

Amendment - 1st Reading/2nd House-blue - Requested by: Mike Cuffe - (S) State Administration

- 2023
68th Legislature 2023

Drafter: Joe Carroll, 406-444-3804

HB0774.002.008

1 HOUSE BILL NO. 774
2 INTRODUCED BY M. HOPKINS
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ELECTION LAWS; ESTABLISHING A
5 SCHOOL ELECTION INCENTIVE PILOT PROGRAM FOR COUNTIES TO ADMINISTER SCHOOL
6 ELECTIONS; PROVIDING GRANTS TO PARTICIPATING COUNTIES; EXEMPTING PARTICIPATING
7 SCHOOL DISTRICTS FROM BEING CHARGED ELECTION COSTS; REQUIRING ALL ELECTIONS TO BE
8 HELD IN EVEN-NUMBERED YEARS AND PROVIDING EXCEPTIONS; REQUIRING ALL ELECTIONS TO BE
9 HELD ON PRIMARY DAY OR GENERAL ELECTION DAY AND PROVIDING EXCEPTIONS; REQUIRING
10 COUNTY ELECTION ADMINISTRATORS TO ADMINISTER ALL ELECTIONS; REVISING DEFINITIONS;
11 CHANGING TERM LENGTHS TO ALIGN WITH THE REVISED ELECTION SCHEDULE; REVISING
12 TIMELINES AND OTHER PROVISIONS RELATED TO SCHOOL ELECTION CANDIDATE FILING,
13 CANDIDATE WITHDRAWAL, WRITE-IN CANDIDATES, TRUSTEES CALLING ELECTIONS, ELECTION
14 ACCLAMATION, AND CERTIFICATE OF ELECTION; REVISING RESIDENCY REQUIREMENTS FOR
15 SCHOOL ELECTION JUDGES; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 3-6-201, 7-4-
16 2611, 7-5-132, 7-6-1504, 7-6-1536, 7-6-1542, 7-6-4431, 7-11-1003, 7-11-1011, 7-11-1012, 7-11-1013, 7-12-
17 4243, 7-13-2208, 7-13-2210, 7-13-2341, 7-13-2342, 7-13-2352, 7-13-4512, 7-13-4535, 7-14-210, 7-14-1106, 7-
18 14-1134, 7-14-1632, 7-14-1633, 7-14-4642, 7-15-4218, 7-15-4408, 7-16-2102, 7-31-106, 7-31-107, 7-31-109,
19 7-33-2106, 7-34-2109, 7-34-2110, 7-34-2414, 13-1-101, 13-1-104, 13-1-106, 13-1-107, 13-1-203, 13-1-204, 13-
20 1-301, 13-1-302, 13-1-405, 13-1-504, 13-2-304, 13-10-211, 13-13-205, 13-13-222, 13-16-205, 13-37-126, 15-
21 10-425, 16-12-301, 16-12-311, 20-1-101, 20-3-106, 20-3-302, 20-3-305, 20-3-306, 20-3-307, 20-3-313, 20-3-
22 321, 20-3-324, 20-3-362, 20-4-401, 20-6-326, 20-6-422, 20-6-423, 20-6-504, 20-6-506, 20-6-603, 20-6-621, 20-
23 6-704, 20-9-115, 20-9-131, 20-9-208, 20-9-306, 20-9-308, 20-9-311, 20-9-313, 20-9-353, 20-9-405, 20-9-406,
24 20-9-422, 20-15-203, 20-15-208, 20-15-221, 20-15-404, 20-20-102, 20-20-104, 20-20-105, 20-20-107, 20-20-
25 108, 20-20-109, 20-20-201, 20-20-417, 76-5-1106, 76-15-207, 76-15-303, 76-15-304, 76-15-506, 76-15-531,
26 76-15-605, 76-15-702, 76-15-805, 85-6-105, 85-6-106, 85-7-1602, 85-7-1702, 85-7-1703, 85-7-1712, 85-7-
27 1974, 85-7-2013, 85-8-302, 85-8-624, AND 85-9-206, MCA; REPEALING SECTIONS 13-1-305, 13-1-503, 20-

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1 ~~6-505, 20-6-604, 20-20-106, 20-20-108, 20-20-203, 20-20-204, 20-20-401, AND 20-20-402, AND 20-20-416,~~
2 ~~MCA; AND PROVIDING A DELAYED EFFECTIVE DATE EFFECTIVE DATES AND A TERMINATION DATE~~
3 ~~PROVIDING FOR A TOP TWO PRIMARY FOR CERTAIN OFFICES; REQUIRING THAT THE TWO~~
4 ~~CANDIDATES WHO RECEIVE THE MOST VOTES IN PRIMARY ELECTIONS FOR A U.S. SENATE OFFICE~~
5 ~~ADVANCE TO THE GENERAL ELECTION IRRESPECTIVE OF PARTY AFFILIATION; RAISING THE FILING~~
6 ~~FEE FOR U.S. SENATE CANDIDATES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS~~
7 ~~3-1-906, 13-1-101, 13-1-103, 13-1-403, 13-1-502, 13-10-201, 13-10-202, 13-10-203, 13-10-204, 13-10-208, 13-~~
8 ~~10-209, 13-10-211, 13-10-301, 13-10-302, 13-10-303, 13-10-325, 13-10-326, 13-10-327, 13-10-405, 13-10-~~
9 ~~501, 13-10-505, 13-10-601, 13-10-605, 13-12-201, 13-12-202, 13-12-203, 13-12-205, 13-12-207, 13-13-214,~~
10 ~~13-13-241, 13-14-112, 13-14-113, 13-15-205, 13-15-206, 13-15-507, 13-16-211, 13-16-412, 13-16-418, 13-16-~~
11 ~~419, 13-16-501, 13-17-103, 13-25-201, 13-25-205, 13-27-401, 13-35-106, 13-35-205, 13-35-206, 13-35-207,~~
12 ~~13-35-214, 13-35-218, 13-35-221, 13-35-226, 13-36-101, 13-36-102, 13-36-103, 13-36-104, 13-36-201, 13-36-~~
13 ~~202, 13-36-203, 13-36-206, 13-36-207, 13-36-209, 13-36-210, 13-36-211, 13-36-212, 13-37-127, AND 13-37-~~
14 ~~234, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.”~~
15

16 WHEREAS, two-thirds of Montana voters passed term limits in 1992 for many elective offices, including
17 U.S. Senate; and

18 WHEREAS, U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995), prevented Montana from
19 enforcing term limits on its federal officials who serve in the U.S. Senate; and

20 WHEREAS, since Montana adopted term limits in 1992, three of the ten elections for U.S. Senate have
21 been won by candidates with less than a majority of Montana voters (1996, 2006, 2012); and

22 WHEREAS, seats for the U.S. Senate are the only statewide federal officeholders in Montana and
23 terms for the U.S. Senate are set at 6 years and do not give voters the same opportunity to hold elected
24 officials accountable as those officials in 2-year terms for the U.S. House; and

25 WHEREAS, in the absence of enforceable term limits on federal officials, the Legislature desires that
26 winners of Montana's U.S. Senate contests garner a majority of voters to ensure our federal elected officials
27 have broad support in the absence of term limits and due to the longer terms in office; and

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1 WHEREAS, a top-two primary for federal offices to determine which candidate has majority support is
2 preferable to a costly run-off election following the general election; and
3 WHEREAS, as recognized by the U.S. Supreme Court in the top two primary case of Washington State
4 Grange v. Washington State Republican Party, 552 U.S. 442 (2008), and authored by Justice Clarence
5 Thomas, states possess a "broad power to prescribe the "Times, Places and Manner of holding Elections for
6 Senators and Representatives" under Article 1, Section 4, Clause 1, of the U.S. Constitution; and
7 WHEREAS, Article IV, section 3, of the Montana Constitution, gives the authority to administer federal
8 elections in Montana to the Montana Legislature; and
9 WHEREAS, the 2023 Legislature proposes a top two primary for U.S. Senate in 2024 with a sunset
10 provision to allow the 2025 Legislature to review the election process and make revisions according to its
11 constitutional authority and determine future applicability of the top two primary in Montana.

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 (Refer to Introduced Bill)

16 Strike everything after the enacting clause and insert:

17
18 **Section 1.** Section 3-1-906, MCA, is amended to read:

19 **"3-1-906. Senate confirmation -- exception -- nomination in interim -- appointment contingent**
20 **on vacancy.** (1) (a) Except as provided in subsection (2):

21 (i) each appointment must be confirmed by the senate; and

22 (ii) an appointment made while the senate is not in session is effective until the end of the next special
23 or regular legislative session.

24 (b) If the appointment is subject to senate confirmation under subsection (1)(a) and is not confirmed,
25 the office is vacant and another selection of nominees and appointment must be made.

26 (2) The following appointments are not subject to senate confirmation, and there must be an election
27 for the office at the general election immediately preceding the scheduled expiration of the term or following the

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1 appointment, as applicable:

2 (a) an appointment made while the senate is not in session if the term to which the appointee is
3 appointed expires prior to the next legislative session, regardless of the time of the appointment in relation to
4 the candidate filing deadlines for the office; and

5 (b) an appointment made while the senate is not in session if a general election will be held prior to
6 the next legislative session and the appointment is made prior to the candidate filing deadline for primary
7 elections under 13-10-201~~(7)~~(8), in which case the position is subject to election at the next primary and
8 general elections.

9 (3) A nomination is not effective unless a vacancy in office occurs."
10

10

11 **Section 2.** Section 13-1-101, MCA, is amended to read:

12 **"13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the
13 following definitions apply:

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

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

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

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

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

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

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

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

7 (8) "Candidate" means:

8 (a) an individual who has filed a declaration of candidacy, declaration for nomination, or petition for
9 nomination, acceptance of nomination, ~~or~~ appointment, or selection to advance, as a candidate for public office
10 as required by law;

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

16 (i) solicitation is made;

17 (ii) contribution is received and retained; or

18 (iii) expenditure is made; or

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

20 (9) "Certificate of selection" means a certificate awarded to the individuals authorized by law to
21 advance for a top two primary election and appear on the general election ballot.

22 ~~(9)(10)~~ (a) "Contribution" means:

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

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

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

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

3 (b) The term does not mean:

4 (i) services provided without compensation by individuals volunteering a portion or all of their time on
5 behalf of a candidate or political committee;

6 (ii) meals and lodging provided by individuals in their private residences for a candidate or other
7 individual;

8 (iii) the use of a person's real property for a fundraising reception or other political event; or

9 (iv) the cost of a communication not for distribution to the general public by a religious organization
10 exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held
11 religious beliefs or practices.

12 (c) This definition does not apply to Title 13, chapter 37, part 6.

13 ~~(10)(11)~~ "Coordinated", including any variations of the term, means made in cooperation with, in
14 consultation with, at the request of, or with the express prior consent of a candidate or political committee or an
15 agent of a candidate or political committee.

16 ~~(11)(12)~~ "De minimis act" means an action, contribution, or expenditure that is so small that it does not
17 trigger registration, reporting, disclaimer, or disclosure obligations under Title 13, chapter 35 or 37, or warrant
18 enforcement as a campaign practices violation under Title 13, chapter 37.

19 (13) "Declaration for nomination" means the document filed by a candidate for an office that
20 requires a partisan primary held under Title 13, chapter 10, part 2, or nonpartisan primary under Title 13,
21 chapter 14.

22 (14) "Declaration of candidacy" means the document filed by a candidate for an office that requires
23 a top two primary be used to narrow the number of candidates for the general election.

24 ~~(12)(15)~~ "Disability" means a temporary or permanent mental or physical impairment such as:

25 (a) impaired vision;

26 (b) impaired hearing;

27 (c) impaired mobility. Individuals having impaired mobility include those who require use of a

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1 wheelchair and those who are ambulatory but are physically impaired because of age, disability, or disease.

2 (d) impaired mental or physical functioning that makes it difficult for the person to participate in the
3 process of voting.

4 ~~(13)(16)~~ "Election" means a general, special, or primary election held pursuant to the requirements of
5 state law, regardless of the time or purpose.

6 ~~(14)(17)~~ (a) "Election administrator" means, except as provided in subsection ~~(14)(b)(17)(b)~~, the
7 county clerk and recorder or the individual designated by a county governing body to be responsible for all
8 election administration duties, except that with regard to school elections not administered by the county, the
9 term means the school district clerk.

10 (b) As used in chapter 2 regarding voter registration, the term means the county clerk and recorder or
11 the individual designated by a county governing body to be responsible for all election administration duties
12 even if the school election is administered by the school district clerk.

