

Unofficial Draft Copy

As of: August 18, 2016 (11:58AM)

LC0030

**** Bill No. ****

Introduced By *****

By Request of the State Administration and Veterans' Affairs Interim
Committee

A Bill for an Act entitled: "An Act generally revising election laws; clarifying when an election requested by petition concerning a local government ordinance must be held; revising notice requirements **in related to** resort tax elections; clarifying the deadline for write-in candidates in local government elections; revising the deadlines by which absentee and mail ballots must be available; clarifying the deadline for the cancellation of a conservation district election; clarifying that county election administrators rather than school clerks perform voter registration duties for school elections; revising notice requirements related to school elections; clarifying the transition of terms of office for special district officers; amending sections 7-5-132, 7-6-1504, 13-1-403, 13-1-404, 13-1-502, 13-2-301, 13-10-211, 13-13-205, 13-13-222, 13-3-213, 20-3-313, 20-20-201, and 20-20-204, MCA; and providing an immediate effective date and a retroactive applicability date; and providing a retroactive applicability date."

Comment [SS1]: See comments for Section 2

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-132 , MCA, is amended to read:

"7-5-132. Procedure for initiative or referendum election.

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(1) The electors of a local government may, by petition, request an election on whether to enact, repeal, or amend an ordinance. The form of the petition must be approved by the county election administrator. A petition signed by at least 15% of the local government's qualified electors is sufficient to require an election.

(2) (a) If an approved petition containing sufficient signatures is filed prior to the ordinance's effective date or within 60 days after the passage of the ordinance, whichever is later, a petition requesting an election on whether to amend or repeal the ordinance delays the ordinance's effective date until the ordinance is ratified by the electors.

(b) If an approved petition containing sufficient signatures is filed within 60 days after the effective date of an emergency ordinance, the emergency ordinance is suspended until it is ratified by the electors.

(3) The governing body may refer an existing or proposed ordinance to a vote of the people by resolution.

(4) A petition or resolution for an election must:

(a) embrace only a single comprehensive subject;

(b) set out fully the ordinance sought, the ordinance to be amended and the proposed amendment, or the ordinance to be repealed;

(c) be in the form prescribed in Title 13, chapter 27, except as specifically provided in this part; and

(d) contain transition provisions if the measure changes terms of office or forms of government.

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(5) An election held pursuant to this section must be conducted in conjunction with the next local government election held in accordance with Title 13, chapter 1, part 4, except that if the petition asks for a special election, specifies an election date that complies with 13-1-405, and is signed by at least 25% of the qualified electors, a special election must be held on the date specified in the petition.

(6) If a majority of those voting on the question approve the proposal, it becomes effective when the election results are officially declared, unless otherwise stated in the proposal."

{*Internal References to 7-5-132:*

x3-10-101 * x3-11-101 * x7-1-4130 * x7-3-1204 *
x7-5-131 * x7-5-134 x7-6-1504 x16-1-205
x16-1-205 * }

Section 2. Section 7-6-1504 , MCA, is amended to read:

"7-6-1504. Resort tax -- election required -- procedure -- notice. (1) A resort community or area may not impose or, except as provided in 7-6-1505, amend or repeal a resort tax unless the resort tax question has been approved by a majority of the qualified electors voting on the question.

(2) The resort tax question may be presented to the qualified electors of:

(a) a resort community by a petition of the electors as provided by 7-5-131, 7-5-132, 7-5-134, 7-5-135, and 7-5-137 or by a resolution of the governing body of the resort community; or

(b) a resort area by a resolution of the board of county

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commissioners, following receipt of a petition of electors as provided in 7-6-1508.

(3) If a resort area is in more than one county, the resort tax question must be presented to and approved by the qualified electors in the resort area of each county.

(4) The petition or resolution referring the taxing question must state:

(a) the rate of the resort tax;

(b) the duration of the resort tax;

(c) the date when the tax becomes effective, which date may not be earlier than 35 days after the election;

~~(d) the goods and services subject to the resort tax; and~~

~~(d)(e)(d)~~ the purposes that may be funded by the resort tax revenue.

(5) On receipt of an adequate petition, the governing body shall hold an election in accordance with Title 13, chapter 1, part 5.

