of valid votes cast for each individual or ballot issue.  
3 Write-in votes must be counted in accordance with subsection (5) and rules adopted pursuant to subsection (7).  
4 If a vote has not been cast according to instructions, the vote must be considered questionable and the entire  
5 ballot must be set aside and votes on the ballot must be handled as provided in subsection (4).
- 6           (b)     (i) After the vote count is complete, the tally sheets of the two judges recording the votes must  
7 be compared.
- 8                 (ii)    If the two tallies match, the judges shall record in the official results records:  
9                 (A)    the names of all individuals who received votes;  
10                (B)    the offices for which individuals received votes;  
11                (C)    the total votes received by each individual as shown by the tally sheets; and  
12                (D)    the total votes received for or against each ballot issue, if any.
- 13           (iii)    If the tallies do not match, the count must be conducted again as provided in this subsection (2)  
14 until the two tallies match.
- 15           (3)     (a) When a voting system is counting votes:  
16                 (i)    if a vote is recognized and counted by the system, it is a valid vote;  
17                 (ii)   if a vote is not recognized and counted by the system, it is not a valid vote; and  
18                 (iii)   write-in votes must be counted in accordance with rules adopted pursuant to subsection (7).
- 19           (b)     If the voting system cannot process the ballot because of the ballot's condition or if the voting  
20 system registers an unmarked ballot or an overvote, which must be considered a questionable vote, the entire  
21 ballot must be set aside and the votes on the ballot must be counted as provided in subsection (4).
- 22           (c)     If an election administrator or counting board has reason to believe that a voting system is not  
23 functioning correctly, the election administrator shall follow the procedures prescribed in 13-15-209.
- 24           (d)     After all valid votes have been counted and totaled, the judges shall record in the official results  
25 records the information specified in subsection (2)(b)(ii).
- 26           (4)     (a) (i) Before being counted, each questionable vote on a ballot set aside under subsection  
27 (2)(a) or (3)(b) must be reviewed by the counting board. The counting board shall evaluate each questionable



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1 vote according to rules adopted by the secretary of state.

2 (ii) If a majority of the counting board members agree that under the rules the voter's intent can be  
3 clearly determined, the vote is valid and must be counted according to the voter's intent.

4 (iii) If a majority of the counting board members do not agree that the voter's intent can be clearly  
5 determined under the rules, the vote is not valid and may not be counted.

6 (b) If a ballot was set aside under subsection (3)(b) because it could not be processed by the  
7 voting system due to the ballot's condition, the counting board shall transfer all valid votes to a new ballot that  
8 can be processed by the voting system.

9 (5) A write-in vote may be counted only if:

10 (a) (i) the write-in vote identifies an individual by a designation filed pursuant to 13-10-211(1)(a); or

11 (ii) pursuant to 13-10-211(7), a declaration of nomination or declaration of candidacy was not  
12 filed and the write-in vote identifies an individual who is qualified for the office; and

13 (b) the oval, box, or other designated voting area on the ballot is marked.

14 (6) A vote is not valid and may not be counted if the elector's choice cannot be determined as  
15 provided in this section.

16 (7) The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each  
17 type of ballot and for each type of voting system used in the state. The rules must provide a sufficient guarantee  
18 that all votes are treated equally among jurisdictions using similar ballot types and voting systems.

19 (8) Local election administrators shall adopt policies to govern local processes that are consistent  
20 with the provisions of this title and that provide for:

21 (a) the security of the counting process against fraud;

22 (b) the place and time and public notice of each count or recount;

23 (c) public observance of each count or recount, including observance by representatives  
24 authorized under 13-16-411;

25 (d) the recording of objections to determinations on the validity of an individual vote or to the entire  
26 counting process; and

27 (e) the keeping of a public record of count or recount proceedings.

1 (9) For purposes of this section, "overvote" means an elector's vote that has been interpreted by  
2 the voting system as an elector casting more votes than allowable for a particular office or ballot issue."

3

4 **Section 36.** Section 13-15-507, MCA, is amended to read:

5 **"13-15-507. Declaration, proclamation, and certification of results.** The board shall declare  
6 nominated, selected to advance, or elected the individual having the highest number of votes cast for each  
7 office, except as provided in 13-1-103(2) and 13-10-204. The board shall proclaim the adoption or rejection of  
8 ballot issues. Certified copies of the report required in 13-15-506, the declaration of nominated, selected to  
9 advance, or elected individuals, the proclamation of adoption or rejection of ballot issues, and the effective date  
10 of adopted ballot issues shall be delivered to the governor."