13 ~~(15)(18)~~ (a) "Election communication" means the following forms of communication to support or
14 oppose a candidate or ballot issue:

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

16 (ii) paid placement of content on the internet or other electronic communication network;

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

18 (iv) a mailing; or

19 (v) printed materials.

20 (b) The term does not mean:

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

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

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

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

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- 1 employees;
- 2 (v) a communication not for distribution to the general public by a religious organization exempt from
- 3 federal income tax when compliance with Title 13 would burden the organization's sincerely held religious
- 4 beliefs or practices; or
- 5 (vi) a communication that the commissioner determines by rule is not an election communication.
- 6 ~~(16)(19)~~ "Election judge" means a person who is appointed pursuant to Title 13, chapter 4, part 1, to
- 7 perform duties as specified by law.
- 8 ~~(17)(20)~~ (a) "Electioneering communication" means a paid communication that is publicly distributed
- 9 by radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other
- 10 distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does
- 11 not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the
- 12 district voting on the candidate or ballot issue, and that:
- 13 (i) refers to one or more clearly identified candidates in that election;
- 14 (ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that
- 15 election; or
- 16 (iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.
- 17 (b) The term does not mean:
- 18 (i) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any
- 19 broadcasting station, newspaper, magazine, internet website, or other periodical publication of general
- 20 circulation unless the facilities are owned or controlled by a candidate or political committee;
- 21 (ii) a communication by any membership organization or corporation to its members, stockholders, or
- 22 employees;
- 23 (iii) a commercial communication that depicts a candidate's name, image, likeness, or voice only in the
- 24 candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy;
- 25 (iv) a communication that constitutes a candidate debate or forum or that solely promotes a candidate
- 26 debate or forum and is made by or on behalf of the person sponsoring the debate or forum;
- 27 (v) a communication not for distribution to the general public by a religious organization exempt from

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1 federal income tax when compliance with Title 13 would burden the organization's sincerely held religious
2 beliefs or practices; or

3 (vi) a communication that the commissioner determines by rule is not an electioneering
4 communication.

5 ~~(18)(21)~~ "Elector" means an individual qualified to vote under state law.

6 ~~(19)(22)~~ (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge,
7 or gift of money or anything of value:

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

9 (ii) made by a candidate while the candidate is engaging in campaign activity to pay child-care

10 expenses as provided in 13-37-220; or

11 (iii) used or intended for use in making independent expenditures or in producing electioneering
12 communications.

13 (b) The term does not mean:

14 (i) services, food, or lodging provided in a manner that they are not contributions under subsection
15 (9);

16 (ii) except as provided in subsection ~~(19)(a)(ii)~~ ~~(22)(a)(ii)~~, payments by a candidate for personal travel
17 expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

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

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

22 (v) the use of a person's real property for a fundraising reception or other political event; or

23 (vi) the cost of a communication not for distribution to the general public by a religious organization
24 exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held
25 religious beliefs or practices.

26 (c) This definition does not apply to Title 13, chapter 37, part 6.

27 ~~(20)(23)~~ "Federal election" means an election in even-numbered years in which an elector may vote for

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1 individuals for the office of president of the United States or for the United States congress.

2 ~~(21)(24)~~ "General election" means an election that is held for offices that first appear on a primary
3 election ballot, unless the primary is cancelled as authorized by law, and that is held on a date specified in 13-
4 1-104.

5 ~~(22)(25)~~ "Inactive elector" means an individual who failed to respond to confirmation notices and
6 whose name was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

7 ~~(23)(26)~~ "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

8 ~~(24)(27)~~ (a) "Incidental committee" means a political committee that is not specifically organized or
9 operating for the primary purpose of supporting or opposing candidates or ballot issues but that may
10 incidentally become a political committee by receiving a contribution or making an expenditure.

11 (b) For the purpose of this subsection ~~(24)~~ ~~(27)~~, the primary purpose is determined by the
12 commissioner by rule and includes criteria such as the allocation of budget, staff, or members' activity or the
13 statement of purpose or goal of the person or individuals that form the committee.

14 ~~(25)(28)~~ "Independent committee" means a political committee organized for the primary purpose of
15 receiving contributions and making expenditures that is not controlled either directly or indirectly by a candidate
16 and that does not coordinate with a candidate in conjunction with the making of expenditures except pursuant
17 to the limits set forth in 13-37-216(1).

18 ~~(26)(29)~~ "Independent expenditure" means an expenditure for an election communication to support or
19 oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue
20 committee.

21 ~~(27)(30)~~ "Individual" means a human being.

22 ~~(28)(31)~~ "Legally registered elector" means an individual whose application for voter registration was
23 accepted, processed, and verified as provided by law.

24 ~~(29)(32)~~ "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by
25 mailing ballots to all active electors.

26 ~~(33)~~ "Nonpartisan primary" means a primary election that is conducted under Title 13, chapter 14.

27 ~~(34)~~ (a) "Partisan primary" means a primary election conducted under Title 13, chapter 10, for local

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1 county, legislative, district, statewide, presidential preference primary, or political party precinct committee
2 offices.

3 (b) The term does not include a primary election for U.S. senator.

4 ~~(30)~~(35) "Person" means an individual, corporation, association, firm, partnership, cooperative,
5 committee, including a political committee, club, union, or other organization or group of individuals or a
6 candidate as defined in subsection (8).

7 ~~(34)~~(36) "Place of deposit" means a location designated by the election administrator pursuant to 13-
8 19-307 for a mail ballot election conducted under Title 13, chapter 19.

9 ~~(32)~~(37) (a) "Political committee" means a combination of two or more individuals or a person other
10 than an individual who receives a contribution or makes an expenditure:

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

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

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

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

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

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

22 (e) A joint fundraising committee is not a political committee.

23 ~~(33)~~(38) "Political party committee" means a political committee formed by a political party organization
24 and includes all county and city central committees.

25 ~~(34)~~(39) "Political party organization" means a political organization that:

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

27 or

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

2 ~~(35)(40)~~ "Political subdivision" means a county, consolidated municipal-county government,
3 municipality, special purpose district, or any other unit of government, except school districts, having authority
4 to hold an election.

5 ~~(36)(41)~~ "Polling place election" means an election primarily conducted at polling places rather than by
6 mail under the provisions of Title 13, chapter 19.

7 ~~(37)(42)~~ "Primary" or "primary election" means an election held on a date specified in 13-1-107 to:

8 ~~(a)~~ _____nominate candidates using a partisan primary or a nonpartisan primary for offices filled at a
9 general election; or

10 ~~(b)~~ _____ narrow the number of candidates using a top two primary for offices filled at a general election.

11 ~~(38)(43)~~ "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has
12 not been verified as provided by law.

13 ~~(39)(44)~~ "Provisionally registered elector" means an individual whose application for voter registration
14 was accepted but whose identity or eligibility has not yet been verified as provided by law.

15 ~~(40)(45)~~ "Public office" means a state, county, municipal, school, or other district office that is filled by
16 the people at an election.

17 ~~(41)(46)~~ "Random-sample audit" means an audit involving a manual count of ballots from designated
18 races and ballot issues in precincts selected through a random process as provided in 13-17-503.

19 ~~(42)(47)~~ "Registrar" means the county election administrator and any regularly appointed deputy or
20 assistant election administrator.

21 ~~(43)(48)~~ "Regular school election" means the school trustee election provided for in 20-20-105(1).

22 ~~(44)(49)~~ "Religious organization" means a house of worship with the major purpose of supporting
23 religious activities, including but not limited to a church, mosque, shrine, synagogue, or temple. The organic
24 documents of the organization must list a formal code of doctrine and discipline, and the organization must
25 spend the majority of its money on religious activities such as regular religious services, educational
26 preparation for its ministers, development and support of its ministers, membership development, outreach and
27 support, and the production and distribution of religious literature developed by the organization.

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Drafter: Joe Carroll, 406-444-3804

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1 ~~(45)~~(50) "School election" has the meaning provided in 20-1-101.

2 ~~(46)~~(51) "School election filing officer" means the filing officer with whom the declarations for
3 nomination for school district office were filed or with whom the school ballot issue was filed.

4 ~~(47)~~(52) "School recount board" means the board authorized pursuant to 20-20-420 to perform recount
5 duties in school elections.

6 ~~(53)~~ "Selection to advance" or "selected to advance" means the status given to an individual
7 authorized by law to advance from a top two primary election and appear on the general election ballot.

8 ~~(48)~~(54) "Signature envelope" means an envelope that contains a secrecy envelope and ballot and
9 that is designed to:

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

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

13 ~~(49)~~(55) "Special election" means an election held on a day other than the day specified for a primary
14 election, general election, or regular school election.

15 ~~(50)~~(56) "Special purpose district" means an area with special boundaries created as authorized by
16 law for a specialized and limited purpose.

17 ~~(54)~~(57) "Statewide voter registration list" means the voter registration list established and maintained
18 pursuant to 13-2-107 and 13-2-108.

19 ~~(52)~~(58) "Support or oppose", including any variations of the term, means:

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

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

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1 (59) "Top two primary" means the primary election process to narrow the number of candidates for
2 U.S. senator to two candidates who, irrespective of political party preference, receive the highest number of
3 votes cast in the race for the office of U.S. senator.

4 (53)(60) "Valid vote" means a vote that has been counted as valid or determined to be valid as
5 provided in 13-15-206.

6 (54)(61) "Voted ballot" means a ballot that is:

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

10 (55)(62) "Voter interface device" means a voting system that:

- 11 (a) is accessible to electors with disabilities;
- 12 (b) communicates voting instructions and ballot information to a voter;
- 13 (c) allows the voter to select and vote for candidates and issues and to verify and change selections;

14 and

- 15 (d) produces a paper ballot that displays electors' choices so the elector can confirm the ballot's
- 16 accuracy and that may be manually counted.

17 (56)(63) "Voting system" or "system" means any machine, device, technology, or equipment used to
18 automatically record, tabulate, or process the vote of an elector cast on a paper ballot."

20 **Section 3.** Section 13-1-103, MCA, is amended to read:

21 **"13-1-103. Determination of winner.** (1) The individual receiving the highest number of valid votes
22 for any office at ~~an a general~~ election, ~~nonpartisan primary, or partisan primary election~~ is elected or nominated
23 to that office.

24 (2) The two individuals receiving the most votes in a top two primary are selected to advance."

26 **Section 4.** Section 13-1-403, MCA, is amended to read:

27 **"13-1-403. Election deadlines for candidate filing, write-in candidacy, and withdrawal -- election**

1 **cancellation -- election by acclamation.** (1) Consistent with the candidate filing deadline in 13-10-201~~(7)~~(8)
2 for primary elections and except as provided in subsection (2) for a write-in candidate, the candidate filing
3 deadline for election to a local government office is no sooner than 145 days and no later than 85 days before
4 the election.

5 (2) A declaration of intent to be a write-in candidate must be filed with the election administrator by 5
6 p.m. on the 65th day before the date of the election.

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

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

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

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

18
19 **Section 5.** Section 13-1-502, MCA, is amended to read:

20 **"13-1-502. Deadlines for candidate filing, write-in candidacy, and withdrawal -- election**

21 **cancellation -- election by acclamation.** (1) Consistent with the candidate filing deadline in 13-10-201~~(7)~~(8)
22 for primary elections and except as provided in subsection (3) for a write-in candidate, the candidate filing
23 deadline for election to a special purpose district office is no sooner than 145 days and no later than 85 days
24 before the election.

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

27 (3) A declaration of intent to be a write-in candidate must be filed with the election administrator by 5

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1 p.m. on the 65th day before the date of the election.

2 (4) (a) Except as provided in subsection (4)(b), if by the write-in candidate deadline in subsection (3)

3 the number of candidates is equal to or less than the number of positions to be filled at the election, the election

4 administrator shall cancel the election and, pursuant to 13-1-304, immediately notify the governing body of the

5 local government in writing of the cancellation. However, the governing body of the local government may by

6 resolution require that the election be held.

7 (b) For an election of conservation district supervisors held in conjunction with a federal primary or

8 federal general election, if by the candidate filing deadline under subsection (1) the number of candidates is

9 equal to or less than the number of positions to be filled at the election, the election administrator shall cancel

10 the election and immediately notify the governing body of the conservation district in writing of the cancellation.

11 However, the governing body of the conservation district may, by no later than 10 days after the candidate filing

12 deadline, pass a resolution to require that the election be held.

