



Montana Legislative Services Division
Legal Services Office

TO: State Administration and Veterans' Affairs Interim Committee

FROM: K. Virginia Aldrich

DATE: July 16, 2015

RE: Legislative Administrative Rule Review Report

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

MAR NOTICE NUMBER: 44-2-204

AGENCY/BOARD: Secretary of State

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

SUBJECT: Voting Accessibility for electors with disabilities and the Montana Absent Uniformed Services and Overseas Voter Act

NOTICE DESCRIPTION: (e.g. proposal notice/adoption notice): Notice of proposed amendment

SUMMARY OF RULE(S): The Secretary of State proposes to amend two rules and adopt a new rule concerning voting accessibility for electors with disabilities and the Montana Absent Uniformed Services and Overseas Voter Act. For consistency with the requirements of Chapter 247, Laws of 2015, (allowing electors with disabilities to electronically request a ballot) and to update certain procedures to ensure secrecy of uniformed service or overseas voter ballots, the proposed rule amendments update current rules concerning the procedures for alternative means of casting a ballot and electronic transmission of voting materials. Specifically, the proposed amendments require three election officials to transcribe an electronic ballot to a standard ballot, specify that a transmittal cover sheet with affirmation must be retained in a container separate from the ballot, require that individuals transcribing the ballot not have access to the name of the elector who voted the ballot, eliminate a notice to the elector that the elector's ballot will not be secret because it will be transcribed, require that electronically transmitted ballot identifying numbers be recorded in an official transcription log, and provide instances in which an elector may use an alternative method of voting because of disability.

In addition, the Secretary of State proposes to adopt a new rule concerning the electronic

transmission of voting materials to electors with disabilities and providing procedures. The proposed rule provides procedures that are generally consistent with the requirements of Chapter 247, Laws of 2015. However, although Chapter 247 requires an election administrator to provide four items, including "an electronic ballot, instructions for completing the ballot, a secrecy envelope, and a transmittal cover sheet that includes an elector affirmation" to a registered (or provisionally registered) elector with a disability at the elector's request, New Rule I requires that the elector be e-mailed the "ballot, instructions to the elector, and a transmittal cover sheet that includes an elector affirmation." Thus, although Chapter 247 requires that a secrecy envelope be provided to an elector with the electronic ballot, the rule omits this requirement. Presumably, this is because an election administrator cannot feasibly provide a secrecy envelope electronically. However, New Rule I does provide that an acceptable received ballot must be logged and then placed in a secure absentee container "without opening the envelope containing the voted ballot". Thus, although a secrecy envelope is apparently not provided when issuing an electronic ballot, the instructions may instruct an elector on the use of a secrecy envelope. The Secretary of State's office has noted that the secrecy envelope was omitted because under section 2-4-305, MCA, "[r]ules may not unnecessarily repeat statutory language", but that it is "exploring possible options in sending along a secrecy ballot along with the ballot and may modify the rule as the rulemaking process proceeds".

NOTES: A public hearing is scheduled for August 7, 2015, at 9:30 a.m. in Room 260, State Capitol Building, Helena, Montana. The public comment period ends on August 14, 2015.

FULL TEXT OF NOTICE: The full text of the notice proposal may be found online at <http://www.mtrules.org/gateway/ShowNoticeFile.asp?TID=6491>

CI0134 5203gafa.



Montana Legislative Services Division
Legal Services Office

TO: State Administration and Veterans' Affairs Interim Committee

FROM: K. Virginia Aldrich

DATE: July 16, 2015

RE: Legislative Administrative Rule Review Report

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

MAR NOTICE NUMBER: 44-2-204

AGENCY/BOARD: Secretary of State

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

SUBJECT: Voting Accessibility for electors with disabilities and the Montana Absent Uniformed Services and Overseas Voter Act

NOTICE DESCRIPTION: (e.g. proposal notice/adoption notice): Notice of proposed amendment

SUMMARY OF RULE(S): The Secretary of State proposes to amend two rules and adopt a new rule concerning voting accessibility for electors with disabilities and the Montana Absent Uniformed Services and Overseas Voter Act. For consistency with the requirements of Chapter 247, Laws of 2015, (allowing electors with disabilities to electronically request a ballot) and to update certain procedures to ensure secrecy of uniformed service or overseas voter ballots, the proposed rule amendments update current rules concerning the procedures for alternative means of casting a ballot and electronic transmission of voting materials. Specifically, the proposed amendments require three election officials to transcribe an electronic ballot to a standard ballot, specify that a transmittal cover sheet with affirmation must be retained in a container separate from the ballot, require that individuals transcribing the ballot not have access to the name of the elector who voted the ballot, eliminate a notice to the elector that the elector's ballot will not be secret because it will be transcribed, require that electronically transmitted ballot identifying numbers be recorded in an official transcription log, and provide instances in which an elector may use an alternative method of voting because of disability.

In addition, the Secretary of State proposes to adopt a new rule concerning the electronic

transmission of voting materials to electors with disabilities and providing procedures. The proposed rule provides procedures that are generally consistent with the requirements of Chapter 247, Laws of 2015. However, although Chapter 247 requires an election administrator to provide four items, including "an electronic ballot, instructions for completing the ballot, a secrecy envelope, and a transmittal cover sheet that includes an elector affirmation" to a registered (or provisionally registered) elector with a disability at the elector's request, New Rule I requires that the elector be e-mailed the "ballot, instructions to the elector, and a transmittal cover sheet that includes an elector affirmation." Thus, although Chapter 247 requires that a secrecy envelope be provided to an elector with the electronic ballot, the rule omits this requirement. Presumably, this is because an election administrator cannot feasibly provide a secrecy envelope electronically. However, New Rule I does provide that an acceptable received ballot must be logged and then placed in a secure absentee container "without opening the envelope containing the voted ballot". Thus, although a secrecy envelope is apparently not provided when issuing an electronic ballot, the instructions may instruct an elector on the use of a secrecy envelope. The Secretary of State's office has noted that the secrecy envelope was omitted because under section 2-4-305, MCA, "[r]ules may not unnecessarily repeat statutory language", but that it is "exploring possible options in sending along a secrecy ballot along with the ballot and may modify the rule as the rulemaking process proceeds".

NOTES: A public hearing is scheduled for August 7, 2015, at 9:30 a.m. in Room 260, State Capitol Building, Helena, Montana. The public comment period ends on August 14, 2015.

FULL TEXT OF NOTICE: The full text of the notice proposal may be found online at <http://www.mtrules.org/gateway/ShowNoticeFile.asp?TID=6491>

CI0134 5203gafa.