11

12 **Section 37.** Section 13-16-211, MCA, is amended to read:

13 **"13-16-211. Recounts allowed if bond posted to cover all costs.** (1) If a candidate for a public  
14 office is defeated by a margin exceeding 1/4 of 1% but not exceeding 1/2 of 1% of the total votes cast for all  
15 candidates for the same position, the candidate may, within 5 days after the official canvass, file with the officer  
16 with whom the candidate's declaration or petition for nomination or declaration of candidacy was filed a petition  
17 stating that the candidate believes a recount will change the result of the election.

18 (2) The unsuccessful candidate shall post a bond with the election administrator of the county in  
19 which the candidate resides. The bond must be in an amount set by the election administrator sufficient to  
20 cover all costs of the recount incurred by each county in which a recount is sought, which may include the  
21 following:

22 (a) compensation for the county recount board, the election administrator, and any additional  
23 personnel needed to participate in the recount; and

24 (b) necessary supplies and travel related to the recount.

25 (3) Upon the filing of a petition and posting of a bond under this section, the county recount board,  
26 as designated in 13-16-101, in each county affected shall meet and recount the ballots specified in the petition."

27

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1           **Section 38.** Section 13-16-412, MCA, is amended to read:

2           **"13-16-412. Procedure for recounting paper ballots.** To conduct a recount of paper ballots:

3           (1)       the election administrator shall provide to the recount board, unopened, each sealed package  
4           or envelope received from the election judges of the precinct or precincts in which a recount is ordered,  
5           containing all the paper ballots voted in the precinct or precincts;

6           (2)       a member of the recount board shall open each sealed package or envelope and remove the  
7           ballots, and the board shall count the votes on each ballot manually in the manner provided in 13-15-206(2),  
8           except that if the office to be recounted is:

9           (a) \_\_\_\_\_ on a partisan primary election ballot, votes are recounted only on the party ballots that are  
10          subject to the recount; and

11          (b) \_\_\_\_\_ on a top two primary election ballot, votes are recounted only on the top two primary ballots  
12          that are subject to recount; and

13          (3)       the recount must be tallied on previously prepared tally sheets. The tally sheets must show the  
14          names of the respective candidates, the office or offices for which a recount is made, and the number of each  
15          election precinct."

17          **Section 39.** Section 13-16-418, MCA, is amended to read:

18          **"13-16-418. Certification after recount.** (1) (a) Immediately after the recount, the county recount  
19          board shall certify the result.

20          (b)       At least two members of the board shall sign the certificate, and it must be attested to under  
21          seal by the election administrator.

22          (c)       The certificate must set forth in substance the proceedings of the board and the appearance of  
23          any candidates or representatives. The certificate must adequately designate:

24          (i)       each precinct recounted;

25          (ii)      the vote of each precinct according to the official canvass previously made;

26          (iii)     the nomination, position, office, or question involved; and

27          (iv)      the correct vote of each precinct as determined by the recount.

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1 (d) When the certificate relates to a recount for a congressional office, a state or district office  
2 voted on in more than one county, a legislative office, or an office of judge of the district court or a ballot issue  
3 voted on in more than one county, the certificate must be made in duplicate. One copy must be transmitted  
4 immediately to the secretary of state by certified mail.

5 (e) (i) If the recount relates to a county, municipal, or district office voted for in only one county,  
6 other than that of a legislator or a judge of the district court, or a precinct office or a ballot issue voted on in only  
7 one county, the county recount board shall immediately recanvass the returns as corrected by the certificate  
8 showing the result of the recount and make a corrected abstract of the votes.

9 (ii) If the corrected abstract shows no change in the result, no further action is needed.

10 (iii) If there is a change in the result, a new certificate of election, selection to advance, or  
11 nomination must be issued to each candidate found to be elected, selected to advance, or nominated and the  
12 first certificate is void. The individual receiving the second certificate must be elected, selected to advance, or  
13 nominated to the office.

14 (2) (a) In the event of a school election recount, immediately after the recount, the school recount  
15 board shall certify the result. At least two members of the recount board shall sign the certificate, and it must be  
16 attested to under seal by the school election administrator.

17 (b) The certificate must adequately designate:

18 (i) the vote of the district according to the official canvass previously made;

19 (ii) the position or question involved; and

20 (iii) the correct vote of the district as determined by the recount.

21 (c) The school recount board shall immediately recanvass the returns as corrected by the  
22 certificate showing the result of the recount and make a corrected abstract of the votes. If the corrected abstract  
23 shows no change in the result, no further action is needed. If there is a change in the result, a new certificate of  
24 election must be issued to each candidate found to be elected and the first certificate is void. The individual  
25 receiving the second certificate must be elected to the office."