13 (5) (a) If an election has been canceled and there is only one candidate for a position, the governing

14 body of the local government or, if appropriate, of the conservation district shall declare the candidate elected to

15 the position by acclamation.

16 (b) Except as otherwise provided by law:

17 (i) if an election has been canceled and there are no regular or declared write-in candidates for a

18 position, the governing body of the local government or, if appropriate, of the conservation district shall fill the

19 position by appointment;

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

21

22 **Section 6.** Section 13-10-201, MCA, is amended to read:

23 **"13-10-201. Declaration for nomination -- declaration of candidacy -- term limitations.** (1) (a)

24 Each candidate in the a partisan primary election, ~~except nonpartisan candidates filing under the provisions of~~

25 ~~Title 13, chapter 14,~~ shall file a declaration for nomination with the secretary of state or election administrator.

26 (b) Each candidate in a top two primary election shall file a declaration of candidacy with the

27 secretary of state.

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1 (c) Except for a candidate under 13-38-201(4) or a candidate covered under 7-1-205, a candidate
2 may not file for more than one public office. Each candidate for governor shall file a joint declaration for
3 nomination with a candidate for lieutenant governor.

4 (2) A declaration for nomination or a declaration of candidacy must be filed in the office of:

5 (a) the secretary of state for placement of a name on the ballot for the presidential preference
6 primary, ~~a congressional office, the office of U.S. representative,~~ a state or district office to be voted for in more
7 than one county other than the office of U.S. senate, a member of the legislature, or a judge of the district court;
8 or

9 (b) the election administrator for a county, municipal, precinct, or district office (other than a member
10 of the legislature or a judge of the district court) to be voted for in only one county.

11 (3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of
12 an indigent candidate, send with it the documents required by 13-10-203. Unless filed electronically with the
13 secretary of state, the declaration for nomination or the declaration of candidacy must be acknowledged by an
14 officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.

15 (4) The declaration for nomination and the declaration of candidacy must include an oath of the
16 candidate that includes wording substantially as follows: "I hereby affirm that I possess, or will possess within
17 constitutional and statutory deadlines, the qualifications prescribed by the Montana constitution and the laws of
18 the United States and the state of Montana." The candidate affirmation included in this oath is presumed to be
19 valid unless proven otherwise in a court of law.

20 (5) (a) In a top two primary, each candidate may state the candidate's political party preference
21 on the declaration of candidacy. A candidate may not declare a preference for more than one party. When
22 identifying a political party preference, a candidate is not restricted to identifying an established party and may
23 use a limited number of characters, according to rules adopted by the secretary of state, to identify a political
24 party preference.

25 (b) In a top two primary, a declaration of political party preference is not evidence that the
26 candidate has been nominated or endorsed by the political party or that the political party approves of or
27 associates with that candidate.

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1 ~~(5)~~(6) The declaration for nomination, when filed, is conclusive evidence that the elector is a
2 candidate for nomination by the elector's party. For a partisan election, an elector may not file a declaration for
3 more than one party's nomination.

4 ~~(6)~~(7) (a) The declaration for nomination and the declaration of candidacy must be in the form and
5 contain the information prescribed by the secretary of state.

6 (b) A person seeking nomination to the legislature shall provide the secretary of state with a street
7 address, legal description, or road designation to indicate the person's place of residence. If a candidate for the
8 legislature changes residence, the candidate shall, within 15 days after the change, notify the secretary of state
9 on a form prescribed by the secretary of state.

10 (c) The secretary of state and election administrator shall furnish declaration for nomination and
11 declaration of candidacy forms to individuals requesting them.

12 ~~(7)~~(8) Except as provided in 13-10-211, a candidate's declaration for nomination or declaration of
13 candidacy must be filed no sooner than 145 days before the election in which the office first appears on the
14 ballot and no later than 5 p.m., 85 days before the date of the primary election.

15 ~~(8)~~(9) A properly completed and signed declaration for nomination or declaration of candidacy form
16 may be sent by facsimile transmission, electronically mailed, delivered in person, or mailed to the election
17 administrator or to the secretary of state.

18 ~~(9)~~(10) For the purposes of implementing Article IV, section 8, of the Montana constitution, the
19 secretary of state shall apply the following conditions:

20 (a) A term of office for an official serving in the office or a candidate seeking the office is considered to
21 begin on January 1 of the term for which the official is elected or for which the candidate seeks election and to
22 end on December 31 of the term for which the official is elected or for which the candidate seeks election.

23 (b) A year is considered to start on January 1 and to end on the following December 31.

24 (c) "Current term", as used in Article IV, section 8, of the Montana constitution, has the meaning
25 provided in 2-16-214."
26

27 **Section 7.** Section 13-10-202, MCA, is amended to read:

1 **"13-10-202. Filing fees.** Filing fees are as follows:

2 (1) for offices having an annual salary of \$2,500 or less and candidates for the legislature, \$15;

3 (2) for county offices having an annual salary of more than \$2,500, 0.5% of the total annual salary;

4 (3) for president in a presidential preference primary, an amount equivalent to the filing fee required

5 for a United States senate candidate;

6 ~~(4)~~ for the United States senate, 1.1% of the total annual salary;

7 ~~(4)(5)~~ for other offices having an annual salary of more than \$2,500, 1% of the total annual salary;

8 ~~(5)(6)~~ for offices in which compensation is paid in fees, \$10;

9 ~~(6)(7)~~ for officers of political parties, presidential electors, and officers who receive no salary or fees,

10 no filing fee is required."

11

12 **Section 8.** Section 13-10-203, MCA, is amended to read:

13 **"13-10-203. Indigent candidates.** If an individual is unable to pay a filing fee, the filing officer shall

14 accept the following documents in lieu of a filing fee:

15 (1) from a successful write-in candidate, a statement that the candidate is unable to pay the filing fee;

16 (2) from a candidate for nomination or a candidate in a top two primary, a statement that the

17 candidate is unable to pay the filing fee and a written petition for nomination as a candidate that meets the

18 following requirements:

19 (a) the petition contains the name of the office to be filled and the candidate's name and residence

20 address;

21 (b) the petition contains signatures numbering 5% or more of the total vote cast for the successful

22 candidate for the same office at the last general election;

23 (c) the signatures are those of electors residing within the political subdivision of the state in which the

24 candidate petitions for nomination; and

25 (d) the signatures have been submitted to the appropriate election administrator at least 1 week prior

26 to the applicable deadline in 13-10-201~~(7)(8)~~ and have been certified by the appropriate election administrator

27 by the procedure provided in 13-27-303 and 13-27-304."

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Section 9. Section 13-10-204, MCA, is amended to read:

"13-10-204. Write-in nominations. (1) An individual nominated in a partisan primary or receiving the highest or second-highest number of votes in a top two primary by having the individual's name written in and counted as provided in 13-15-206(5) or otherwise placed on the primary ballot and desiring to accept the nomination or selection to advance may not have the individual's name appear on the general election ballot unless the individual:

- (a) if the individual is nominated in a partisan primary, received at least 5% of the total votes cast for the successful candidate for the same office at the last general election;
- (b) files with the secretary of state or election administrator, no later than 10 days after the official canvass, a written declaration indicating acceptance of the nomination or selection to advance; and
- (c) complies with the provisions of 13-37-126.

(2) A write-in candidate who was exempt from filing a declaration of intent under 13-10-211 shall, at the time of filing the declaration of acceptance, pay the filing fee specified in 13-10-202 or, if indigent, file the appropriate documents described in 13-10-203."

Section 10. Section 13-10-208, MCA, is amended to read:

"13-10-208. Certification of candidate names and ballot issues for ballot -- preparing ballot. (1) Ten days after the close of candidate filing under 13-10-201~~(7)~~(8) for a primary election, the secretary of state shall certify to the election administrators the names and designations of candidates who have filed with the secretary of state, subject to 13-37-126, and any ballot issues as shown in the official records of the secretary of state's office in the manner provided in 13-10-209 and Title 13, chapter 12, part 2.

(2) On receiving the secretary of state's certification pursuant to subsection (1), the county election administrator shall certify the names and designations of all candidates whose names are entitled to appear on the ballot, subject to 13-37-126, and any ballot issues as shown in the official record of the county election administrator's office and shall have the official ballots prepared in the manner provided in 13-10-209 and Title 13, chapter 12, part 2.

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1 (3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana
2 constitution to seek the office for which the candidate has filed because the candidate has changed residence,
3 the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-
4 325."

5

6 **Section 11.** Section 13-10-209, MCA, is amended to read:

7 **"13-10-209. Arrangement and preparing of primary ballots.** (1) (a) Ballots for a primary election
8 must be arranged and prepared in the same manner and number as provided in chapter 12 for general election
9 ballots, except that:

10 (i) for a partisan primary, there must be separate ballots for each political party entitled to
11 participate. The name of the political party must appear at the top of the separate ballot for that party and need
12 not appear with each candidate's name

13 (ii) in a top two primary, the political party preference declared by the candidate on the declaration
14 of candidacy under 13-10-201 must appear with the candidate's name on the ballot. The word "preference"
15 must follow the candidate's preferred party, if any. If a candidate has not declared a preference for a political
16 party, the words "no party preference" must appear on the ballot with the candidate's name. Nothing in a top
17 two primary portion of the ballot may indicate whether a candidate has been endorsed or nominated by a
18 political party. The top two primary portion or portions of a ballot must clearly and conspicuously state that
19 candidates in that section are not necessarily nominees or members of or endorsed by or otherwise associated
20 with the candidate's political party preference. Information must be printed on the ballot and in the voter
21 information pamphlet provided for in 13-27-401 to inform voters that in the top two primary the two candidates
22 who receive the most votes for the office will advance to the general election regardless of either candidate's
23 political party preference.

24 (b) (i) Nonpartisan offices, offices in which candidates are selected to advance in a top two primary,
25 and ballot issues may be prepared on separate ballots or may appear on the same ballot as partisan offices if:

26 (i)(A) each section is clearly identified as separate; and

27 (i)(B) the nonpartisan offices, offices in which candidates are selected to advance in a top two primary,

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1 and ballot issues appear on each party's ballot.

2 (ii) The top two primary portion of a ballot must clearly and conspicuously state that the candidates
3 in that section are not necessarily nominees or members of or endorsed by or otherwise associated with the
4 candidate's political party preference.

5 (2) Except as provided in subsection (3), an election administrator ~~does is~~ not ~~need-required~~ to
6 prepare a partisan primary ballot for a political party if:

7 (a) the party does not have candidates for more than half of the offices to appear on the ballot; and

8 (b) no more than one candidate files for nomination by that party for any of the offices to appear on
9 the ballot.

10 (3) Subsection (2) does not apply to elections for precinct committee offices. If more than one
11 candidate files for a precinct committee office from a party that will not have a primary ballot prepared, that
12 party shall select the candidate to fill the office.

13 (4) If, pursuant to subsection (2), in a primary election held in an even-numbered year a primary ballot
14 for a political party is not prepared, the secretary of state shall certify that a primary election is unnecessary for
15 that party and shall instruct the election administrator to certify the names of the candidates for that party for the
16 general election ballot only.

17 (5) The separate ballots for each party must have the same appearance. Each set of party ballots
18 must bear the same number. If prepared as a separate ballot, the nonpartisan ballot and the top two primary
19 ballot may have a ~~different appearance~~ appearances than the party ballots but must be numbered in the same
20 order as the party ballots.

21 (6) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot,
22 the top two primary ballot, or a separate ballot. A separate ballot may have a different appearance than the
23 other ballots in the election but must be numbered in the same order.

24 (7) Each elector must receive a set of ballots that includes the party partisan primary, top two primary,
25 nonpartisan, and ballot issue choices."

26

27 **Section 12.** Section 13-10-211, MCA, is amended to read:

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1 **"13-10-211. Declaration of intent for write-in candidates.** (1) Except as provided in subsection (7),
2 a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent.
3 Except for a candidate under 13-38-201(4) or a candidate covered under 7-1-205, a candidate may not file for
4 more than one public office. The declaration of intent must be filed with the secretary of state or election
5 administrator, depending on where a declaration ef-for nomination or declaration of candidacy for the desired
6 office is required to be filed under 13-10-201, or with the school district clerk for a school district office. When a
7 county election administrator is conducting the election for a school district, the school district clerk or school
8 district office that receives the declaration of intent shall notify the county election administrator of the filing.
9 Except as provided in 13-1-403, 13-1-503, 20-3-305(3)(b), and subsection (2) of this section, the declaration
10 must be filed no later than 5 p.m. on the 10th day before the earliest date established under 13-13-205 on
11 which a ballot must be available and must contain:
12 (a) the candidate's name, including:
13 (i) the candidate's first and last names;
14 (ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the
15 candidate's last name;
16 (iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and
17 (iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;
18 (b) the candidate's mailing address;
19 (c) a statement declaring the candidate's intention to be a write-in candidate;
20 (d) the title of the office sought;
21 (e) the date of the election;
22 (f) the date of the declaration; and
23 (g) the candidate's signature.
24 (2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later
25 than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the
26 office that the write-in candidate is seeking dies or is charged with a felony offense and if the election has not
27 been canceled as provided by law.