(6) Before the resort tax question is submitted to the electorate of a resort community or area, the governing body of the resort community or the board of county commissioners in the county in which the resort area is located shall publish notice of the goods and services subject to the resort tax. The notice must be published in a newspaper that meets the qualification of subsection (6)(b) and be published twice, with at least 6 days separating the publications. The first publication must be no more than 30 days prior to the election and the last publication must be no less than 3 days prior to the

Comment [SS2]: Reinsert all of the language that was inadvertently stricken in HB 84. This is a different notice than under subsection (4). By request of lobbyist for resort areas. (Mona Jamison)

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election.

(b) The newspaper in which the notice under subsection (6)(a) must appear must be:

(i) of general, paid circulation with a second-class mailing permit;

(ii) published at least once a week; and

(iii) published in the county where the election will take place.

~~(6)(7)~~ Notice of the election must be accomplished as provided in 13-1-108 and include the information listed in subsection (4) of this section.

~~(7)(8)~~ The question of the imposition of a resort tax may not be placed before the qualified electors more than once in any fiscal year."

{Internal References to 7-6-1504:

x7-6-1502 * x7-6-1502 * x7-6-1503 x7-6-1506
x7-6-1508 x7-6-1508 x7-6-1509 x7-6-1541

x7-7-4424 * }

Section 3. Section 13-1-403 , MCA, is amended to read:

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

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(2) Consistent with the deadline for write-in candidates under 13-10-211 for primary elections, a declaration of intent to be a write-in candidate must be filed with the election administrator by 5 p.m. on the 10th day before the earliest date on which the ballot must be available ~~for absentee or mail ballot voting~~ under 13-1-404, ~~as applicable.~~

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

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

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

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

{*Internal References to 13-1-403:*

x7-3-176 x7-3-176 x7-3-1208 }

Section 4. Section 13-1-404 , MCA, is amended to read:

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"13-1-404. Deadline for absentee ballots and mail ballots. (1)

Pursuant to 13-13-205, ballots for a local government polling place election must be:

(a) available for absentee voting in person at least 30 days before election day; and

(b) mailed to absentee voters at least 25 days prior to a ~~polling place~~ election day.

(2) Pursuant to 13-19-207, ballots for a local government election conducted by mail must be mailed no sooner than the 20th day and no later than the 15th day before election day ~~for an election conducted by mail.~~"

{Internal References to 13-1-404:

a13-1-403 }

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

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

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

(3) Consistent with the deadline for write-in candidates under

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13-10-211 for primary elections, a declaration of intent to be a write-in candidate must be filed with the election administrator by 5 p.m. on the 10th day before the date on which the ballot must be available for absentee or mail ballot voting under 13-1-503, as applicable.

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

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

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

(b) Except as otherwise provided by law:

(i) if an election has been canceled and there are no regular

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or declared write-in candidates for a position, the governing body shall fill the position by appointment;

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

{Internal References to 13-1-502:

x7-6-1544 x7-13-2241 x7-14-1106 x7-33-2106
x22-1-706 x85-7-1702 x85-8-302 x85-8-306

x85-8-306 }

NEW SECTION. **Section 6. Definition.** Unless the context clearly requires otherwise, as used in this chapter, "election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties.

Section 7. Section 13-2-301 , MCA, is amended to read:

"13-2-301. Close of regular registration -- notice -- changes.

(1) The election administrator shall:

(a) close regular registrations for 30 days before any election; and

(b) ~~except as provided in subsection (5),~~ publish a notice specifying the day regular registrations will close and the availability of the late registration option provided for in 13-2-304 in a newspaper of general circulation in the county at least three times in the 4 weeks preceding the close of registration or broadcast a notice on radio or television as provided in 2-3-105 through 2-3-107, using the method the election administrator believes is best

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suited to reach the largest number of potential electors. The provisions of this subsection (1)(b) are fulfilled upon the third publication or broadcast of the notice.

(2) Information to be included in the notice must be prescribed by the secretary of state.

(3) An application for voter registration properly executed and postmarked on or before the day regular registration is closed must be accepted as a regular registration for 3 days after regular registration is closed under subsection (1)(a).

(4) An elector who misses the deadlines provided for in this section may register to vote or change the elector's voter information and vote in the election, except as otherwise provided in 13-2-304.

~~(5) The method of a notice about the close of regular registration for a school election must be as specified in 20-20-204."~~

{Internal References to 13-2-301:

x13-2-115 x13-2-304 x13-2-514 x13-13-301 }

Section 8. Section 13-10-211 , MCA, is amended to read:

"13-10-211. Declaration of intent for write-in candidates.

