



## Montana Legislative Services Division

### Legal Services Office

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TO: Legislative Interim Committees

FROM: K. Virginia Aldrich, Staff Attorney

RE: Interim Review of Ballot Issues

DATE: July 26, 2021

This memorandum was prepared as background information for legislative committees that are required to review ballot issues, and it does not represent any opinion or action on the part of any legislative committee.

#### **I. Interim Committee Review of Ballot Issues**

Committees should familiarize themselves with the new process implemented by Chapter 554, L. 2021, requiring interim committees to review ballot issues referred to them. From the time that the Executive Director receives a communication transmitting a ballot issue from the Secretary of State until the date that the Executive Director must transmit the vote tally of the legislative committee is 14 days (or less). Within this time, the committee that receives the ballot issue must also notice of its meeting according to its adopted rules. Thus, it is critically important that committees and staff be aware of the deadlines regarding ballot issues and that they act swiftly upon notice that a ballot issue has been referred.

Proponents of ballot issues must follow several steps to place an issue on the ballot. After several preliminary steps by the petitioner and other entities, the Secretary of State receives a legal sufficiency opinion and the ballot statements as approved by the Attorney General. After the Secretary of State reviews the opinion and the ballot statements, the Secretary of State is instructed to provide the Executive Director of the Legislative Services Division with a copy of the final text of the proposed issue and the ballot statements.<sup>1</sup>

Once the Executive Director has received the final text of the proposed issue and the ballot statements, the Executive Director must provide the information to the appropriate interim committee for review.<sup>2</sup> This must be done as promptly as possible. The "appropriate" interim committee is determined by the relevant interim committee's subject-matter jurisdiction.<sup>3</sup> If questions arise regarding which interim committee has jurisdiction over the matter before the matter is referred to a committee, the Executive

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<sup>1</sup> Section 13-27-202, MCA.

<sup>2</sup> Section 5-5-215, MCA.

<sup>3</sup> *Id.*

Director must direct the review to the Legislative Council.<sup>4</sup> The Legislative Council is then empowered to undertake the review.<sup>5</sup>

Once the appropriate committee has received the final text of the proposed issue and the ballot statements from the Executive Director, the committee must promptly notice a public meeting, and it should post the final text of the proposed issue and the ballot statements to the committee's meeting page as soon as possible. Please note that under the *Rules, Procedures, and Guidelines for Interim Committees*, a meeting with a public hearing requires notice at least 10 days prior to the meeting. In anticipation of receiving referrals of ballot issues under these tight deadlines, it is recommended that each interim committee amend their adopted *Rules, Procedures, and Guidelines* to allow a committee to convene upon receipt of a referred ballot issue with notice appropriate to the circumstances.

The public hearing may be held remotely,<sup>6</sup> telephonically,<sup>7</sup> in person, or any combination of these methods, and it may provide for remote participation by the public<sup>8</sup>. As with any other meeting, a quorum is required. After holding the public hearing, the committee must take executive action on whether to vote to "support or not support the placement of the proposed initiative text on the ballot."<sup>9</sup> Thus, a motion should be in substantially the following form:

*"I move that this committee [support / not support] the placement of the proposed text of [ballot issue number \_\_\_\_] on the ballot."*

Despite any interim committee rules to the contrary, for votes relating to this matter, proxies "must be allowed for legislators unable to participate if a quorum meets . . ." <sup>10</sup> The statute does not contemplate a situation where a committee is unable to meet due to quorum requirements or other circumstances.

Although the statute does not expressly address the situation of a tie vote, a tie vote on an affirmative legislative action means that the affirmative action fails. Therefore, a committee that ties on a motion to support placing the issue on the ballot shall be reflected as not supporting the placement of the issue on the ballot. A committee that ties on a motion to not support the placement of the issue on the ballot should offer a second motion phrased in the affirmative to support placing the issue on the ballot. If that motion also ties, the committee shall be recorded as not supporting the placement of the issue on the ballot.

The committee must promptly inform the Executive Director of the Legislative Services Division of the outcome of the vote, including the number of votes for and against supporting the placement of the issue on the ballot, and within 14 days after the Executive Director initially received the final text of the proposed issue and the ballot statements from the Secretary of State, the Executive Director must provide written correspondence to the Secretary of State providing the name of the committee that voted on the proposal, the date of the vote, and the outcome of the vote (including the number of

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<sup>4</sup> *Id.*

<sup>5</sup> 5-11-105, MCA.

<sup>6</sup> Section 13-27-202, MCA.

<sup>7</sup> *Id.*

<sup>8</sup> *Rules, Procedures, and Guidelines for Interim Committees*, Legislative Council (2021).

<sup>9</sup> Section 13-27-202, MCA.

<sup>10</sup> *Id.*

members who voted to support / not support placement of the issue on the ballot).<sup>11</sup> This concludes the role of the committee in the ballot issue process.

When the Secretary of State receives the results of the committee's vote, language is placed on the petitions for a particular ballot issue that states that the legislative committee "reviewed the content of this initiative and [did] or [did not] support the placement of the proposed text of this initiative on the ballot. The outcome of the vote was [x] in favor of placing the measure on the ballot and [x] against placing the measure on the ballot."<sup>12</sup> This statement appears only on the petition circulated for signatures – it does not modify the statement of purpose and implication, the petition title, or the ballot title if the issue is placed on the ballot.<sup>13</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> Section 13-27-204, MCA.

<sup>13</sup> Section 13-27-312, MCA.