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

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

7 (a) by facsimile transmission;

8 (b) in person;

9 (c) by mail; or

10 (d) by electronic mail.

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

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

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

16 (a) an election is held;

17 (b) a person's name is written in on the ballot;

18 (c) the person is qualified for and seeks election to the office for which the person's name was written
19 in; and

20 (d) no other candidate has filed a declaration or petition for nomination, a declaration of candidacy, or
21 a declaration of intent."

22

23 **Section 13.** Section 13-10-301, MCA, is amended to read:

24 **"13-10-301. Casting of ballot.** (1) Unless otherwise provided by law, the conduct of the primary
25 election, the voting procedure, the counting, tallying, and return of ballots and all election records and supplies,
26 the canvass of votes, the certification and notification of nominees or candidates who selected to advance,
27 recounts, procedures upon tie votes, and any other necessary election procedures must be at the same times

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1 and in the same manner as provided for in the laws for the general election.

2 (2) At a primary election, the elector shall cast votes on only one of the party-partisan primary ballots,
3 preparing the ballot as provided in 13-13-117. After casting votes on any other ballots received other than the
4 party ballots, the elector shall ensure the proper disposition of the ballots in accordance with instructions
5 provided pursuant to 13-13-112.

6 (3) The elector's ballot must be handled as prescribed in 13-13-117."
7

8 **Section 14.** Section 13-10-302, MCA, is amended to read:

9 **"13-10-302. Write-in votes for previously nominated candidates.** (1) Subject to subsection (2), if
10 an elector casts a write-in vote for a candidate on a primary-party ballot in a partisan primary when the
11 candidate's name also appears or is written in for the same office on another party's ballot, the write-in vote
12 counts only with respect to the party on whose ballot the write-in vote was cast and the write-in votes, if on
13 multiple parties' ballots, and the votes cast for the candidate on the other party's ballots may not be added
14 together.

15 (2) A write-in vote must be counted as provided in 13-15-206(5)."
16

17 **Section 15.** Section 13-10-303, MCA, is amended to read:

18 **"13-10-303. Nominations by more than one party.** If an individual is nominated by more than one
19 party in a partisan primary, the individual shall, not later than 10 days after the election, file written notification
20 with the secretary of state or election administrator indicating the party under which the individual's name is to
21 appear upon the ballot for the general election. If the individual fails to notify the proper officers, the individual's
22 name must appear under the party with whom the declaration for nomination was filed if a declaration was filed.
23 If an individual did not file a declaration or acceptance of nomination and fails to notify the proper officers, the
24 individual's name must appear on the ballot without a party designation."
25

26 **Section 16.** Section 13-10-325, MCA, is amended to read:

27 **"13-10-325. Withdrawal from nomination.** (1) (a) A candidate for nomination, a candidate for an

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1 office in which candidates are selected to advance in a top two primary, or a candidate for election to an office
2 may withdraw from the election by sending a statement of withdrawal to the officer with whom the candidate's
3 declaration, petition, ~~or acceptance of nomination~~, or selection to advance was filed. The statement must
4 contain all information necessary to identify the candidate and the office sought. Unless filed electronically with
5 the secretary of state, the statement of withdrawal from nomination or selection to advance must be
6 acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the
7 filing is made.

8 (b) A candidate may not withdraw after the candidate filing deadline established in 13-10-201~~(7)~~(8).

9 (2) Filing fees paid by the candidate may not be refunded."

11 **Section 17.** Section 13-10-326, MCA, is amended to read:

12 **"13-10-326. Vacancy prior to primary election.** (1) Vacancies that occur prior to a partisan primary
13 must be filled as follows:

14 (a) If a candidate ~~for nomination for a partisan office~~ dies or withdraws before the candidate filing
15 deadline established in 13-10-201~~(7)~~(8), the affected political party may appoint someone to replace the
16 candidate by the procedure provided in 13-10-327.

17 ~~(2)(b)~~ Except as provided in subsection ~~(3)(1)(c)~~, if a candidate ~~for nomination for a partisan office~~
18 dies after the candidate filing deadline established in 13-10-201~~(7)~~(8), or is disqualified pursuant to 13-37-126
19 from having the candidate's name appear on the primary election ballot, the affected political party shall appoint
20 a candidate after the primary election as provided in 13-10-327 if a candidate for that office for that party was
21 not nominated at the primary election.

22 ~~(3)(c)~~ A political party may not appoint a candidate for an office if no candidate for nomination by that
23 party filed for the office before the primary election or if the deadline for certifying candidate names for the ballot
24 pursuant to 13-10-208 has passed.

25 (2) Vacancies that occur prior to a top two primary due to death, disqualification, or withdrawal of a
26 candidate may not be filled."

1 **Section 18.** Section 13-10-327, MCA, is amended to read:

2 **"13-10-327. Vacancy after primary and prior to general election.** (1) Except as provided in 13-10-
3 328 for a vacancy in the candidacy of either governor or lieutenant governor caused by the death of a candidate
4 and in subsection (2) for a candidate selected to advance in a top two primary, if a party candidate dies or
5 withdraws after the primary and before the general election, or if a candidate is disqualified pursuant to 13-37-
6 126 from having the candidate's name appear on a general election ballot, the affected political party shall
7 appoint someone to replace the candidate in one of the following ways:

8 (a) ~~For Except as provided in subsection (2), for~~ offices to be filled by the state at large, the state
9 central committee shall make the appointment as provided by the rules of the party.

10 (b) For offices to be filled in districts including more than one county, a committee appointed by the
11 county central committees of all counties in the district shall make the appointment. Procedures for the
12 appointment of the committee and making the appointment must be provided in party rules.

13 (c) For offices to be filled in counties, municipalities, or districts wholly within a county, the
14 appointment must be made under rules adopted by the county central committee.

15 (2) Vacancies that occur after a top two primary but before the general election due to death,
16 disqualification, or withdrawal of a candidate may not be filled. If a candidate entitled to appear on the general
17 election ballot following a top two primary dies, the name of that candidate must appear on the general election
18 ballot and any votes cast for that candidate must be counted in determining the results of the election for that
19 office. If the deceased candidate receives a majority of the votes cast for the office, the candidate is considered
20 elected to that office and the office is considered vacant at the beginning of the term for which the candidate
21 was elected. Vacancies following an election of a deceased candidate for an office filled using a top two primary
22 must be filled as provided in 13-25-206.

23 ~~(2)(3)~~ Except as provided in this section, appointments to fill vacancies must be made no later than 76
24 days before the election. A candidate may not officially withdraw 85 days or less before a general election.
25 However, if a candidate for partisan office dies less than 85 days before the general election, the affected
26 political party shall appoint a candidate within 5 days after being notified of the vacancy. One of the procedures
27 provided in 13-12-204 must be used to place the name of the appointee on the ballot if necessary.

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1 ~~(3)~~(4) The appointing committee shall send a certificate to the officer with whom a declaration for
2 nomination for the office would be filed, with the information required on a declaration for nomination and the
3 name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed and
4 acknowledged acceptance of the appointment and the filing fee for the office.

5 ~~(4)~~(5) The officer receiving the certificate of appointment, accompanied by a statement of acceptance
6 and the filing fee, shall certify the name of the appointee for the ballot."

7
8 **NEW SECTION. Section 19. Top two primary elections -- legislative findings -- restrictions --**
9 **exceptions.** (1) The legislature finds that a top two primary may not determine the nominees of a political party
10 but serves to winnow the candidates for general election to the candidates receiving the highest and second
11 highest number of votes cast at the primary election.

12 (2) If two or fewer candidates seek advancement to a general election, those candidates shall
13 immediately advance without appearing on the primary election ballot.

14 (3) The top two primary may not be used as a process for a political party to nominate or endorse
15 a candidate for a partisan public office. A top two primary election may not be construed as a regulation of how
16 a political party may nominate or endorse a candidate. A party preference may not be used to limit the voting
17 options available to a voter.

18
19 **Section 20.** Section 13-10-405, MCA, is amended to read:

20 **"13-10-405. Submission and verification of petition.** Petitions of nomination for the presidential
21 preference primary election and the affidavits of circulation required by 13-27-302 must be presented to the
22 election administrator of the county in which the signatures are gathered at least 1 week before the primary
23 election filing deadline prescribed in 13-10-201~~(7)~~(8). The election administrator shall verify the signatures in
24 the manner prescribed in 13-27-303 through 13-27-308 and must forward the petitions to the secretary of state
25 by the filing deadline prescribed in 13-10-201~~(7)~~(8)."

26
27 **Section 21.** Section 13-10-501, MCA, is amended to read:

1 **"13-10-501. Petition for nomination by independent candidates or political parties not eligible**
2 **to participate in partisan primary election.** (1) Except as provided in 13-10-504, nominations for a public
3 office that uses a partisan primary election by an independent candidate or a political party that does not meet
4 the requirements of 13-10-601 may be made by a petition for nomination.

5 (2) The petition must contain the same information and the oath of the candidate required for a
6 declaration for nomination.

7 (3) If a petition is filed by a political party, it must contain the party name and, in five words or less, the
8 principle that the body represents.

9 (4) The form of the petition must be prescribed by the secretary of state, and the secretary of state
10 shall furnish sample copies to the election administrators and on request to any individual.

11 (5) Each sheet of a petition must contain signatures of electors residing in only one county."

12
13 **Section 22.** Section 13-10-505, MCA, is amended to read:

14 **"13-10-505. Applicability.** The provisions of 13-10-501 through 13-10-504 ~~shall~~may not be used to
15 fill vacancies or to nominate candidates in nonpartisan elections or candidates for offices for which candidates
16 are selected to advance in a top two primary~~except for nominations to fill a vacancy as provided in 13-25-205.~~"

17
18 **Section 23.** Section 13-10-601, MCA, is amended to read:

19 **"13-10-601. Parties eligible for partisan primary election -- petitions by minor parties.** (1) Each
20 political party that had a candidate for a statewide office other than U.S. senator in either of the last two general
21 elections who received a total vote that was 5% or more of the total votes cast for the most recent successful
22 candidate for governor shall nominate its candidates for public office, except for presidential electors and the
23 office of U.S. senator, by a partisan primary election as provided in this chapter.

24 (2) After certification of a petition by the secretary of state under 13-10-610(1), a political party that
25 does not qualify to hold a primary election under subsection (1) shall nominate its candidates for public office by
26 partisan primary election. However, this section may not be construed to prohibit an election administrator from
27 not preparing a partisan primary election ballot pursuant to 13-10-209."

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Section 24. Section 13-10-605, MCA, is amended to read:

"13-10-605. Qualifying minor political parties -- reports required. (1) A person who spends or receives money to support or oppose an effort to qualify a minor political party for partisan primary elections using the petitions described in 13-10-606 shall comply with the provisions of Title 13, chapter 37, part 6.

(2) For the purposes of this section, "support or oppose" has the meaning as provided in 13-37-601."

Section 25. Section 13-12-201, MCA, is amended to read:

"13-12-201. Certification of candidate names and ballot issues for general election ballot. (1) Seventy-five days before a general election, the secretary of state shall certify to the election administrators the name and party, party preference, or other designation of each candidate who filed with the secretary of state and whose name is entitled to appear on the ballot, subject to 13-37-126, and the ballot issues as shown in the official records of the secretary of state's office.

(2) On certification from the secretary of state's office pursuant to subsection (1), the election administrator shall certify the name and party, party preference, or other designation of each candidate whose name is entitled to appear on the ballot, subject to 13-37-126, and the ballot issues as shown in the official records of the election administrator's office, and shall have the official ballots prepared.

(3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325."