26

27 **Section 40.** Section 13-16-419, MCA, is amended to read:

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1           **"13-16-419. Recount by board of state canvassers.** (1) When the secretary of state receives  
2 certificates from all county recount boards, the secretary of state shall file them, shall fix a time and place, as  
3 soon as possible, for reconvening the board of state canvassers, and shall notify the members.

4           (2)     The board of state canvassers shall recanvass the official returns on the office, nomination,  
5 selection to advance, position, or question as corrected by the certificates and make a new and corrected  
6 abstract of the votes cast.

7           (3)     (a) If the corrected abstract shows no change in the results, further action may not be taken.

8           (b)     If there is a change in the results, the first certificate is void and a new certificate of election,  
9 selection to advance, or nomination must be issued in the same manner as the certificate of election or  
10 nomination was previously issued to each candidate elected, selection to advance, or nominated."  
11

12           **Section 41.** Section 13-16-501, MCA, is amended to read:

13           **"13-16-501. Tie vote after recount.** (1) If the recount shows a tie vote for any office and it cannot be  
14 determined who has been nominated or selected to advance by the primary election, the election officer with  
15 whom the candidates' nominating declarations or petitions or declarations of candidacy were filed shall  
16 determine by lot which candidate shall be nominated or selected to advance. Written notice of the time and  
17 place of the drawing shall must be given to each candidate involved.

18           (2)     If the recount after a general election shows a tie vote and it cannot be determined who has  
19 been elected, the office or position shall must be filled as provided by 13-16-502 through 13-16-506."  
20

21           **Section 42.** Section 13-17-103, MCA, is amended to read:

22           **"13-17-103. Required specifications for voting systems.** (1) A voting system may not be approved  
23 under 13-17-101 unless the voting system:

24           (a)     allows an elector to vote in secrecy;

25           (b)     prevents an elector from voting for any candidate or on any ballot issue more than once;

26           (c)     prevents an elector from voting on any office or ballot issue for which the elector is not entitled  
27 to vote;

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- 1 (d) allows an elector to vote only for the candidates of the party selected by the elector in the a  
2 partisan primary election;
- 3 (e) allows an elector to vote a split ticket in a general election if the elector desires;
- 4 (f) allows each valid vote cast to be registered and recorded within the performance standards  
5 adopted pursuant to subsection (3);
- 6 (g) is protected from tampering for a fraudulent purpose;
- 7 (h) prevents an individual from seeing or knowing the number of votes registered for any candidate  
8 or on any ballot issue during the progress of voting;
- 9 (i) allows write-in voting;
- 10 (j) will, if purchased by a jurisdiction within the state, be provided with a guarantee that the training  
11 and technical assistance will be provided to election officials under the contract for purchase of the voting  
12 system;
- 13 (k) uses a paper ballot that allows votes to be manually counted; and
- 14 (l) allows auditors to access and monitor any software program while it is running on the system to  
15 determine whether the software is running properly.
- 16 (2) A voter interface device may not be approved for use in this state unless:
- 17 (a) the device meets the electronic security standards adopted by the secretary of state;
- 18 (b) the device provides accessible voting technology for electors with hearing, vision, speech, or  
19 ambulatory impairments;
- 20 (c) the device meets all requirements specified in subsection (1);
- 21 (d) the device has been made available for demonstration and use by electors with disabilities in at  
22 least one public event held by the secretary of state; and
- 23 (e) disabled electors have been able to participate in the process of determining whether the  
24 system meets accessibility standards.
- 25 (3) To implement the provisions of subsection (1)(f), the secretary of state shall adopt rules setting  
26 a benchmark performance standard that must be met in tests by each voting system prior to approval under 13-  
27 17-101. The standard must be based on commonly accepted industry standards for readily available

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1 technologies."

2

3 **Section 43.** Section 13-25-201, MCA, is amended to read:

4 **"13-25-201. Election of United States senators and representatives.** (1) United States senators  
5 and representatives shall be elected at the general election preceding commencement of the term to be filled.

6 (2) Nominations and elections for United States representatives shall ~~must~~ be as provided by law  
7 for governor.

8 (3) Selections to advance and elections for United States senator must be as provided by law and  
9 use a top two primary."

10

11 **Section 44.** Section 13-25-205, MCA, is amended to read:

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

16 (2)(b) Nominating petitions may be filed by independent candidates for the office up to 5 p.m. of the  
17 75th day before the election.

18 (2) (a) When a special election is ordered to fill a vacancy in the office of United States senator, a  
19 top two primary election to narrow the number of candidates must be conducted prior to the special election.

