

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



MIKE COONEY
LT. GOVERNOR

April 14, 2017

The Honorable Austin Knudsen
Speaker of the House
State Capitol
Helena, MT 59620

Dear Speaker Knudsen:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return with amendments House Bill 103 (HB 103), "AN ACT GENERALLY REVISING LAWS RELATING TO ELECTIONS; REVISING CERTAIN DEFINITIONS AND TERMS; REVISING CERTAIN REQUIREMENTS RELATED TO BALLOTS CAST FOR DISABLED ELECTORS; REVISING TERMINOLOGY RELATED TO VOTER REGISTRATION FORMS, VOTER LISTS, AND VOTER RECORDS; REVISING ELECTION JUDGE INSTRUCTION; REVISING NOTICE REQUIREMENTS FOR ABSENTEE BALLOT COUNTING; REVISING CERTAIN TIMELINES FOR THE COUNTING OF FEDERAL WRITE-IN BALLOTS; UPDATING LANGUAGE REGARDING BALLOT ISSUE CERTIFICATION; SUBSTITUTING THE SECRETARY OF STATE FOR THE ELECTION ADMINISTRATOR WITH RESPECT TO PROPOSED CONSTITUTIONAL AMENDMENT NOTIFICATION; UPDATING THE METHOD FOR CANVASSING BALLOT ISSUES; ELIMINATING CERTAIN REQUIREMENTS CONCERNING JOINDER OF PARTIES IN ACTIONS TO COMPEL A REGISTRAR TO ENTER AN ELECTOR IN A PRECINCT REGISTER; ELIMINATING AUTHORIZATION TO HOLD A MILL LEVY FOR ADMINISTERING AN ABSENTEE ELECTION BOARD PROGRAM; ELIMINATING A REQUIREMENT FOR NOTIFICATION IF RETURNS NOT RECEIVED FROM COUNTIES; AMENDING SECTIONS 13-1-101, 13-1-116, 13-1-121, 13-2-220, 13-2-512, 13-2-513, 13-3-213, 13-4-203, 13-10-404, 13-10-602, 13-13-114, 13-13-213, 13-13-241, 13-13-245, 13-15-105, 13-15-107, 13-15-205, 13-19-303, 13-19-304, 13-21-104, 13-21-206, 13-27-103, 13-27-204, 13-27-205, 13-27-206, 13-27-207, 13-27-303, 13-27-304, 13-27-308, 13-27-311, 13-27-503, AND 13-35-207, MCA; REPEALING SECTIONS 13-1-122, 13-2-601, 13-2-602, 13-13-230, AND 13-15-503, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

I am amending HB 103, a bill generally revising elections, to include provisions that will enable our counties to purchase new voting equipment for people with disabilities. Counties are seeking to replace older voting machines for people with disabilities, but the new machines cannot be certified for use in elections by the Secretary of State unless a statutory change is made so that the machines comply with rules regarding ballot uniformity. These amendments have been requested by Montana

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clerks and recorders. With these amendments codified into law, the Secretary of State will be able to certify this voting equipment, effective immediately.

I respectfully ask for your support of these amendments.

Sincerely,



STEVE BULLOCK
Governor

Enclosure

cc: Legislative Services Division
Secretary of State

Amendments to House Bill No. 103
Reference Copy

Requested by the Governor

For the House Committee of the Whole

Prepared by Susan Byorth Fox
April 13, 2017 (4:07pm)

1. Title, line 7.

Following: "ELECTORS;"

Insert: "CREATING AN EXCEPTION THAT ALL BALLOTS BE UNIFORM IN
APPEARANCE;"

2. Title, line 9.

Following: "INSTRUCTION;"

Insert: "ALLOWING THE SECRETARY OF STATE TO APPROVE A VOTING
SYSTEM THAT USES A NONCONFORMING BALLOT IF RESULTS ARE
TRANSCRIBED TO A BALLOT; REQUIRING THE SECRETARY OF STATE TO
ADOPT RULES;"

3. Title, page 18.

Following: "13-10-602,"

Insert: "13-12-202,"

4. Title, line 19.

Following: "13-15-205,"

Insert: "13-17-103, 13-17-107,"

5. Title, line 22.

Strike: "A DELAYED"

Strike: "DATE"

Insert: "DATES"

6. Page 1, line 25.

Insert: "**Section 1.** Section 13-1-101, MCA, is amended to read:
"**13-1-101. Definitions.** As used in this title, unless the
context clearly indicates otherwise, the following definitions
apply:

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

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

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

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

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

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

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

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

(8) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

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

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; or

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

election.