Section 26. 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:

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- 1 (a) the manner in which each type of ballot may be corrected under 13-12-204;
- 2 (b) what provisions must be made on the ballot for write-in candidates;
- 3 (c) the size and content of stubs on paper ballots, except as provided in 13-19-106(1);
- 4 (d) how unvoted ballots must be handled;
- 5 (e) how the number of individuals voting and the number of ballots cast must be recorded; ~~and~~
- 6 (f) the order and arrangement of voting system ballots; and
- 7 (g) to promote clarity for voters, how a ballot must be designed so that there is a difference in
- 8 appearance between a party preference designation in a top two primary and a party designation in a partisan
- 9 primary.
- 10 (2) The names of all candidates that appear on the face of a ballot must appear in the same font size
- 11 and style.
- 12 (3) Notwithstanding 13-19-106(1) and except as provided in 13-3-208, when the stubs are detached,
- 13 it must be impossible to distinguish any one of the ballots from another ballot for the same office or issue.
- 14 (4) The ballots must contain the name of each candidate whose nomination or selection to advance is
- 15 certified under law for an office and no other names, except that the names of candidates for president and vice
- 16 president of the United States must appear on the ballot as provided in 13-25-101(5)."

17

18 **Section 27.** Section 13-12-203, MCA, is amended to read:

19 **"13-12-203. Appearance of candidate's name and party designation on ballot.** (1) Subject to 13-

20 12-202 and except as provided in 13-10-209 for nonpartisan offices and 13-10-303 for certain other

21 candidates;

22 (a) in partisan elections, candidates' names must appear under the title of the office sought, with

23 the name of the party in not more than three words appearing opposite or below the name;

24 (b) (i) in elections for which candidates are selected to advance in a top two primary, the

25 candidate's political party preference in not more than three words must appear opposite or below the name;

26 and

27 (ii) if the candidate has not declared a political party, the words "no party preference" must appear

1 on the ballot with the candidate's name.

2 (2) Subject to 13-12-202, in nonpartisan general elections, the candidates' names must appear under
3 the title of the office sought, with no description or designation appearing with the name unless partisan and
4 nonpartisan offices appear on the same ballot. In such a case, the names of nonpartisan candidates must
5 appear with the word "Nonpartisan".

6 (3) Except as otherwise provided by this section, information about the candidate other than the
7 candidate's name may not appear on the ballot, including a title, accomplishment, award, or degree."

8
9 **Section 28.** Section 13-12-205, MCA, is amended to read:

10 **"13-12-205. Arrangement of names -- rotation on ballot.** (1) The candidates' names must be
11 arranged alphabetically on the ballot according to surnames under the title of the respective offices and rotated
12 as provided in this section.

13 (2) (a) If two or more individuals are candidates for nomination, candidates for selection to advance,
14 or election to the same office, the election administrator shall divide the ballot forms into sets equal in number
15 to the greatest number of candidates for any office. The candidates for nomination to an office by each political
16 party must be considered separately in determining the number of sets necessary for a primary election.

17 (b) The election administrator shall begin with a form arranged alphabetically and rotate the names of
18 the candidates so that each candidate's name will be at the top of the list for each office on substantially an
19 equal number of ballots. If it is not numerically possible to place each candidate's name at the top of the list, the
20 names must be rotated in groups so that each candidate's name is as near the top of the list as possible on
21 substantially an equal number of ballots.

22 (c) If the county contains more than one legislative district, the election administrator may rotate each
23 candidate's name so that it will be at or near the top of the list for each office on substantially an equal number
24 of ballots in each house district.

25 (d) For purposes of rotation, the offices of president and vice president and of governor and lieutenant
26 governor must be considered as a group.

27 (e) No more than one of the sets may be used in preparing the ballot for use in any one precinct, and

1 all ballots furnished for use in any precinct must be identical."
2

3 **Section 29.** Section 13-12-207, MCA, is amended to read:

4 **"13-12-207. Order of placement.** (1) The order on the ballot for state and federal offices must be as
5 follows:

6 (a) If the election is in a year in which a president of the United States is to be elected, in spaces
7 separated from the balance of the party tickets or ballot by a line must be the names and spaces for voting for
8 candidates for president and vice president. The names of candidates for president and vice president for each
9 political party must be grouped together.

10 (b) United States senator;

11 (c) United States representative;

12 (d) governor and lieutenant governor;

13 (e) secretary of state;

14 (f) attorney general;

15 (g) state auditor;

16 (h) state superintendent of public instruction;

17 (i) public service commissioners;

18 (j) clerk of the supreme court;

19 (k) chief justice of the supreme court;

20 (l) justices of the supreme court;

21 (m) district court judges;

22 (n) state senators;

23 (o) members of the Montana house of representatives.

24 (2) The following order of placement must be observed for county offices:

25 (a) clerk of the district court;

26 (b) county commissioner;

27 (c) county clerk and recorder;

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- 1 (d) sheriff;
- 2 (e) coroner;
- 3 (f) county attorney;
- 4 (g) county superintendent of schools;
- 5 (h) county auditor;
- 6 (i) public administrator;
- 7 (j) county assessor;
- 8 (k) county treasurer;
- 9 (l) surveyor;
- 10 (m) justice of the peace.

11 (3) The secretary of state shall designate the order for placement on the ballot of any offices not on
12 the above lists, except that the election administrator shall designate the order of placement for municipal,
13 charter, or consolidated local government offices and district offices when the district is part of only one county.

14 (4) Constitutional amendments must be placed before statewide referendum and initiative measures.
15 Ballot issues for a county, municipality, school district, or other political subdivision must follow statewide
16 measures in the order designated by the election administrator.

17 (5) If any offices are not to be elected they may not be listed, but the order of the offices to be filled
18 must be maintained.

19 (6) If there is a short-term and a long-term election for the same office, the long-term office must
20 precede the short-term."

21

22 **Section 30.** Section 13-13-214, MCA, is amended to read:

23 **"13-13-214. Mailing absentee ballot to elector -- delivery to person other than elector.** (1) (a)
24 Except as provided in 13-13-213 and in subsection (1)(c) of this section, the election administrator shall mail,
25 postage prepaid, to each legally registered elector and provisionally registered elector from whom the election
26 administrator has received a valid absentee ballot application under 13-13-211 and 13-13-212 whatever official
27 ballots are necessary in a manner that conforms to postal regulations to require the return rather than

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1 forwarding of ballots.

2 (b) The election administrator shall mail the ballots in a manner that conforms to the deadlines
3 established for ballot availability in 13-13-205.

4 (c) The election administrator may deliver a ballot in person to an individual other than the elector if:

5 (i) the elector has designated the individual, either by a signed letter or by making the designation on
6 the application form in a manner prescribed by the secretary of state or pursuant to 13-1-116;

7 (ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of
8 the ballot;

9 (iii) the election administrator believes that the individual receiving the ballot is the designated person;
10 and

11 (iv) the designated person has not previously picked up ballots for four other electors.

12 (2) The election administrator shall enclose with the ballots:

13 (a) a secrecy envelope, free of any marks that would identify the voter; and

14 (b) a signature envelope for the return of the ballot. The signature envelope must be self-addressed
15 by the election administrator and an affirmation in the form prescribed by the secretary of state must be printed
16 on the back of the signature envelope.

17 (3) The election administrator shall ensure that the ballots provided to an absentee elector are
18 marked as provided in 13-13-116 and shall remove the stubs from the ballots, keeping the stubs in numerical
19 order with the application for absentee ballots, if applicable, or in a precinct envelope or container for that
20 purpose.

21 (4) Instructions for voting must be enclosed with the ballots. Instructions for partisan primary elections
22 must include disposal instructions for unvoted ballots. The instructions must include information concerning the
23 type or types of writing instruments that may be used to mark the absentee ballot. The instructions must include
24 information regarding use of the secrecy envelope and use of the signature envelope. The election
25 administrator shall include a voter information pamphlet with the instructions if:

26 (a) a statewide ballot issue appears on the ballot mailed to the elector; and

27 (b) the elector requests a voter information pamphlet."

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Section 31. Section 13-13-241, MCA, is amended to read:

"13-13-241. Examination of absentee ballot signature envelopes -- deposit of absentee and unvoted ballots -- rulemaking. (1) (a) Upon receipt of each absentee ballot signature envelope, an election administrator shall compare the signature of the elector or elector's agent on the absentee ballot request or on the elector's voter registration form with the signature on the signature envelope.

(b) If the elector is legally registered and the signature on the signature envelope matches the signature on the absentee ballot application or on the elector's voter registration form, the election administrator or an election judge shall handle the ballot as a regular ballot.

(c) (i) If the elector is provisionally registered and the signature on the signature envelope matches the signature on the absentee ballot application or on the elector's voter registration form, the election administrator or an election judge shall open the outer signature envelope and determine whether the elector's voter identification and eligibility information, if enclosed pursuant to 13-13-201, is sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.

(ii) If the voter identification and eligibility information is sufficient to legally register the elector, the ballot must be handled as a regular ballot.

(iii) If voter identification or eligibility information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.

(2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(3) In a partisan primary election, if unvoted party ballots are returned by a voter, they must be separated and handled pursuant to 13-1-303 and 13-12-202.

(4) If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector as provided in 13-13-245.

(5) If the signature on the absentee ballot signature envelope does not match the signature on the absentee ballot request form or on the elector's voter registration form or if there is no signature on the absentee ballot signature envelope, the election administrator shall notify the elector as provided in 13-13-245.

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1 (6) If at any point there is a question concerning the validity of a particular ballot, the question must be
2 resolved as provided in 13-13-245.

3 (7) (a) Except as provided in subsection (8), after receiving an absentee ballot secrecy envelope and
4 if the validity of the ballot is confirmed pursuant to 13-13-245, then no sooner than 3 business days before
5 election day, the election official may open the secrecy envelope and place the ballot in the proper, secured
6 ballot box until tabulation occurs. Automatic tabulation using a vote-counting machine may not begin sooner
7 than 1 day before election day. Tabulation using a manual count may not begin until election day.

8 (b) An election official may not conduct the process described in subsection (7)(a) on a Saturday or a
9 Sunday.

10 (c) Ballot preparation as described in this subsection (7) is open to the public. Tabulation is open to
11 the public as provided in 13-15-101.

12 (d) Access to an electronic system containing early tabulation results is limited to the election
13 administrator and the election administrator's designee. Results may not be released except as provided in 13-
14 35-241.

15 (8) For a county with fewer than 8,000 registered electors or fewer than 5,000 absentee electors at
16 the close of regular registration, the ballot preparation process described in subsection (7)(a) may not begin
17 sooner than 1 business day before election day.

18 (9) The election administrator shall safely and securely keep the absentee ballots in the election
19 administrator's office until delivered by the election administrator to the election judges.

20 (10) The secretary of state shall develop administrative rules to establish the process and procedures
21 to be used during the early preparation of ballots to ensure the security of the ballots and the secrecy of the
22 votes during the early preparation period. The rules must include but are not limited to:

23 (a) the allowable distance from the observers to the judges and ballots;

24 (b) the security in the observation area;

25 (c) secrecy of votes during the preparation of the ballots; and

26 (d) security of the secured ballot boxes in storage until tabulation procedures begin."
27

1 **Section 32.** Section 13-14-112, MCA, is amended to read:

2 **"13-14-112. Declarations for nomination -- fee -- filing.** (1) Nonpartisan candidates shall file
3 declarations for nomination as required by the primary election laws in a form prescribed by the secretary of
4 state except as provided in 13-14-113. Except for a candidate covered under 7-1-205, a candidate may not file
5 for more than one public office.

6 (2) Declarations may not indicate political affiliation. The candidate may not state in the declaration
7 any principles or measures that the candidate advocates or any slogans.

8 (3) Each individual filing a declaration shall pay the fee prescribed by law for the office that the
9 individual seeks.

10 (4) Declarations must be filed:

11 (a) in the office of the secretary of state or the appropriate election administrator as provided in 13-10-
12 201; and

13 (b) within the filing period provided in 13-10-201(~~7~~)(8) for the office that the individual seeks."
14

15 **Section 33.** Section 13-14-113, MCA, is amended to read:

16 **"13-14-113. Filing for offices without salary or fees.** (1) Candidates for nonpartisan offices for
17 which a salary or fees are not paid shall file with the appropriate official a petition for nomination or a
18 declaration for nomination containing the information and the oath of the candidate required for a declaration of
19 nomination in a form prescribed by the secretary of state.

20 (2) Petitions for nomination or declarations for nomination must be filed within the filing period
21 provided in 13-10-201(~~7~~)(8).

22 (3) Except for a candidate covered under 7-1-205, a candidate may not file for more than one public
23 office."
24

25 **Section 34.** Section 13-15-205, MCA, is amended to read:

26 **"13-15-205. Items to be delivered to election administrator by election judges -- disposition of**
27 **other items.** (1) Before they adjourn, the election judges shall enclose in a strong envelope or package,

1 securely fastened:

2 (a) the precinct register;

3 (b) the list of individuals challenged;

4 (c) the pollbook;

5 (d) both of the tally sheets.