20 (b) Declarations of candidacy may be filed for the office up to 5 p.m. of the 75th day before the  
21 special top two primary election."

22

23 **Section 45.** Section 13-27-401, MCA, is amended to read:

24 **"13-27-401. Voter information pamphlet.** (1) The secretary of state shall prepare for printing a voter  
25 information pamphlet containing information relevant to the election, including but not limited to:

26 (a) information to inform voters that in the top two primary the two candidates who receive the  
27 most votes for the office will advance to the general election regardless of either candidate's political party

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1 preference; and

2 (b) the following information for each ballot issue to be voted on at an election, as applicable:

3 ~~(a)~~(i) ballot title, fiscal statement if applicable, and complete text of the issue;

4 ~~(b)~~(ii) the form in which the issue will appear on the ballot;

5 ~~(e)~~(iii) arguments advocating approval and rejection of the issue; and

6 ~~(d)~~(iv) rebuttal arguments.

7 (2) The pamphlet must also contain a notice advising the recipient as to where additional copies of  
8 the pamphlet may be obtained.

9 (3) Whenever more than one ballot issue is to be voted on at a single election, the secretary of  
10 state may publish a single pamphlet for all of the ballot issues. The secretary of state may arrange the  
11 information in the order that seems most appropriate, but the information for all issues in the pamphlet must be  
12 presented in the same order.

13 (4) The secretary of state may prescribe by rule the format and manner of submission of the  
14 arguments concerning the ballot issue."

15

16 **Section 46.** Section 13-35-106, MCA, is amended to read:

17 **"13-35-106. Ineligibility to hold office because of conviction.** In addition to all other penalties  
18 prescribed by law:

19 (1) a candidate who is convicted of violating any provision of this title, except 13-35-207(9), is  
20 ineligible to be a candidate for any public office in the state of Montana until final discharge from state  
21 supervision;

22 (2) a campaign treasurer who is convicted of violating any provision of this title, except 13-35-  
23 207(9), is ineligible to be a candidate for any public office or to hold the position of campaign treasurer in any  
24 campaign in the state of Montana until final discharge from state supervision;

25 (3) if an elected official or a candidate is adjudicated to have violated any provision of this title,  
26 except 13-35-207(9), the individual must be removed from nomination, selection to advance, or office, as the  
27 case may be, even though the individual was regularly nominated, selected to advance, or elected."



1

2           **Section 47.** Section 13-35-205, MCA, is amended to read:

3           **"13-35-205. Tampering with election records and information.** A person is guilty of tampering with  
4 public records or information and is punishable as provided in 45-7-208 whenever the person:

5           (1) suppresses any declaration or certificate of nomination, declaration of candidacy, or certificate  
6 of selection that has been filed;

7           (2) purposely causes a vote to be incorrectly recorded as to the candidate or ballot issue voted on;

8           (3) in an election return, knowingly adds to or subtracts from the votes actually cast at the election;

9           (4) changes any ballot after it has been completed by the elector;

10           (5) adds a ballot to those legally polled at an election, either before or after the ballots have been  
11 counted, with the purpose of changing the result of the election;

12           (6) causes a name to be placed on the registry lists other than in the manner provided by this title;

13 or

14           (7) changes a poll list or checklist."

15

16           **Section 48.** Section 13-35-206, MCA, is amended to read:

17           **"13-35-206. Injury to election equipment, materials, and records.** A person is guilty of criminal  
18 mischief or tampering with public records and information, as appropriate, and is punishable as provided in 45-  
19 6-101 or 45-7-208, as applicable, whenever the person:

20           (1) prior to or on election day, knowingly defaces or destroys any list of candidates posted in  
21 accordance with the provisions of the law;

22           (2) during an election:

23           (a) removes or defaces instructions for the voters; or

24           (b) removes or destroys any of the supplies or other conveniences placed in the voting station for  
25 the purpose of enabling a voter to prepare the voter's ballot;

26           (3) removes any ballots from the polling place before the closing of the polls with the purpose of  
27 changing the result of the election;

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1 (4) carries away or destroys any poll lists, checklists, ballots, ballot boxes, or other equipment for  
2 the purpose of disrupting or invalidating an election;

3 (5) knowingly detains, mutilates, alters, or destroys any election returns;

4 (6) mutilates, secretes, destroys, or alters election records, except as provided by law;

5 (7) tampers with, disarranges, defaces, injures, or impairs a voting system with the intent to alter  
6 the outcome of an election;

7 (8) mutilates, injures, or destroys a ballot or appliance used in connection with a voting system; or

8 (9) fraudulently defaces or destroys a declaration or certificate of nomination, declaration of  
9 candidacy, or certificate of selection."

