



Montana Legislative Services Division
Legal Services Office

TO: State Administration and Veterans' Affairs Interim Committee

FROM: K. Virginia Aldrich

DATE: May 11, 2022

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: 44-2-258

AGENCY/BOARD: Secretary of State

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

SUBJECT: Minor Parties

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

SUMMARY OF RULE(S):

The Secretary of State proposes to adopt four new rules concerning minor parties that implement Senate Bill 350, a bill related to minor parties that included provisions on how petitions to nominate a political party's candidate by primary election are submitted and processed.

The Secretary of State proposes to adopt one rule that provides the requirements for the submission of petitions to nominate a political party's candidate by primary election. Section 13-10-606, MCA, allows an elector to withdraw the elector's signature "until the final submission of petition sheets" to the county official responsible for registration. The proposed rule requires that the petitioning elector notify the county official responsible for registration when the final sheet or portion of the petition has been submitted. Thus, the date that the petitioning elector notifies the county official that the final sheet has been submitted will function as the deadline for an elector to withdraw the elector's signature. The rule also requires, as provided in statute, that the petition be signed by a number of electors equal to the lesser of five percent or more of the total votes cast statewide for the successful candidate for governor at the last general election or 5,000 electors. Section 13-10-606, MCA, also requires that the number of signatures "must include the registered voters in at least one-third of the legislative districts equal to 5% or more of the total

votes cast for the successful candidate for governor at the last general election in those districts or 150 electors in those districts, whichever is less." However, in November 2021, the distribution requirement indexed to five percent of the votes for the previous gubernatorial winner in each house district was struck down by the United States Court of Appeals for the Ninth Circuit in *Montana Green Party v. Jacobsen*, 17 F.4th 919 (9th Cir. 2021), because the provision violated the Equal Protection Clause of the 14th Amendment of the United States Constitution. Thus, the proposed rule omits the enjoined 5% portion of the distribution requirement, but it maintains the other portion of the distribution requirement that was not struck down, requiring at least "150 electors in at least one-third of legislative house districts." The proposed rule also provides format requirements for petitions.

The Secretary of State proposes to adopt a rule concerning the verification of elector signatures by county election officials that provides that on the receipt of a petition for a political party to elect the party's candidate by primary election, the county election officials responsible for registration of elections must determine if a signatory is a registered voter in a legislative district in the county, verify the signature of each signatory by comparing it with the signature of the elector in the county election office records, and determine the total numbers of verified electors in the county who have signed the petition by legislative district within the county.

The Secretary of State proposes to adopt one rule which states that an elector may request to withdraw their signature from a petition to elect a political party's candidates by primary election. The proposed rule requires that the county election administrator only remove the requesting elector's signature after the identity of the requesting elector is verified in the same manner that the identities of applicants for voter registration are verified.

The Secretary of State proposes to adopt one rule that provides definitions related to the other proposed rules.

NOTES: A public hearing will be held on June 3, 2022, at 9:00 a.m., Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana. The public comment period ends on June 10, 2022.

FULL TEXT OF NOTICE: The full text of the original proposal notice and the amended proposal may be found online at <https://rules.mt.gov> after it is officially published.