6 (2) The election judges shall enclose in a separate container, securely sealed, all unused ballots with
7 the numbered stubs attached.

8 (3) The election judges shall enclose in a separate container, securely sealed, all ballots voted,
9 including those not counted or allowed, and detached stubs from all counted or rejected absentee ballots. This
10 envelope must be endorsed on the outside "ballots voted". At the partisan primary election the unvoted party
11 ballots must be enclosed in a separate container, securely sealed, and marked on the outside "unvoted ballots".

12 (4) Each election judge shall sign the judge's name across all seals.

13 (5) The return form provided for in 13-15-101 must be returned with the items provided for in this
14 section but may not be sealed in any of the containers.

15 (6) The containers required by this section must be delivered to the election administrator by the chief
16 election judge or another judge appointed by the chief judge in the manner ordered by the election
17 administrator.

18 (7) The election administrator shall instruct the chief election judge in writing on the proper disposition
19 of all other election materials and supplies."

20

21 **Section 35.** Section 13-15-206, MCA, is amended to read:

22 **"13-15-206. Counting votes -- uniformity -- rulemaking -- definitions.** (1) When conducting vote
23 counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and
24 determine the validity of each vote in a uniform manner as provided in this section.

25 (2) A manual count or recount of votes must be conducted as follows:

26 (a) One election judge on the board shall read the ballot while the two other judges on the board shall
27 each record on an official tally sheet the number of valid votes cast for each individual or ballot issue. Write-in

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1 votes must be counted in accordance with subsection (5) and rules adopted pursuant to subsection (7). If a
2 vote has not been cast according to instructions, the vote must be considered questionable and the entire ballot
3 must be set aside and votes on the ballot must be handled as provided in subsection (4).

4 (b) (i) After the vote count is complete, the tally sheets of the two judges recording the votes must be
5 compared.

6 (ii) If the two tallies match, the judges shall record in the official results records:

7 (A) the names of all individuals who received votes;

8 (B) the offices for which individuals received votes;

9 (C) the total votes received by each individual as shown by the tally sheets; and

10 (D) the total votes received for or against each ballot issue, if any.

11 (iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2)
12 until the two tallies match.

13 (3) (a) When a voting system is counting votes:

14 (i) if a vote is recognized and counted by the system, it is a valid vote;

15 (ii) if a vote is not recognized and counted by the system, it is not a valid vote; and

16 (iii) write-in votes must be counted in accordance with rules adopted pursuant to subsection (7).

17 (b) If the voting system cannot process the ballot because of the ballot's condition or if the voting
18 system registers an unmarked ballot or an overvote, which must be considered a questionable vote, the entire
19 ballot must be set aside and the votes on the ballot must be counted as provided in subsection (4).

20 (c) If an election administrator or counting board has reason to believe that a voting system is not
21 functioning correctly, the election administrator shall follow the procedures prescribed in 13-15-209.

22 (d) After all valid votes have been counted and totaled, the judges shall record in the official results
23 records the information specified in subsection (2)(b)(ii).

24 (4) (a) (i) Before being counted, each questionable vote on a ballot set aside under subsection (2)(a)
25 or (3)(b) must be reviewed by the counting board. The counting board shall evaluate each questionable vote
26 according to rules adopted by the secretary of state.

27 (ii) If a majority of the counting board members agree that under the rules the voter's intent can be

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1 clearly determined, the vote is valid and must be counted according to the voter's intent.

2 (iii) If a majority of the counting board members do not agree that the voter's intent can be clearly
3 determined under the rules, the vote is not valid and may not be counted.

4 (b) If a ballot was set aside under subsection (3)(b) because it could not be processed by the voting
5 system due to the ballot's condition, the counting board shall transfer all valid votes to a new ballot that can be
6 processed by the voting system.

7 (5) A write-in vote may be counted only if:

8 (a) (i) the write-in vote identifies an individual by a designation filed pursuant to 13-10-211(1)(a); or

9 (ii) pursuant to 13-10-211(7), a declaration ef for nomination or declaration of candidacy was not filed

10 and the write-in vote identifies an individual who is qualified for the office; and

11 (b) the oval, box, or other designated voting area on the ballot is marked.

12 (6) A vote is not valid and may not be counted if the elector's choice cannot be determined as
13 provided in this section.

14 (7) The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each type
15 of ballot and for each type of voting system used in the state. The rules must provide a sufficient guarantee that
16 all votes are treated equally among jurisdictions using similar ballot types and voting systems.

17 (8) Local election administrators shall adopt policies to govern local processes that are consistent with
18 the provisions of this title and that provide for:

19 (a) the security of the counting process against fraud;

20 (b) the place and time and public notice of each count or recount;

21 (c) public observance of each count or recount, including observance by representatives authorized
22 under 13-16-411;

23 (d) the recording of objections to determinations on the validity of an individual vote or to the entire
24 counting process; and

25 (e) the keeping of a public record of count or recount proceedings.

26 (9) For purposes of this section, "overvote" means an elector's vote that has been interpreted by the
27 voting system as an elector casting more votes than allowable for a particular office or ballot issue."

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Section 36. Section 13-15-507, MCA, is amended to read:

"13-15-507. Declaration, proclamation, and certification of results. The board shall declare nominated, selected to advance, or elected the individual having the highest number of votes cast for each office, except as provided in 13-1-103(2) and 13-10-204. The board shall proclaim the adoption or rejection of ballot issues. Certified copies of the report required in 13-15-506, the declaration of nominated, selected to advance, or elected individuals, the proclamation of adoption or rejection of ballot issues, and the effective date of adopted ballot issues shall be delivered to the governor."

Section 37. Section 13-16-211, MCA, is amended to read:

"13-16-211. Recounts allowed if bond posted to cover all costs. (1) If a candidate for a public office is defeated by a margin exceeding 1/4 of 1% but not exceeding 1/2 of 1% of the total votes cast for all candidates for the same position, the candidate may, within 5 days after the official canvass, file with the officer with whom the candidate's declaration or petition for nomination or declaration of candidacy was filed a petition stating that the candidate believes a recount will change the result of the election.

(2) The unsuccessful candidate shall post a bond with the election administrator of the county in which the candidate resides. The bond must be in an amount set by the election administrator sufficient to cover all costs of the recount incurred by each county in which a recount is sought, which may include the following:

- (a) compensation for the county recount board, the election administrator, and any additional personnel needed to participate in the recount; and
- (b) necessary supplies and travel related to the recount.

(3) Upon the filing of a petition and posting of a bond under this section, the county recount board, as designated in 13-16-101, in each county affected shall meet and recount the ballots specified in the petition."

Section 38. Section 13-16-412, MCA, is amended to read:

"13-16-412. Procedure for recounting paper ballots. To conduct a recount of paper ballots:

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1 (1) the election administrator shall provide to the recount board, unopened, each sealed package or
2 envelope received from the election judges of the precinct or precincts in which a recount is ordered, containing
3 all the paper ballots voted in the precinct or precincts;

4 (2) a member of the recount board shall open each sealed package or envelope and remove the
5 ballots, and the board shall count the votes on each ballot manually in the manner provided in 13-15-206(2),
6 except that if the office to be recounted is:

7 (a) _____ on a partisan primary election ballot, votes are recounted only on the party ballots that are
8 subject to the recount; and

9 (b) on a top two primary election ballot, votes are recounted only on the top two primary ballots
10 that are subject to recount; and

11 (3) the recount must be tallied on previously prepared tally sheets. The tally sheets must show the
12 names of the respective candidates, the office or offices for which a recount is made, and the number of each
13 election precinct."

14

15 **Section 39.** Section 13-16-418, MCA, is amended to read:

16 **"13-16-418. Certification after recount.** (1) (a) Immediately after the recount, the county recount
17 board shall certify the result.

18 (b) At least two members of the board shall sign the certificate, and it must be attested to under seal
19 by the election administrator.

20 (c) The certificate must set forth in substance the proceedings of the board and the appearance of
21 any candidates or representatives. The certificate must adequately designate:

22 (i) each precinct recounted;

23 (ii) the vote of each precinct according to the official canvass previously made;

24 (iii) the nomination, position, office, or question involved; and

25 (iv) the correct vote of each precinct as determined by the recount.

26 (d) When the certificate relates to a recount for a congressional office, a state or district office voted
27 on in more than one county, a legislative office, or an office of judge of the district court or a ballot issue voted

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1 on in more than one county, the certificate must be made in duplicate. One copy must be transmitted
2 immediately to the secretary of state by certified mail.

3 (e) (i) If the recount relates to a county, municipal, or district office voted for in only one county, other
4 than that of a legislator or a judge of the district court, or a precinct office or a ballot issue voted on in only one
5 county, the county recount board shall immediately recanvass the returns as corrected by the certificate
6 showing the result of the recount and make a corrected abstract of the votes.

7 (ii) If the corrected abstract shows no change in the result, no further action is needed.

8 (iii) If there is a change in the result, a new certificate of election, selection to advance, or nomination
9 must be issued to each candidate found to be elected, selected to advance, or nominated and the first
10 certificate is void. The individual receiving the second certificate must be elected, selected to advance, or
11 nominated to the office.

12 (2) (a) In the event of a school election recount, immediately after the recount, the school recount
13 board shall certify the result. At least two members of the recount board shall sign the certificate, and it must be
14 attested to under seal by the school election administrator.

15 (b) The certificate must adequately designate:

16 (i) the vote of the district according to the official canvass previously made;

17 (ii) the position or question involved; and

18 (iii) the correct vote of the district as determined by the recount.

19 (c) The school recount board shall immediately recanvass the returns as corrected by the certificate
20 showing the result of the recount and make a corrected abstract of the votes. If the corrected abstract shows no
21 change in the result, no further action is needed. If there is a change in the result, a new certificate of election
22 must be issued to each candidate found to be elected and the first certificate is void. The individual receiving
23 the second certificate must be elected to the office."

24

25 **Section 40.** Section 13-16-419, MCA, is amended to read:

26 **"13-16-419. Recount by board of state canvassers.** (1) When the secretary of state receives
27 certificates from all county recount boards, the secretary of state shall file them, shall fix a time and place, as

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1 soon as possible, for reconvening the board of state canvassers, and shall notify the members.

2 (2) The board of state canvassers shall recanvass the official returns on the office, nomination,
3 selection to advance, position, or question as corrected by the certificates and make a new and corrected
4 abstract of the votes cast.

5 (3) (a) If the corrected abstract shows no change in the results, further action may not be taken.

6 (b) If there is a change in the results, the first certificate is void and a new certificate of election,
7 selection to advance, or nomination must be issued in the same manner as the certificate of election or
8 nomination was previously issued to each candidate elected, selected to advance, or nominated."
9

10 **Section 41.** Section 13-16-501, MCA, is amended to read:

11 **"13-16-501. Tie vote after recount.** (1) If the recount shows a tie vote for any office and it cannot be
12 determined who has been nominated or selected to advance by the primary election, the election officer with
13 whom the candidates' nominating declarations or petitions or declarations of candidacy were filed shall
14 determine by lot which candidate shall be nominated or selected to advance. Written notice of the time and
15 place of the drawing shall-must be given to each candidate involved.

16 (2) If the recount after a general election shows a tie vote and it cannot be determined who has been
17 elected, the office or position shall-must be filled as provided by 13-16-502 through 13-16-506."
18

19 **Section 42.** Section 13-17-103, MCA, is amended to read:

20 **"13-17-103. Required specifications for voting systems.** (1) A voting system may not be approved
21 under 13-17-101 unless the voting system:

22 (a) allows an elector to vote in secrecy;

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

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

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

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- 1 (e) allows an elector to vote a split ticket in a general election if the elector desires;
- 2 (f) allows each valid vote cast to be registered and recorded within the performance standards
- 3 adopted pursuant to subsection (3);
- 4 (g) is protected from tampering for a fraudulent purpose;
- 5 (h) prevents an individual from seeing or knowing the number of votes registered for any candidate or
- 6 on any ballot issue during the progress of voting;
- 7 (i) allows write-in voting;
- 8 (j) will, if purchased by a jurisdiction within the state, be provided with a guarantee that the training
- 9 and technical assistance will be provided to election officials under the contract for purchase of the voting
- 10 system;
- 11 (k) uses a paper ballot that allows votes to be manually counted; and
- 12 (l) allows auditors to access and monitor any software program while it is running on the system to
- 13 determine whether the software is running properly.
- 14 (2) A voter interface device may not be approved for use in this state unless:
- 15 (a) the device meets the electronic security standards adopted by the secretary of state;
- 16 (b) the device provides accessible voting technology for electors with hearing, vision, speech, or
- 17 ambulatory impairments;
- 18 (c) the device meets all requirements specified in subsection (1);
- 19 (d) the device has been made available for demonstration and use by electors with disabilities in at
- 20 least one public event held by the secretary of state; and
- 21 (e) disabled electors have been able to participate in the process of determining whether the system
- 22 meets accessibility standards.
- 23 (3) To implement the provisions of subsection (1)(f), the secretary of state shall adopt rules setting a
- 24 benchmark performance standard that must be met in tests by each voting system prior to approval under 13-
- 25 17-101. The standard must be based on commonly accepted industry standards for readily available
- 26 technologies."
- 27

1 **Section 43.** Section 13-25-201, MCA, is amended to read:
2 "**13-25-201. Election of United States senators and representatives.** (1) United States senators
3 and representatives shall be elected at the general election preceding commencement of the term to be filled.
4 (2) Nominations and elections for United States representative shall must be as provided by law for
5 governor.
6 (3) Selections to advance and elections for United States senator must be as provided by law and
7 use a top two primary."