10

11 **Section 49.** Section 13-35-207, MCA, is amended to read:

12 **"13-35-207. Deceptive election practices.** A person is guilty of false swearing, unsworn falsification,  
13 or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-202, 45-  
14 7-203, or 45-7-208, as applicable, whenever the person:

15 (1) falsely represents the person's name or other information required upon the person's voter  
16 registration form and causes registration with the form;

17 (2) signs a voter registration form knowingly witnessing any false or misleading statement;

18 (3) knowingly causes a false statement, certificate, or return of any kind to be signed;

19 (4) falsely makes a declaration or certificate of nomination, declaration of candidacy, or certificate  
20 of selection;

21 (5) files or receives for filing a declaration or certificate of nomination, declaration of candidacy, or  
22 certificate of selection knowing that all or part of the declaration or certificate is false;

23 (6) forges or falsely makes the official endorsement of a ballot;

24 (7) forges or counterfeits returns of an election purporting to have been held at a precinct,  
25 municipality, or ward where no election was in fact held;

26 (8) knowingly substitutes forged or counterfeit returns of election in place of the true returns for a  
27 precinct, municipality, or ward where an election was held;

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1 (9) signs a name other than the person's own to a petition, signs more than once for the same  
2 ballot issue, or signs a petition while not being a qualified elector of the state; or

3 (10) makes a false oath or affidavit where an oath or affidavit is required by law."  
4

5 **Section 50.** Section 13-35-214, MCA, is amended to read:

6 **"13-35-214. Illegal influence of voters.** A person may not knowingly or purposely, directly or  
7 indirectly, individually or through any other person, for any election, in order to induce any elector to vote or  
8 refrain from voting or to vote for or against any particular candidate, political party ticket, or ballot issue:

9 (1) give, lend, agree to give or lend, offer, or promise any money, liquor, or valuable consideration  
10 or promise or endeavor to procure any money, liquor, or valuable consideration; or

11 (2) promise to appoint another person or promise to secure or aid in securing the appointment,  
12 nomination, selection to advance, or election of another person to a public or private position or employment or  
13 to a position of honor, trust, or emolument in order to aid or promote the candidate's nomination, selection to  
14 advance, or election, except that the candidate for governor may publicly announce or define the candidate's  
15 choice for lieutenant governor."  
16

17 **Section 51.** Section 13-35-218, MCA, is amended to read:

18 **"13-35-218. Coercion or undue influence of voters.** (1) A person, directly or indirectly, individually  
19 or through any other person, in order to induce or compel a person to vote or refrain from voting for any  
20 candidate, the ticket of any political party, any candidates associating with any political party, or any ballot issue  
21 before the people, may not:

22 (a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any  
23 person; or

24 (b) inflict or threaten to inflict, individually or with any other person, any temporal or spiritual injury,  
25 damage, harm, or loss upon or against any person.

26 (2) A person may not, by abduction, duress, or any fraudulent contrivance, impede or prevent the  
27 free exercise of the franchise by any voter at any election or compel, induce, or prevail upon any elector to give

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1 or to refrain from giving the elector's vote at any election.

2 (3) A person may not, in any manner, interfere with a voter lawfully exercising the right to vote at  
3 an election in order to prevent the election from being fairly held and lawfully conducted.

4 (4) A person on election day may not obstruct the doors or entries of any polling place or engage  
5 in any solicitation of a voter within the room where votes are being cast or elsewhere in any manner that in any  
6 way interferes with the election process or obstructs the access of voters to or from the polling place."  
7

8 **Section 52.** Section 13-35-221, MCA, is amended to read:

9 **"13-35-221. Improper nominations or candidacies.** (1) A person may not pay or promise valuable  
10 consideration to another, in any manner or form, for the purpose of inducing the other person to be or to refrain  
11 from or to cease being a candidate, and a person may not solicit or receive any payment or promise from  
12 another for that purpose.

13 (2) A person, in consideration of any gift, loan, offer, promise, or agreement, as mentioned in  
14 subsection (1), may not:

15 (a) be nominated or selected to advance or refuse to be nominated or selected to advance as a  
16 candidate at an election;

17 (b) become, individually or in combination with any other person or persons, a candidate for the  
18 purpose of defeating the nomination, selection to advance, or election of any other person, without a bona fide  
19 intent to obtain the office; or

20 (c) withdraw if the person has been nominated.

