



Montana Legislative Services Division
Legal Services Office

TO: State Administration and Veterans' Affairs Interim Committee

FROM: K. Virginia Aldrich

DATE: October 22, 2021

RE: Legislative Administrative Rule Review Report

Pursuant to 5-5-228, MCA, the State Administration and Veterans' Affairs Interim Committee is responsible for reviewing administrative rules within its jurisdiction. Staff for the State Administration and Veterans' Affairs Interim Committee has prepared this report for informational purposes only. This report does not represent any action or opinion of the State Administration and Veterans' Affairs Interim Committee and does not preclude additional action that may be taken by the State Administration and Veterans' Affairs Interim Committee pursuant to its authority under the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).-

MAR NOTICE NUMBER: 44-2-250

AGENCY/BOARD: Secretary of State

RULE CLASSIFICATION: (e.g., substantive/interpretive/emergency/temporary): Substantive

SUBJECT: Voter Registration Requirements, Provisional Registration, Late Registration Procedures, Voter Identification, and Related Definitions

NOTICE DESCRIPTION: (e.g., proposal notice/adoption notice): Notice of Public Hearing on Proposed Amendment

SUMMARY OF RULE(S):

The Secretary of State proposes to amend nine rules relating to voter identification and registration, primarily to amend existing rules to comport with changes made by Chapters 244 and 254, L. 2021 (HB 176 and SB 169).

The Secretary of State proposes to amend three rules providing definitions for regulatory subchapters concerning voter registration, voter identification, provisional voting procedures, and provisional voting by absentee and mail ballot. The proposed changes update the definition of "identification" to reflect the changes in acceptable forms of voter identification made by Chapter 254, L. 2021. The proposed changes also delete provisions related to presuming identification is "current and valid" because the changes in Chapter 254, L. 2021, deleted statutory references to "current and valid" photo identification (with the exception of requiring "current" utility bills, paychecks, government checks, or other government documents used as a secondary source of identification for a current address). The proposed changes also delete a definition for "driver's license number", which provided that the term included a driver's license number or a motor vehicle division identification card number. The definition's provisions were

rendered moot when the Legislature explicitly added identification card numbers issued by the Department of Justice to the list of acceptable forms of identification. The proposed changes also delete the definition for "notice by the most expedient method available" in each subchapter. Two subchapters do not use the defined term, and it appears only once in the third subchapter. The current definition provides that required notifications to electors can be achieved by telephone, mail, fax, e-mail, or other electronic means, or in person at the discretion of the election administrator. According to the office of the Secretary of State, the removal of this definition will allow an election administrator greater discretion to identify the most expedient method, rather than limiting them to the list of methods provided in the rule. In addition, the proposed changes provide a definition for a "reasonable impediment declaration form," a new form provided for in Chapter 254, L. 2021.

The Secretary of State proposes to amend one rule concerning voter registration application requirements. The proposed changes conform the identification requirements to the requirements provided in Chapter 245, L. 2021. The proposed changes require county election officials to enter the voter registration application into the statewide voter registration system. The changes also provide that an applicant who does not complete all required fields on the application must be provisionally registered. The proposed amendment provides additional information concerning how a provisionally registered elector's application will be handled if it is incomplete, including how an election administrator must handle a provisionally registered elector's application that does not contain the address information (residential address or other geographic information to identify the elector's residence) required by statute. Under the proposed amendments, the application is marked incomplete until the required information is provided. However, if the application does contain a residential address or the address can be easily ascertained from the application's information, the election official must use best efforts to contact the elector and request the documentation required to complete the application. After the missing information is completed, the election administrator must complete the registration and change the elector's status to "active."

The Secretary of State proposes to amend one rule concerning provisional voter registration. The proposed amendments update the rule to reflect changes made by Chapter 254, L. 2021. In addition, the proposed changes provide for the verification process of identification information. Specifically, the proposed changes provide that registration information is verified if the information is a Montana driver's license number, a Montana state identification card number, or the last four digits of a social security number validated through the statewide voter registration system. If the registration information is not in one of these forms but otherwise meets the statutory identification requirements, it is verified if an election administrator determines that the identification information identifies the applicant, satisfies statutory and regulatory identification requirements, and "appears to be genuine and authentic." The proposed changes also provide that if the identification information submitted by the applicant cannot be verified, the election administrator must notify the applicant by the most expedient method available.

The Secretary of State proposes to amend one rule concerning late registration procedures to update the rule's provisions to reflect the changes made in Chapter 244, L. 2021, which changed the closure of late registration to noon the day before the election. In addition, the proposed amendments provide for changes allowable by an elector after the close of late registration, e.g., what an elector may do on election day, including allowing an elector to change the elector's residence but limiting the elector to voting in the previous county of residence, changing the elector's name but limiting the elector to voting under their former name unless the registration was cancelled, reactivating an elector's inactive registration but limiting the elector to voting on election day at the county election administrator's office or a central location designated by the county election administrator, and allowing an elector to change the elector's residence within a county and vote in the "new precinct, old precinct, or a central location designated by the county election administrator." Pursuant to 13-2-512, MCA, an elector who changes the elector's residence to reside in a different precinct within the same county and who fails to notify the election administrator of the change by a new registration form "may vote at the polling place or by absentee or mail ballot in the precinct where the elector is registered at the first election at which the elector offers to vote after the change or at a central location designated by the election administrator unless the elector's registration has been canceled" The statute specifies where an elector can vote if the elector moves within the county but does not immediately update their registration information. If the elector has not updated the elector's registration information, it isn't clear how the election administrator would know that the individual had moved within the county in order to allow the elector to vote at the "new precinct" unless new registration information is filed with the election administrator, subjecting the change to the late registration deadline. Thus, unlike allowing the elector to vote in the old precinct or a central location designated by the election administrator, both of which are specifically addressed by statute, the rule goes beyond this to allow an elector to change the elector's residence to a different precinct within the county and vote in the *new precinct*. Because registration changes, including updating a residential address, are subject to the late registration deadline, the inclusion of allowing a voter to change residences within the county and vote in the "new precinct" under the rule may raise potential legal concerns. The Secretary of State's office is currently reviewing this provision, and an update will be provided at the next State Administration and Veterans' Affairs Interim Committee meeting.

The Secretary of State proposes to amend one rule concerning determining the sufficiency of identification of provisionally registered electors by striking unnecessary references to "eligibility information."

The Secretary of State proposes to update a rule concerning absentee or mail ballot elector identification materials by correcting a subsection impacted by the renumbering changes in other proposed rule amendments.

Additional proposed changes throughout the proposed amendments include minor changes for readability and grammar.

NOTES: A public hearing will be held on October 28, 2021, at 10 a.m., Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana. The public comment period ends on November 5, 2021.

FULL TEXT OF NOTICE: The full text of the proposal notice and the amended proposal may be found online at https://rules.mt.gov/gateway/Cycle_Home.asp?CID=3345.