8
9 **Section 44.** Section 13-25-205, MCA, is amended to read:
10 "**13-25-205. Nominations for special election.** (1) (a) When a special election is ordered to fill a
11 vacancy in the office of ~~United States senator or~~ United States representative, each political party shall choose
12 a candidate according to the rules of the party. Nominations by parties must be made no later than 75 days
13 before the date set for the election.
14 (2)(b) Nominating petitions may be filed by independent candidates for the office up to 5 p.m. of the
15 75th day before the election.
16 (2) (a) When a special election is ordered to fill a vacancy in the office of United States senator, a
17 top two primary election to narrow the number of candidates must be conducted prior to the special election.
18 (b) Declarations of candidacy may be filed for the office up to 5 p.m. of the 75th day before the
19 special top two primary election."

20
21 **Section 45.** Section 13-27-401, MCA, is amended to read:
22 "**13-27-401. Voter information pamphlet.** (1) The secretary of state shall prepare for printing a voter
23 information pamphlet containing information relevant to the election, including but not limited to:
24 (a) information to inform voters that in the top two primary the two candidates who receive the most
25 votes for the office will advance to the general election regardless of either candidate's political party
26 preference; and
27 (b) the following information for each ballot issue to be voted on at an election, as applicable:

1 ~~(a)~~(i) ballot title, fiscal statement if applicable, and complete text of the issue;

2 ~~(b)~~(ii) the form in which the issue will appear on the ballot;

3 ~~(c)~~(iii) arguments advocating approval and rejection of the issue; and

4 ~~(d)~~(iv) rebuttal arguments.

5 (2) The pamphlet must also contain a notice advising the recipient as to where additional copies of
6 the pamphlet may be obtained.

7 (3) Whenever more than one ballot issue is to be voted on at a single election, the secretary of state
8 may publish a single pamphlet for all of the ballot issues. The secretary of state may arrange the information in
9 the order that seems most appropriate, but the information for all issues in the pamphlet must be presented in
10 the same order.

11 (4) The secretary of state may prescribe by rule the format and manner of submission of the
12 arguments concerning the ballot issue."

13

14 **Section 46.** Section 13-35-106, MCA, is amended to read:

15 **"13-35-106. Ineligibility to hold office because of conviction.** In addition to all other penalties
16 prescribed by law:

17 (1) a candidate who is convicted of violating any provision of this title, except 13-35-207(9), is
18 ineligible to be a candidate for any public office in the state of Montana until final discharge from state
19 supervision;

20 (2) a campaign treasurer who is convicted of violating any provision of this title, except 13-35-207(9),
21 is ineligible to be a candidate for any public office or to hold the position of campaign treasurer in any campaign
22 in the state of Montana until final discharge from state supervision;

23 (3) if an elected official or a candidate is adjudicated to have violated any provision of this title, except
24 13-35-207(9), the individual must be removed from nomination, selection to advance, or office, as the case may
25 be, even though the individual was regularly nominated, selected to advance, or elected."

26

27 **Section 47.** Section 13-35-205, MCA, is amended to read:

1 **"13-35-205. Tampering with election records and information.** A person is guilty of tampering with
2 public records or information and is punishable as provided in 45-7-208 whenever the person:

- 3 (1) suppresses any declaration or certificate of nomination, declaration of candidacy, or certificate of
4 selection that has been filed;
- 5 (2) purposely causes a vote to be incorrectly recorded as to the candidate or ballot issue voted on;
- 6 (3) in an election return, knowingly adds to or subtracts from the votes actually cast at the election;
- 7 (4) changes any ballot after it has been completed by the elector;
- 8 (5) adds a ballot to those legally polled at an election, either before or after the ballots have been
9 counted, with the purpose of changing the result of the election;
- 10 (6) causes a name to be placed on the registry lists other than in the manner provided by this title; or
- 11 (7) changes a poll list or checklist."

12

13 **Section 48.** Section 13-35-206, MCA, is amended to read:

14 **"13-35-206. Injury to election equipment, materials, and records.** A person is guilty of criminal
15 mischief or tampering with public records and information, as appropriate, and is punishable as provided in 45-
16 6-101 or 45-7-208, as applicable, whenever the person:

- 17 (1) prior to or on election day, knowingly defaces or destroys any list of candidates posted in
18 accordance with the provisions of the law;
- 19 (2) during an election:
- 20 (a) removes or defaces instructions for the voters; or
- 21 (b) removes or destroys any of the supplies or other conveniences placed in the voting station for the
22 purpose of enabling a voter to prepare the voter's ballot;
- 23 (3) removes any ballots from the polling place before the closing of the polls with the purpose of
24 changing the result of the election;
- 25 (4) carries away or destroys any poll lists, checklists, ballots, ballot boxes, or other equipment for the
26 purpose of disrupting or invalidating an election;
- 27 (5) knowingly detains, mutilates, alters, or destroys any election returns;

- 1 (6) mutilates, secretes, destroys, or alters election records, except as provided by law;
- 2 (7) tampers with, disarranges, defaces, injures, or impairs a voting system with the intent to alter the
- 3 outcome of an election;
- 4 (8) mutilates, injures, or destroys a ballot or appliance used in connection with a voting system; or
- 5 (9) fraudulently defaces or destroys a declaration or certificate of nomination, declaration of
- 6 candidacy, or certificate of selection."

7
8 **Section 49.** Section 13-35-207, MCA, is amended to read:

9 **"13-35-207. Deceptive election practices.** A person is guilty of false swearing, unsworn falsification,

10 or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-202, 45-

11 7-203, or 45-7-208, as applicable, whenever the person:

- 12 (1) falsely represents the person's name or other information required upon the person's voter
- 13 registration form and causes registration with the form;
- 14 (2) signs a voter registration form knowingly witnessing any false or misleading statement;
- 15 (3) knowingly causes a false statement, certificate, or return of any kind to be signed;
- 16 (4) falsely makes a declaration or certificate of nomination, declaration of candidacy, or certificate of
- 17 selection;
- 18 (5) files or receives for filing a declaration or certificate of nomination, declaration of candidacy, or
- 19 certificate of selection knowing that all or part of the declaration or certificate is false;
- 20 (6) forges or falsely makes the official endorsement of a ballot;
- 21 (7) forges or counterfeits returns of an election purporting to have been held at a precinct,
- 22 municipality, or ward where no election was in fact held;
- 23 (8) knowingly substitutes forged or counterfeit returns of election in place of the true returns for a
- 24 precinct, municipality, or ward where an election was held;
- 25 (9) signs a name other than the person's own to a petition, signs more than once for the same ballot
- 26 issue, or signs a petition while not being a qualified elector of the state; or
- 27 (10) makes a false oath or affidavit where an oath or affidavit is required by law."

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Section 50. Section 13-35-214, MCA, is amended to read:

"13-35-214. Illegal influence of voters. A person may not knowingly or purposely, directly or indirectly, individually or through any other person, for any election, in order to induce any elector to vote or refrain from voting or to vote for or against any particular candidate, political party ticket, or ballot issue:

- (1) give, lend, agree to give or lend, offer, or promise any money, liquor, or valuable consideration or promise or endeavor to procure any money, liquor, or valuable consideration; or
- (2) promise to appoint another person or promise to secure or aid in securing the appointment, nomination, selection to advance, or election of another person to a public or private position or employment or to a position of honor, trust, or emolument in order to aid or promote the candidate's nomination, selection to advance, or election, except that the candidate for governor may publicly announce or define the candidate's choice for lieutenant governor."

Section 51. Section 13-35-218, MCA, is amended to read:

"13-35-218. Coercion or undue influence of voters. (1) A person, directly or indirectly, individually or through any other person, in order to induce or compel a person to vote or refrain from voting for any candidate, the ticket of any political party, any candidates associating with any political party, or any ballot issue before the people, may not:

- (a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any person; or
- (b) inflict or threaten to inflict, individually or with any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person.

(2) A person may not, by abduction, duress, or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election or compel, induce, or prevail upon any elector to give or to refrain from giving the elector's vote at any election.

(3) A person may not, in any manner, interfere with a voter lawfully exercising the right to vote at an election in order to prevent the election from being fairly held and lawfully conducted.

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1 (4) A person on election day may not obstruct the doors or entries of any polling place or engage in
2 any solicitation of a voter within the room where votes are being cast or elsewhere in any manner that in any
3 way interferes with the election process or obstructs the access of voters to or from the polling place."
4

5 **Section 52.** Section 13-35-221, MCA, is amended to read:

6 **"13-35-221. Improper nominations or candidacies.** (1) A person may not pay or promise valuable
7 consideration to another, in any manner or form, for the purpose of inducing the other person to be or to refrain
8 from or to cease being a candidate, and a person may not solicit or receive any payment or promise from
9 another for that purpose.

10 (2) A person, in consideration of any gift, loan, offer, promise, or agreement, as mentioned in
11 subsection (1), may not:

12 (a) be nominated or selected to advance or refuse to be nominated or selected to advance as a
13 candidate at an election;

14 (b) become, individually or in combination with any other person or persons, a candidate for the
15 purpose of defeating the nomination, selection to advance, or election of any other person, without a bona fide
16 intent to obtain the office; or

17 (c) withdraw if the person has been nominated.

18 (3) Upon complaint made to any district court, the judge shall issue a writ of injunction restraining the
19 officer whose duty it is to prepare official ballots for a nominating election or a top two primary from placing the
20 name of a person on the ballot as a candidate for nomination or selection to advance to any office if the judge is
21 convinced that:

22 (a) the person has sought the nomination or selection to advance or seeks to have the person's name
23 presented to the voters as a candidate for nomination by any political party or selection to advance in a top two
24 primary for any mercenary or venal consideration or motive; and

25 (b) the person's candidacy for the nomination or selection to advance is not in good faith."
26

27 **Section 53.** Section 13-35-226, MCA, is amended to read:

1 **"13-35-226. Unlawful acts of employers and employees.** (1) It is unlawful for any employer, in
2 paying employees the salary or wages due them, to include with their pay the name of any candidate or any
3 political mottoes, devices, or arguments containing threats or promises, express or implied, calculated or
4 intended to influence the political opinions or actions of the employees.

5 (2) It is unlawful for an employer to exhibit in a place where the employer's workers or employees may
6 be working any handbill or placard containing:

7 (a) any threat, promise, notice, or information that, in case any particular ticket or political party,
8 organization, or candidate is elected:

9 (i) work in the employer's place or establishment will cease, in whole or in part, or will be continued or
10 increased;

11 (ii) the employer's place or establishment will be closed; or

12 (iii) the salaries or wages of the workers or employees will be reduced or increased; or

13 (b) other threats or promises, express or implied, intended or calculated to influence the political
14 opinions or actions of the employer's workers or employees.

15 (3) A person may not coerce, command, or require a public employee to support or oppose any
16 political committee, the nomination, selection to advance, or election of any person to public office, or the
17 passage of a ballot issue.

18 (4) A public employee may not solicit support for or opposition to any political committee, the
19 nomination, selection to advance, or election of any person to public office, or the passage of a ballot issue
20 while on the job or at the place of employment. However, subject to 2-2-121, this section does not restrict the
21 right of a public employee to perform activities properly incidental to another activity required or authorized by
22 law or to express personal political views.