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

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

- (a) the candidate's name, including:
 - (i) the candidate's first and last names;
 - (ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;
 - (iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and
 - (iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;
- (b) the candidate's mailing address;
- (c) a statement declaring the candidate's intention to be a write-in candidate;
- (d) the title of the office sought;
- (e) the date of the election;
- (f) the date of the declaration; and
- (g) the candidate's signature.

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

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

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

- (a) by facsimile transmission;
- (b) in person;
- (c) by mail; or
- (d) by electronic mail.

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

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

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

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- (a) an election is held;
- (b) a person's name is written in on the ballot;
- (c) the person is qualified for and seeks election to the office for which the person's name was written in; and
- (d) no other candidate has filed a declaration or petition for nomination or a declaration of intent."

{Internal References to 13-10-211:

a13-1-403 a13-1-502 x13-10-201 x13-10-204
x13-15-206 x13-15-206 x13-38-201 }

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

"13-13-205. When ballots to be available for absentee voting.

(1) Except as provided in subsection (2), the election administrator shall ensure that ballots for ~~an~~ a polling place election ~~not~~ ~~conducted by mail~~ are available ~~for absentee voting at least as~~ follows:

(a) for an election conducted on a primary or general election day:

(i) 25 30 days prior to election day ~~for an election not covered under subsection (1)(b)~~ for absentee voting in person; and

(ii) 25 day prior to the election for mailing ballots to absentee voters; and

(b) 20 days prior to election day for a special purpose district or school district election, except that ballots for a conservation district election held on a primary or general election day must be available as provided under subsection (1)(a).

(2) A federal election ballot requested by an absent uniformed

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services or overseas elector pursuant to Title 13, chapter 21, must be sent to the elector as soon as the ballot is printed but not later than 45 days in advance of the election."

{*Internal References to 13-13-205:*

a13-1-404 a13-1-503 a13-10-211 x13-13-213
x13-13-213 x13-13-214 a13-13-222 x13-19-207

?13-21-104 ?13-21-206 }

Section 10. Section 13-13-222 , MCA, is amended to read:

"13-13-222. Marking ballot in person before election day. (1)

As soon as the official ballots are available ~~pursuant to~~ for in person absentee voting under 13-13-205(1)(a)(i), the election administrator shall permit an elector to apply for, receive, and mark an absentee ballot before election day by appearing in person at the office of the election administrator and marking the ballot in a voting station area designated by the election administrator.

(2) The provisions of this chapter apply to voting under this section.

(3) For the purposes of this section, an official ballot is voted when the ballot is received at the election administrator's office."

{*Internal References to 13-13-222:*

a13-3-213 x13-13-211 x13-13-233 }

Section 11. Section 13-3-213 , MCA, is amended to read:

"13-3-213. Alternative means for casting ballot. (1) The election administrator shall provide individuals with disabilities and elderly individuals an alternative means for casting a ballot

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on election day if they are assigned to an inaccessible polling place. These alternative means for casting a ballot include:

(a) delivery of a ballot to the elector as provided in 13-13-118;

(b) voting by absentee ballot ~~as provided in 13-13-222 in~~ person at a designated voting station at the county election administrator's office; and

(c) prearranged assignment to an accessible polling place within the county.

(2) An elector with a disability or an elderly elector assigned to an inaccessible polling place who desires to vote at an accessible polling place:

(a) shall request assignment to an accessible polling place by notifying the election administrator in writing at least 7 days preceding the election;

(b) must be assigned to the nearest accessible polling place for the purpose of voting in the election;

(c) shall sign the elector's name on a special addendum to the official precinct register as required in 13-2-601; and

(d) must receive the same ballot to which the elector is otherwise entitled.

(3) For the purpose of subsection (2), the ballot cast at an alternative polling place must be processed and counted in the same manner as an absentee ballot."

{Internal References to 13-3-213:

x13-2-601 }

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Section 12. Section 20-3-313 , MCA, is amended to read:

"20-3-313. Election by acclamation -- notice. (1) If the number of candidates filing for vacant positions or filing a declaration of intent to be a write-in candidate under 20-3-305(2)(b) is equal to or less than the number of positions to be elected, the trustees may cancel the election.