21 (3) Upon complaint made to any district court, the judge shall issue a writ of injunction restraining  
22 the officer whose duty it is to prepare official ballots for a nominating election or a top two primary from placing  
23 the name of a person on the ballot as a candidate for nomination or selection to advance to any office if the  
24 judge is convinced that:

25 (a) the person has sought the nomination or selection to advance or seeks to have the person's  
26 name presented to the voters as a candidate for nomination by any political party or selection to advance in a  
27 top two primary for any mercenary or venal consideration or motive; and

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1 (b) the person's candidacy for the nomination or selection to advance is not in good faith."

2

3 **Section 53.** Section 13-35-226, MCA, is amended to read:

4 **"13-35-226. Unlawful acts of employers and employees.** (1) It is unlawful for any employer, in  
5 paying employees the salary or wages due them, to include with their pay the name of any candidate or any  
6 political mottoes, devices, or arguments containing threats or promises, express or implied, calculated or  
7 intended to influence the political opinions or actions of the employees.

8 (2) It is unlawful for an employer to exhibit in a place where the employer's workers or employees  
9 may be working any handbill or placard containing:

10 (a) any threat, promise, notice, or information that, in case any particular ticket or political party,  
11 organization, or candidate is elected:

12 (i) work in the employer's place or establishment will cease, in whole or in part, or will be  
13 continued or increased;

14 (ii) the employer's place or establishment will be closed; or

15 (iii) the salaries or wages of the workers or employees will be reduced or increased; or

16 (b) other threats or promises, express or implied, intended or calculated to influence the political  
17 opinions or actions of the employer's workers or employees.

18 (3) A person may not coerce, command, or require a public employee to support or oppose any  
19 political committee, the nomination, selection to advance, or election of any person to public office, or the  
20 passage of a ballot issue.

21 (4) A public employee may not solicit support for or opposition to any political committee, the  
22 nomination, selection to advance, or election of any person to public office, or the passage of a ballot issue  
23 while on the job or at the place of employment. However, subject to 2-2-121, this section does not restrict the  
24 right of a public employee to perform activities properly incidental to another activity required or authorized by  
25 law or to express personal political views.

26 (5) A person who violates this section is liable in a civil action authorized by 13-37-128, brought by  
27 the commissioner of political practices or a county attorney pursuant to 13-37-124 and 13-37-125."

1

2           **Section 54.** Section 13-36-101, MCA, is amended to read:

3           **"13-36-101. Grounds for contest of nomination, selection to advance, or election to public**

4 **office.** An elector may contest the right of ~~any a~~ person to any nomination, selection to advance, or election to  
5 public office for which the elector has the right to vote if the elector believes that:

6           (1) a deliberate, serious, and material violation of any provision of the law relating to nominations,  
7 selections to advance, or elections has occurred;

8           (2) the person was not, at the time of the election, eligible to be a candidate for the office;

9           (3) votes were cast illegally or were counted or canvassed in an erroneous or fraudulent manner."

10

11           **Section 55.** Section 13-36-102, MCA, is amended to read:

12           **"13-36-102. Time for commencing contest.** (1) Five days or less after a candidate has been

13 certified as nominated or selected to advance, a person wishing to contest the nomination or selection to

14 advance to any public office shall give notice in writing to the candidate whose nomination or selection to

15 advance the person intends to contest, briefly stating the cause for the contest. The contestant shall make

16 application to the district court in the county where the contest is to be had. The judge shall then set the time for

17 the hearing. The contestant shall serve notice 3 days before the hearing is scheduled. The notice must state

18 the time and place of the hearing.

19           (2) Any action to contest the right of a candidate to be declared elected to an office or to annul and

20 set aside the election or to remove from or deprive any person of an office of which the person is the incumbent

21 for any offense mentioned in this title must, unless a different time is stated, be commenced within 1 year after

22 the day of election at which the offense was committed."

23

24           **Section 56.** Section 13-36-103, MCA, is amended to read:

25           **"13-36-103. Court having jurisdiction of proceedings.** An application for filing a statement,

26 payment of a claim, or correction of an error or false recital in a filed statement or an action or proceeding to

27 annul and set aside the election of any person declared elected to an office or to remove or deprive any person

1 of the person's office for an offense mentioned in this title or any petition to excuse any person or candidate in  
2 accordance with the power of the court to excuse, as provided in 13-36-209, must be made or filed in the  
3 district court of the county in which the certificate, declaration, or acceptance of the person's nomination or  
4 selection to advance as a candidate for the office to which the person is declared nominated, selected to  
5 advance, or elected is filed or in which the incumbent resides."