(9) (a) "Contribution" means:

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

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

(iii) the receipt by a political committee of funds transferred from another political committee; or

(iv) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual.

(10) "Coordinated", including any variations of the term, means made in cooperation with, in consultation with, at the request of, or with the express prior consent of a candidate or political committee or an agent of a candidate or political committee.

(11) "De minimis act" means an action, contribution, or expenditure that is so small that it does not trigger registration, reporting, disclaimer, or disclosure obligations under Title 13, chapter 35 or 37, or warrant enforcement as a campaign practices violation under Title 13, chapter 37.

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

(13) "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, except that with regard to school elections not administered by the county, the term means the school district clerk.

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

(i) a paid advertisement broadcast over radio, television, cable, or satellite;

(ii) paid placement of content on the internet or other

electronic communication network;

(iii) a paid advertisement published in a newspaper or periodical or on a billboard;

(iv) a mailing; or

(v) printed materials.

(b) The term does not mean:

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

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

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

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

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

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

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

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

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

(b) The term does not mean:

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

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

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

to the candidacy;

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

(v) a communication that the commissioner determines by rule is not an electioneering communication.

(16) "Elector" means an individual qualified to vote under state law.

(17) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value:

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

(ii) used or intended for use in making independent expenditures or in producing electioneering communications.

(b) "Expenditure" does not mean:

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

(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

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

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

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

(19) "General election" means an election that is held for offices that first appear on a primary election ballot, unless the primary is canceled as authorized by law, and that is held on a date specified in 13-1-104.

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

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

(22) (a) "Incidental committee" means a political committee that is not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues but

that may incidentally become a political committee by receiving a contribution or making an expenditure.

(b) For the purpose of this subsection (22), the primary purpose is determined by the commissioner by rule and includes criteria such as the allocation of budget, staff, or members' activity or the statement of purpose or goal of the person or individuals that form the committee.

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

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

(25) "Individual" means a human being.

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

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

(28) "Nonconforming ballot" means a printed record of the vote of an elector that is cast using a voting system approved by the secretary of state as provided in Title 13, chapter 17, and that must be transcribed to a ballot to be tabulated.

~~(28)~~(29) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, including a political committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (8).

~~(29)~~(30) "Place of deposit" means a location designated by the election administrator pursuant to 13-19-307 for a mail ballot election conducted under Title 13, chapter 19.

~~(30)~~(31) (a) "Political committee" means a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure:

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

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

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

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

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

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

~~(31)~~(32) "Political party committee" means a political committee formed by a political party organization and includes all county and city central committees.

~~(32)~~(33) "Political party organization" means a political organization that:

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

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

~~(33)~~(34) "Political subdivision" means a county, consolidated municipal-county government, municipality, special purpose district, or any other unit of government, except school districts, having authority to hold an election.

~~(34)~~(35) "Polling place election" means an election primarily conducted at polling places rather than by mail under the provisions of Title 13, chapter 19.

~~(35)~~(36) "Primary" or "primary election" means an election held on a date specified in 13-1-107 to nominate candidates for offices filled at a general election.

~~(36)~~(37) "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not been verified as provided by law.

~~(37)~~(38) "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose identity or eligibility has not yet been verified as provided by law.

~~(38)~~(39) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

~~(39)~~(40) "Random-sample audit" means an audit involving a manual count of ballots from designated races and ballot issues in precincts selected through a random process as provided in 13-17-503.

~~(40)~~(41) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

~~(41)~~(42) "Regular school election" means the school trustee election provided for in 20-20-105(1).

~~(42)~~(43) "School election" has the meaning provided in 20-1-101.

~~(43)~~(44) "School election filing officer" means the filing officer with whom the declarations for nomination for school district office were filed or with whom the school ballot issue was filed.

~~(44)~~(45) "School recount board" means the board authorized pursuant to 20-20-420 to perform recount duties in school elections.

~~(45)~~(46) "Signature envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:

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

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

~~(46)~~(47) "Special election" means an election held on a day other than the day specified for a primary election, general election, or regular school election.

~~(47)~~(48) "Special purpose district" means an area with special boundaries created as authorized by law for a specialized and limited purpose.

~~(48)~~(49) "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

~~(49)~~(50) "Support or oppose", including any variations of the term, means:

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

(b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or ballot issues in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election, or defeat of the candidate in an election, the election or defeat of the political party, or the passage or defeat of the ballot issue or other question submitted to the voters in an election.

~~(50)~~(51) "Transfer form" means a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector's registration when the elector's residence

address has changed within the county.

