

## LEGAL REVIEW NOTE

**Bill No.:** HB 806

**LC#:** LC 3793, To Legal Review Copy, as  
of February 12, 2023

**Short Title:** Revise requirements for  
Absentee ballots

**Attorney Reviewer:** Todd Everts  
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**Date:** February 24, 2023

### CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

*As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of jurisdictionally relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.*

*This review is intended to inform the bill draft requestor of potential constitutional conformity issues that may be raised by the bill as drafted. This review IS NOT dispositive of the issue of constitutional conformity and the general rule as repeatedly stated by the Montana Supreme Court is that an enactment of the Legislature is presumed to be constitutional unless it is proven beyond a reasonable doubt that the enactment is unconstitutional. See *Alexander v. Bozeman Motors, Inc.*, 356 Mont. 439, 234 P.3d 880 (2010); *Eklund v. Wheatland County*, 351 Mont. 370, 212 P.3d 297 (2009); *St. v. Pyette*, 337 Mont. 265, 159 P.3d 232 (2007); and *Elliott v. Dept. of Revenue*, 334 Mont. 195, 146 P.3d 741 (2006).*

#### Legal Reviewer Comments:

HB 806 may raise potential federal constitutional issues related to the Supremacy Clause under the United States Constitution. Article VI, clause 2, of the United States Constitution provides that federal law is the "supreme Law of the Land".

Pursuant to the amendments by HB 806 in section 13-1-101 provides a definition for a "qualified absentee voter" as follows:

"Qualified absentee voter" means an individual who is in a nursing home or long-term care facility, is homebound, is hospital-bound, is on vacation the day of a primary or general election, or who may be absent from his or her election district on the day of a primary or general election and has completed the request for absentee ballot form provided for in 13-1-210 no later than seven days immediately prior to the election. This includes covered voters as defined in 13-21-102. (Emphasis added).

However, HB 806 amends 13-1-210(1) to require that "Qualified individuals must request to be added to the absentee ballot list in January of every even-numbered year." This implies that if a qualified individual does not request to be added to the absentee ballot list in January of every even-numbered year, they will not be added to the list.

Under federal law, the Voting Rights Act Amendments of 1970 provide that:

each State shall provide by law for the casting of absentee ballots for the choice of electors for President and Vice President, or for President and Vice President, by all duly qualified residents of such State *who may be absent from their election district or unit in such State on the day such election is held and who have applied therefor not later than seven days immediately prior to such election* and have returned such ballots to the appropriate election official of such State not later than the time of closing of the polls in such State on the day of such election. (Emphasis added.)

PL 91-285.

The provisions of the Voting Rights Act Amendments of 1970 that require uniform nationwide federal absentee standards concerning the election of President and Vice President, or electors for the same, have been upheld by the United States Supreme Court. *Or v. Mitchell*, 400 U.S. 112, 119 (1970). Although a state is granted the power to govern its own elections, Congress has the power to alter the laws concerning national elections. *Id.*

To the extent that HB 806 makes requires a person to request to be added to the absentee ballot list in January of every even-numbered year instead of "not later than seven days immediately prior" to the election, HB 806 raises potential constitutional conformity issues under the Supremacy Clause of the United States Constitution.

**Requester Comments:**