(2) If the election is cancelled, the trustees shall give notice that a trustee election will not be held. Notice The notice must be given no later than 30 days before the election. ~~A copy of the notice must be provided to the superintendent of public instruction within 3 days after the cancellation.~~

~~(2)(3)~~ (3) If a trustee election is not held, the trustees shall declare elected by acclamation the candidate who filed for the position or who filed a declaration of intent to be a write-in candidate and shall issue a certificate of election to the candidate.

~~(3)(4)~~ (4) An election for a trustee in a single-member district as provided in 20-3-338 or in a trustee nominating district as provided in 20-3-353 is considered a separate trustee election for the purposes of declaring election by acclamation as provided in this section."

{Internal References to 20-3-313:

x20-3-301 x20-3-306 x20-3-307 }

~~**Section 13.** Section 20-20-201 , MCA, is amended to read:
"20-20-201. Calling of school election. (1) At least 70 days before any school election, the trustees of a district or other entity or official authorized by law to call a school election shall call~~

Comment [SS3]: Strike the change to require schools to send a copy of the notice of cancellation to OPI, by request of OPI

Comment [SS4]: Take this section out of the bill, by request of OPI. So, there would be no changes to current law (i.e., schools would not have to send OPI a copy of the election resolution.

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~~the school election by resolution, stating the date and purpose of each election and whether, pursuant to 13-19-202, any election is requested to be by mail.~~

~~(2) To enable the county election administrator to manage voter registration and prepare the lists of registered electors:~~

~~(a) the resolution calling for a school election must be transmitted to the county election administrator and the superintendent of public instruction no later than 3 days after the resolution is passed; and~~

~~(b) if the election is to be conducted by mail, the school clerk must also transmit to the county election administrator a copy of the written plan required under 13-19-205 as soon as the plan has been approved by the secretary of state."~~

~~{Internal References to 20-20-201:~~

~~x20-3-306 x20-6-312 x20-6-422 x20-6-423
x20-6-505 x20-6-603 x20-6-621 x20-9-421
x20-9-422 x20-9-502 x20-9-705 x20-10-126 }~~

Section 14. Section 20-20-204 , MCA, is amended to read:

"20-20-204. Election notice. (1) (a) When the trustees of a district call a school election, they shall give notice of the election not less than 10 days or more than 40 days before the election by:

(i) publishing a notice in a newspaper of general circulation if there is one in the district;

(ii) posting notices in three public places in the district;
and

(iii) posting notice on the district's website, if the district has an active website, for 10 days prior to the election.

(b) Whenever, in the judgment of the trustees, the best interest of the district will be served by the supplemental publication or broadcast of the school election notice by any recognized media organization in the district, the trustees may cause

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the supplemental notification to be made.

(2) The notice of a school election, unless otherwise required by law, must specify:

- (a) the date and polling places of the election;
- (b) the hours that the polling places will be open;
- (c) each proposition to be considered by the electorate;
- (d) if there are trustees to be elected, the number of

positions subject to election and the length of term of each position;
~~and~~

(e) where and how absentee ballots may be obtained; and

(f) where and how late registrants may obtain a ballot on election day.

(3) If more than one proposition is to be considered at the same school election, each proposition must be set apart and separately identified in the same notice or published in separate notices."

{Internal References to 20-20-204:

a13-2-301 x20-6-604 }

NEW SECTION. Section 15. Terms of office transition - special purpose district officers. An officer of a special purpose district, a defined in 13-1-101, who was elected or appointed to a term of office that would otherwise have expired prior to the school election immediately following the expiration of their term, shall serve until the election or appointment of a successor under the laws effective on and after November 4, 2015, which provides for the special purpose

Comment [SS5]: This section was revised after discussions with Mona Jamison and legislative staff editors.

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district election to be held on the same day as the regular school election in May.

NEW SECTION. **Section 16. {standard} Codification**

instruction. [Section 6] is intended to be codified as an integral part of Title 13, chapter 2, and the provisions of Title 13, chapter 2, apply to [section 6].

NEW SECTION. **Section 17. {standard} Effective date.** [This

act] is effective on passage and approval.

NEW SECTION. **Section 18. {standard} Retroactive**

applicability. [Section 15] applies retroactively, within the meaning of 1-2-109, to the terms of office for special purpose district officers elected before November 4, 2015.

Comment [SS6]: Added in conjunction with revisions to Section 15.

- END -

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