6

7 **Section 57.** Section 13-36-104, MCA, is amended to read:

8 **"13-36-104. Nomination and selection to advance contests.** In the case of nomination and  
9 selection to advance contests, the judge of the district court shall hear and determine the case and make all  
10 necessary orders for the trial of the case and carrying the judgment into effect. The order of the judge for a  
11 nomination contest must express the will of a majority of the legal voters of the political party, as indicated by  
12 their votes, disregarding technicalities or errors in spelling. The order of the judge for a selection to advance  
13 contest must express the will of a majority of the legal voters, as indicated by their votes, disregarding  
14 technicalities or errors in spelling. Each party is entitled to subpoenas. The registrar shall issue a certificate to  
15 the person declared nominated or selected to advance by the court. The certificate is conclusive evidence of  
16 the right of the person to hold the nomination or selection to advance."

17

18 **Section 58.** Section 13-36-201, MCA, is amended to read:

19 **"13-36-201. Contents of contest petition.** Any petition contesting the right of any person to a  
20 nomination, selection to advance, or election must set forth the name of every person whose election is  
21 contested and the grounds of the contest. The petition may not be amended unless the amendment is  
22 authorized by a court."

23

24 **Section 59.** Section 13-36-202, MCA, is amended to read:

25 **"13-36-202. Reception of illegal votes -- allegations and evidence.** When the reception of illegal  
26 votes is alleged as a cause of contest, it is sufficient to state generally that in one or more specified voting  
27 precincts illegal votes were given to the candidate whose nomination, selection to advance, or election is

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1 contested that, if taken from the candidate, will reduce the number of the candidate's legal votes below the  
2 number of legal votes given to some other candidate for the same office. Testimony may not be received of any  
3 illegal votes unless the party contesting the election delivers to the opposite party, at least 3 days before trial, a  
4 written list of the number of illegal votes and by whom given that the party intends to prove at trial. This  
5 provision may not prevent the contestant from offering evidence of illegal votes not included in the statement if  
6 the contestant did not know and by reasonable diligence was unable to learn of the additional illegal votes and  
7 by whom they were given before delivering the written list."

8

9 **Section 60.** Section 13-36-203, MCA, is amended to read:

10 **"13-36-203. Form of complaint.** (1) A petition or complaint filed under the provisions of this chapter  
11 is sufficient if it is in substantially the following form:

12

In the District Court of the

13

.... Judicial District,

14

for the County of...., State of Montana.

15

A B (or A B and C D), Contestants,

16

vs.

17

E F, Contestee.

18

The petition of the contestant (or contestants) named above alleges:

19

That an election was held (in the state, district, county, or city of...), on the.... day of...., 20..., for the

20

(nomination of a candidate for) (or selection to advance for) (or election of a) (state the office).

21

That.... and.... were candidates at the election and the board of canvassers has returned.... as being

22

nominated (or selected to advance) (or elected) at the election.

23

That contestant A B voted (or had a right to vote, as the case may be) at the election (or claims to have

24

had a right to be returned as the nominee, person selected to advance, or officer elected, or nominated, or

25

selected to advance at the election or was a candidate at the election, as the case may be) and that contestant

26

C D (here state in a similar manner the right of each contestant).

27

The contestant (or contestants) further allege (here state the facts and grounds on which the



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1 contestants rely).

2 The contestants ask that it be determined by the court that... was not nominated (or selected to  
3 advance) (or elected) and that the election was void or that A B or C D, as the case may be, was nominated (or  
4 selected to advance) (or elected) and ask for other relief that the court may find appropriate.

5 (2) The complaint must be verified by the affidavit of one of the petitioners in the manner required  
6 by law for the verification of complaints in civil cases."

7

8 **Section 61.** Section 13-36-206, MCA, is amended to read:

9 **"13-36-206. Notice of filing -- prompt hearing.** On the filing of a petition under this part, the clerk  
10 shall immediately notify the judge of the court and issue a citation to the person whose nomination, selection to  
11 advance, or office is contested, citing the person to appear and answer not less than 3 or more than 7 days  
12 after the date of filing the petition. The court shall hear the cause, and the contest must take precedence over  
13 all other business on the court docket and must be tried and disposed of with all convenient dispatch. The court  
14 is always considered to be in session for the trial of contest cases."