23 (5) A person who violates this section is liable in a civil action authorized by 13-37-128, brought by the
24 commissioner of political practices or a county attorney pursuant to 13-37-124 and 13-37-125."
25

26 **Section 54.** Section 13-36-101, MCA, is amended to read:

27 **"13-36-101. Grounds for contest of nomination, selection to advance, or election to public**

1 **office.** An elector may contest the right of ~~any~~ a person to any nomination, selection to advance, or election to
2 public office for which the elector has the right to vote if the elector believes that:

- 3 (1) a deliberate, serious, and material violation of any provision of the law relating to nominations, selections to advance, or elections has occurred;
- 4
- 5 (2) the person was not, at the time of the election, eligible to be a candidate for the office;
- 6 (3) votes were cast illegally or were counted or canvassed in an erroneous or fraudulent manner."
- 7

8 **Section 55.** Section 13-36-102, MCA, is amended to read:

9 **"13-36-102. Time for commencing contest.** (1) Five days or less after a candidate has been
10 certified as nominated or selected to advance, a person wishing to contest the nomination or selection to
11 advance to any public office shall give notice in writing to the candidate whose nomination or selection to
12 advance the person intends to contest, briefly stating the cause for the contest. The contestant shall make
13 application to the district court in the county where the contest is to be had. The judge shall then set the time for
14 the hearing. The contestant shall serve notice 3 days before the hearing is scheduled. The notice must state
15 the time and place of the hearing.

16 (2) Any action to contest the right of a candidate to be declared elected to an office or to annul and
17 set aside the election or to remove from or deprive any person of an office of which the person is the incumbent
18 for any offense mentioned in this title must, unless a different time is stated, be commenced within 1 year after
19 the day of election at which the offense was committed."

20

21 **Section 56.** Section 13-36-103, MCA, is amended to read:

22 **"13-36-103. Court having jurisdiction of proceedings.** An application for filing a statement,
23 payment of a claim, or correction of an error or false recital in a filed statement or an action or proceeding to
24 annul and set aside the election of any person declared elected to an office or to remove or deprive any person
25 of the person's office for an offense mentioned in this title or any petition to excuse any person or candidate in
26 accordance with the power of the court to excuse, as provided in 13-36-209, must be made or filed in the
27 district court of the county in which the certificate, declaration, or acceptance of the person's nomination or

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1 selection to advance as a candidate for the office to which the person is declared nominated, selected to
2 advance, or elected is filed or in which the incumbent resides."

3
4 **Section 57.** Section 13-36-104, MCA, is amended to read:
5 **"13-36-104. Nomination and selection to advance contests.** In the case of nomination and
6 selection to advance contests, the judge of the district court shall hear and determine the case and make all
7 necessary orders for the trial of the case and carrying the judgment into effect. The order of the judge for a
8 nomination contest must express the will of a majority of the legal voters of the political party, as indicated by
9 their votes, disregarding technicalities or errors in spelling. The order of the judge for a selection to advance
10 contest must express the will of a majority of the legal voters, as indicated by their votes, disregarding
11 technicalities or errors in spelling. Each party is entitled to subpoenas. The registrar shall issue a certificate to
12 the person declared nominated or selected to advance by the court. The certificate is conclusive evidence of
13 the right of the person to hold the nomination or selection to advance."

14
15 **Section 58.** Section 13-36-201, MCA, is amended to read:
16 **"13-36-201. Contents of contest petition.** Any petition contesting the right of any person to a
17 nomination, selection to advance, or election must set forth the name of every person whose election is
18 contested and the grounds of the contest. The petition may not be amended unless the amendment is
19 authorized by a court."

20
21 **Section 59.** Section 13-36-202, MCA, is amended to read:
22 **"13-36-202. Reception of illegal votes -- allegations and evidence.** When the reception of illegal
23 votes is alleged as a cause of contest, it is sufficient to state generally that in one or more specified voting
24 precincts illegal votes were given to the candidate whose nomination, selection to advance, or election is
25 contested that, if taken from the candidate, will reduce the number of the candidate's legal votes below the
26 number of legal votes given to some other candidate for the same office. Testimony may not be received of any
27 illegal votes unless the party contesting the election delivers to the opposite party, at least 3 days before trial, a

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1 written list of the number of illegal votes and by whom given that the party intends to prove at trial. This
2 provision may not prevent the contestant from offering evidence of illegal votes not included in the statement if
3 the contestant did not know and by reasonable diligence was unable to learn of the additional illegal votes and
4 by whom they were given before delivering the written list."

5

6 **Section 60.** Section 13-36-203, MCA, is amended to read:

7 **"13-36-203. Form of complaint.** (1) A petition or complaint filed under the provisions of this chapter
8 is sufficient if it is in substantially the following form:

9 In the District Court of the
10 Judicial District,
11 for the County of, State of Montana.

12 A B (or A B and C D), Contestants,

13 vs.

14 E F, Contestee.

15 The petition of the contestant (or contestants) named above alleges:

16 That an election was held (in the state, district, county, or city of), on the day of, 20..., for the
17 (nomination of a candidate for) (or selection to advance for) (or election of a) (state the office).

18 That and were candidates at the election and the board of canvassers has returned as being
19 nominated (or selected to advance) (or elected) at the election.

20 That contestant A B voted (or had a right to vote, as the case may be) at the election (or claims to have
21 had a right to be returned as the nominee, person selected to advance, or officer elected, ~~or~~ nominated, or
22 selected to advance at the election or was a candidate at the election, as the case may be) and that contestant
23 C D (here state in a similar manner the right of each contestant).

24 The contestant (or contestants) further allege (here state the facts and grounds on which the
25 contestants rely).

26 The contestants ask that it be determined by the court that was not nominated (or selected to
27 advance) (or elected) and that the election was void or that A B or C D, as the case may be, was nominated (or

1 selected to advance (or elected) and ask for other relief that the court may find appropriate.

2 (2) The complaint must be verified by the affidavit of one of the petitioners in the manner required by
3 law for the verification of complaints in civil cases."
4

5 **Section 61.** Section 13-36-206, MCA, is amended to read:

6 **"13-36-206. Notice of filing -- prompt hearing.** On the filing of a petition under this part, the clerk
7 shall immediately notify the judge of the court and issue a citation to the person whose nomination, selection to
8 advance, or office is contested, citing the person to appear and answer not less than 3 or more than 7 days
9 after the date of filing the petition. The court shall hear the cause, and the contest must take precedence over
10 all other business on the court docket and must be tried and disposed of with all convenient dispatch. The court
11 is always considered to be in session for the trial of contest cases."
12

13 **Section 62.** Section 13-36-207, MCA, is amended to read:

14 **"13-36-207. Hearing of contest.** The petitioner (contestant) and the contestee may appear and
15 produce evidence at the hearing, but no person other than the petitioner and contestee may be made a party to
16 the proceedings on the petition and no person other than the parties and their attorneys may be heard except
17 by order of the court. If more than one petition is pending or the election of more than one person is contested,
18 the court may in its discretion order the cases to be heard together and may apportion the costs,
19 disbursements, and attorney fees between the parties and shall finally determine all questions of law and fact,
20 except that the judge may impanel a jury to decide on questions of fact. In the case of nominations, selections
21 to advance, or elections other than for federal congressional offices, the court shall immediately certify its
22 decision to the governing body or official issuing certificates of nomination, selection to advance, or election and
23 the governing body or official shall issue certificates of nomination, selection to advance, or election to the
24 person or persons entitled to the certificates by the court's decision. If judgment of ouster against a defendant is
25 rendered, the nomination or office must be declared vacant by the judgment, except as provided in 13-36-212,
26 and must be filled by a new election or by appointment as may be provided by law regarding vacancies in the
27 nomination, selection to advance, or office."

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Section 63. Section 13-36-209, MCA, is amended to read:

"13-36-209. Forfeiture of nomination, selection to advance, or office for violation of law -- when inappropriate. Upon the trial of any action or proceeding under the provisions of this title to contest the right of any person to be declared nominated, selected to advance, or elected to any office or to annul or set aside a nomination, selection to advance, or election or to remove a person from office, the nomination, selection to advance, or election of the candidate is not by reason of the offense or omission complained of void and the candidate may not be removed from or deprived of office if under the circumstances it seems to the court to be unjust that the candidate forfeit a nomination, selection to advance, or office or be deprived of any office of which the candidate is the incumbent. The decision of the court must be based upon the following:

- (1) it appears from the evidence that the offense complained of was not committed by the candidate or with the candidate's knowledge or consent or was committed without the candidate's sanction or connivance and that all reasonable means for preventing the commission of the offense at the election were taken by and on behalf of the candidate;
- (2) the offense or offenses complained of were trivial, unimportant, and limited in character and in all other respects the candidate's participation in the election was free from offenses or illegal acts; or
- (3) any act or omission of the candidate arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature and in any case did not arise from any lack of good faith."

Section 64. Section 13-36-210, MCA, is amended to read:

"13-36-210. Punishment. If, upon the trial of any action or proceeding under the provisions of this title to contest the right of any person to be declared to be nominated or selected to advance to an office or elected to an office or to annul and set aside the election or to remove any person from office, it appears that the person was guilty of any corrupt practice, illegal act, or undue influence in or about the nomination, selection to advance, or election, the person must be punished by being deprived of the nomination, selection to advance, or office and the vacancy must be filled in the manner provided by law. The only exceptions to this judgment are those provided in 13-36-209. The judgment does not prevent the candidate or officer from being proceeded

1 against by indictment or criminal information for any act or acts."
2

3 **Section 65.** Section 13-36-211, MCA, is amended to read:

4 **"13-36-211. When nomination, selection to advance, or election not to be vacated.** The ground
5 of contest specified in 13-36-101(3) may not be construed to authorize a nomination, selection to advance, or
6 election to be set aside on account of illegal votes unless it appears:

7 (1) that the candidate ~~or~~, nominee, or person selected to advance whose right is contested had
8 knowledge of or connived in the illegal votes; or

9 (2) that the number of illegal votes given to the person whose right to the nomination, selection to
10 advance, or office is contested, if taken from the person, would reduce the number of legal votes for the person
11 below the number of votes given to some other person for the same nomination, selection to advance, or office,
12 after deducting the illegal votes that may be shown to have been given to the other person."
13

14 **Section 66.** Section 13-36-212, MCA, is amended to read:

15 **"13-36-212. Declaration of result of election after rejection of illegal votes.** If, in any case of a
16 contest on the ground of illegal votes, it appears that a person other than the one returned has the highest
17 number of legal votes after the illegal votes have been eliminated, the court ~~must~~ shall declare ~~such the~~ person
18 nominated, selected to advance, or elected, as the case may be."
19

20 **Section 67.** Section 13-37-127, MCA, is amended to read:

21 **"13-37-127. Withholding of certificates of nomination, selection to advance, or election.** (1) A
22 certificate of election may not be granted to any candidate until the candidate or the candidate's treasurer has
23 filed the reports and statements that must be filed pursuant to the provisions of this chapter. A candidate for an
24 elective office may not assume the powers and duties of that office until the candidate has received a certificate
25 of election as provided by law. A certificate of election may only be issued by the public official responsible for
26 issuing a certificate or commission of election.

27 (2) In carrying out the mandate of this section, the commissioner ~~must~~ shall, by written statement,

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1 notify the public official responsible for issuing a certificate of nomination, certificate of selection, or election that
2 a candidate or the candidate's treasurer has complied with the provisions of this chapter as described in
3 subsection (1) and that a certificate of nomination, certificate of selection, or election may be issued."
4

5 **Section 68.** Section 13-37-234, MCA, is amended to read:

6 **"13-37-234. Religious organization exemptions to be broadly construed.** Pursuant to the first
7 amendment to the United States constitution and to ensure the consistent application of the law, the
8 commissioner shall broadly construe the exemptions concerning religious organizations provided in 13-1-
9 101 ~~(9)(b)(iv), (15)(b)(v), (17)(b)(v), and (19)(b)(vi)~~ (10)(b)(iv), (18)(b)(v), (20)(b)(v), and (22)(b)(vi)."

10
11
12 **NEW SECTION. Section 69. Severability.** If a part of [this act] is invalid, all valid parts that are
13 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
14 the part remains in effect in all valid applications that are severable from the invalid applications.
15

16 **NEW SECTION. Section 70. Codification instruction.** [Section 19] is intended to be codified as an
17 integral part of Title 13, chapter 10, part 2, and the provisions of Title 13, chapter 10, part 2, apply to [section
18 19].
19

20 **NEW SECTION. Section 71. Effective date.** [This act] is effective on passage and approval.
21
22

- END -