~~(51)~~(52) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

~~(52)~~(53) "Voted ballot" means a ballot that is:

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

~~(53)~~(54) "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a ~~paper~~ ballot or to print the record of an elector's vote on a nonconforming ballot."

{Internal References to 13-1-101:

2-2-121 x 3-15-402 x 7-33-2106 x 13-27-111x
13-37-101 x 13-37-201 x 13-37-219 x 13-37-226x
13-37-228 x 13-37-250 x 20-20-421 x 70-1-522x}"

Renumber: subsequent sections

7. Page 6, line 9.

Following: line 8

Insert: "(29) "Nonconforming ballot" means a printed record of the vote of an elector that is cast using a voting system approved by the secretary of state as provided in Title 13, chapter 17, and that must be transcribed to a ballot to be tabulated."

Renumber: subsequent subsections

8. Page 8, line 24.

Strike: "paper"

Following: "ballot"

Insert: "or to print the record of an elector's vote on a nonconforming ballot"

9. Page 13, line 26.

Insert: "**Section 12.** Section 13-12-202, MCA, is amended to read:

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

- (a) the manner in which each type of ballot may be corrected under 13-12-204;
- (b) what provisions must be made on the ballot for write-in candidates;
- (c) the size and content of stubs on paper ballots, except

as provided in 13-19-106(1);

(d) how unvoted ballots must be handled;

(e) how the number of individuals voting and the number of ballots cast must be recorded; and

(f) the order and arrangement of voting system ballots.

(2) The names of all candidates to appear on the ballots must be in the same font size and style.

(3) Notwithstanding 13-19-106(1) and except as provided in Title 13, chapter 17, for a nonconforming ballot, when the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot for the same office or issue.

(4) The ballots must contain the name of each candidate whose nomination is certified under law for an office and no other names, except that the names of candidates for president and vice president of the United States must appear on the ballot as provided in 13-25-101(5)."

{*Internal References to 13-12-202:*

13-10-311x 13-12-203x 13-12-203x 13-12-204x

13-13-115x 13-14-212 x 13-17-306 x 13-19-106x}"

Renumber: subsequent sections

10. Page 20, line 1.

Insert: "Section 20. Section 13-17-103, MCA, is amended to read:

"13-17-103. Required specifications for voting systems. (1)

A voting system may not be approved under 13-17-101 unless the voting system:

(a) allows an elector to vote in secrecy;

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

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

(d) allows an elector to vote only for the candidates of the party selected by the elector in the primary election;

(e) allows an elector to vote a split ticket in a general election if the elector desires;

(f) allows each valid vote cast to be registered and recorded within the performance standards adopted pursuant to subsection (2);

(g) is protected from tampering for a fraudulent purpose;

(h) prevents an individual from seeing or knowing the number of votes registered for any candidate or on any ballot issue during the progress of voting;

(i) allows write-in voting;

(j) will, if purchased by a jurisdiction within the state, be provided with a guarantee that the training and technical

assistance will be provided to election officials under the contract for purchase of the voting system;

(k) (i) uses a ~~paper~~ ballot that allows votes to be manually counted; or

(ii) uses a nonconforming ballot that must be transcribed to a ballot using a process established in rule by the secretary of state pursuant to 13-17-107; and

(1) allows auditors to access and monitor any software program while it is running on the system to determine whether the software is running properly.

(2) To implement the provisions of subsection (1)(f), the secretary of state shall adopt rules setting a benchmark performance standard that must be met in tests by each voting system prior to approval under 13-17-101. The standard must be based on commonly accepted industry standards for readily available technologies."

{Internal References to 13-17-103:

13-1-202x 13-17-101x}"

Insert: "Section 21. Section 13-17-107, MCA, is amended to read:

"13-17-107. **Secretary of state to prescribe rules.** (1) The secretary of state may prescribe rules for the submission of voting systems for examination and additional requirements for approval of voting systems.

(2) The secretary of state shall prescribe rules:

(a) for the complete procedures necessary to use each type of voting system now approved for use in this state and for each type of system approved for use under the provisions of this chapter; and

(b) to create and implement a process that an election administrator shall use to distribute, collect, and transcribe a nonconforming ballot used in or created by a voting system. The transcription process must be substantially similar to that described in 13-13-246(4) and must ensure the secrecy of the elector's vote."

{Internal References to 13-17-107:

13-17-104x}"

Renumber: subsequent sections

11. Page 29, line 27.

Strike: "date. [This"

Insert: "dates. (1) Except as provided in subsection (2), [this"

12. Page 29, line 28.

Following: line 27

Insert: "(2) [Sections 1, 12, 20, and 21] and this section are effective on passage and approval."

- END -