15

16 **Section 62.** Section 13-36-207, MCA, is amended to read:

17 **"13-36-207. Hearing of contest.** The petitioner (contestant) and the contestee may appear and  
18 produce evidence at the hearing, but no person other than the petitioner and contestee may be made a party to  
19 the proceedings on the petition and no person other than the parties and their attorneys may be heard except  
20 by order of the court. If more than one petition is pending or the election of more than one person is contested,  
21 the court may in its discretion order the cases to be heard together and may apportion the costs,  
22 disbursements, and attorney fees between the parties and shall finally determine all questions of law and fact,  
23 except that the judge may impanel a jury to decide on questions of fact. In the case of nominations, selections  
24 to advance, or elections other than for federal congressional offices, the court shall immediately certify its  
25 decision to the governing body or official issuing certificates of nomination, selection to advance, or election and  
26 the governing body or official shall issue certificates of nomination, selection to advance, or election to the  
27 person or persons entitled to the certificates by the court's decision. If judgment of ouster against a defendant is

1 rendered, the nomination or office must be declared vacant by the judgment, except as provided in 13-36-212,  
2 and must be filled by a new election or by appointment as may be provided by law regarding vacancies in the  
3 nomination, selection to advance, or office."  
4

5 **Section 63.** Section 13-36-209, MCA, is amended to read:

6 **"13-36-209. Forfeiture of nomination, selection to advance, or office for violation of law -- when**  
7 **inappropriate.** Upon the trial of any action or proceeding under the provisions of this title to contest the right of  
8 any person to be declared nominated, selected to advance, or elected to any office or to annul or set aside a  
9 nomination, selection to advance, or election or to remove a person from office, the nomination, selection to  
10 advance, or election of the candidate is not by reason of the offense or omission complained of void and the  
11 candidate may not be removed from or deprived of office if under the circumstances it seems to the court to be  
12 unjust that the candidate forfeit a nomination, selection to advance, or office or be deprived of any office of  
13 which the candidate is the incumbent. The decision of the court must be based upon the following:

14 (1) it appears from the evidence that the offense complained of was not committed by the  
15 candidate or with the candidate's knowledge or consent or was committed without the candidate's sanction or  
16 connivance and that all reasonable means for preventing the commission of the offense at the election were  
17 taken by and on behalf of the candidate;

18 (2) the offense or offenses complained of were trivial, unimportant, and limited in character and in  
19 all other respects the candidate's participation in the election was free from offenses or illegal acts; or

20 (3) any act or omission of the candidate arose from inadvertence or from accidental miscalculation  
21 or from some other reasonable cause of a like nature and in any case did not arise from any lack of good faith."  
22

23 **Section 64.** Section 13-36-210, MCA, is amended to read:

24 **"13-36-210. Punishment.** If, upon the trial of any action or proceeding under the provisions of this title  
25 to contest the right of any person to be declared to be nominated or selected to advance to an office or elected  
26 to an office or to annul and set aside the election or to remove any person from office, it appears that the  
27 person was guilty of any corrupt practice, illegal act, or undue influence in or about the nomination, selection to

1 advance, or election, the person must be punished by being deprived of the nomination, selection to advance,  
2 or office and the vacancy must be filled in the manner provided by law. The only exceptions to this judgment  
3 are those provided in 13-36-209. The judgment does not prevent the candidate or officer from being proceeded  
4 against by indictment or criminal information for any act or acts."  
5

6 **Section 65.** Section 13-36-211, MCA, is amended to read:

7 **"13-36-211. When nomination, selection to advance, or election not to be vacated.** The ground  
8 of contest specified in 13-36-101(3) may not be construed to authorize a nomination, selection to advance, or  
9 election to be set aside on account of illegal votes unless it appears:

10 (1) that the candidate, or nominee, or person selected to advance whose right is contested had  
11 knowledge of or connived in the illegal votes; or

12 (2) that the number of illegal votes given to the person whose right to the nomination, selection to  
13 advance, or office is contested, if taken from the person, would reduce the number of legal votes for the person  
14 below the number of votes given to some other person for the same nomination, selection to advance, or office,  
15 after deducting the illegal votes that may be shown to have been given to the other person."  
16

17 **Section 66.** Section 13-36-212, MCA, is amended to read:

18 **"13-36-212. Declaration of result of election after rejection of illegal votes.** If, in any case of a  
19 contest on the ground of illegal votes, it appears that a person other than the one returned has the highest  
20 number of legal votes after the illegal votes have been eliminated, the court must shall declare such the person  
21 nominated, selected to advance, or elected, as the case may be."  
22

23 **Section 67.** Section 13-37-127, MCA, is amended to read:

24 **"13-37-127. Withholding of certificates of nomination, selection to advance, or election.** (1) A  
25 certificate of election may not be granted to any candidate until the candidate or the candidate's treasurer has  
26 filed the reports and statements that must be filed pursuant to the provisions of this chapter. A candidate for an  
27 elective office may not assume the powers and duties of that office until the candidate has received a certificate

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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 -