

Fall 2020

State Administration and Veterans' Affairs Interim Committee  
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## **FINAL REPORT TO THE 67<sup>TH</sup> MONTANA LEGISLATURE**

# **HJ 3 STUDY ON ACCESSIBILITY FOR DISABLED ELECTORS**







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# STATE ADMINISTRATION AND VETERANS' AFFAIRS

## INTERIM COMMITTEE MEMBERS

### 2019-2020

Before the close of each legislative session, the House and Senate leadership appoint lawmakers to interim committees. The members of the State Administration and Veterans' Affairs Interim Committee, like most other interim committees, serve one 20-month term. Members who are reelected to the Legislature, subject to overall term limits and if appointed, may serve again on an interim committee. This information is included in order to comply with 2-15-155, MCA.

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This report is a summary of the work of the State Administration and Veterans' Affairs Interim Committee under House Joint Resolution 3, a study of accessibility for disabled electors. This report highlights information presented by staff, stakeholders, and the interested public and explains the processes followed by the committee in reaching its conclusions. To review additional information, including audio/video minutes and exhibits from each meeting, visit the Legislative Branch website at [www.leg.mt.gov](http://www.leg.mt.gov) and navigate to the 2019-2020 State Administration and Veterans' Affairs Interim Committee home page.

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## SCOPE & WORK PLAN

### Previous Interim Work

This study builds on the work accomplished by the 2017-2018 State Administration and Veterans' Affairs Interim Committee (SAVA) on election accessibility and cybersecurity. During that study, the committee examined accessible ballot marking technologies, including the AutoMark and ExpressVote devices.

Prior to 2019, Montana law required a uniform ballot size. The standard ballots could be marked by disabled electors using the accessible ballot marking technology of the AutoMark device, which printed the elector's choices on the ballot. However, the AutoMark is becoming outdated and difficult to maintain. Thus, the committee examined other ballot marking devices, such as the ExpressVote, which is being marketed as the successor to the AutoMark. The ExpressVote device, however, uses a half-page ballot card rather than the full standard-size ballot.

Although SAVA's 2018 final report provides information and details about both the AutoMark and the ExpressVote, as well as other devices, the committee's final recommendations did not include revising Montana's uniform ballot law. But the committee did recommend the continued examination of Montana's election laws to specifically address not only the availability of accessible ballot marking devices at polling places and during mail ballot elections, but also broader issues related to accessibility for disabled electors. This study recommendation became House Joint Resolution 3.

The 2019 Legislature passed both HJ 3 and Senate Bill 291. SB 291 revised Montana's laws on ballot form and uniformity to allow for the nonstandard ballot card used by the ExpressVote device and was supported by the Montana Association of Clerks and Records and Election Administrators.

A copy of HJ 3 is provided at Appendix A.

A copy of SAVA's 2018 final report on election accessibility and cybersecurity is available online at <https://www.leg.mt.gov/committees/interim/past-interim-committees/>.

## House Joint Resolution 3

The committee's study tasks under HJ 3 were to:

- examine federal and state laws related to accessibility for electors with disabilities;
- solicit and consider comments, concerns, and suggestions from all interested stakeholder groups, including but not limited to the elections staff in the Office of the Secretary of State, the Office of Public Instruction, election administrators, counties, school districts, elderly electors, and electors with disabilities;
- identify and analyze relevant policy and logistical issues and options; and
- if appropriate, develop a committee bill to update or revise related state laws based on the committee's study findings and recommendations.

## A Study Plan Priority

The committee set the HJ 3 study as one of four priority work areas. The table under the Work Schedule section outlines the meeting dates, agenda items, and committee actions related to HJ 3.

The committee's website at <https://www.leg.mt.gov/committees/interim/2019sava/> offers online access to the minutes log, digital recordings of each meeting, and meeting and study materials.

## Work Schedule

Meeting Date	Agenda Items/Reports on HJ 3	Committee Actions
June 27, 2019	<ul style="list-style-type: none"><li>○ Overview of Secretary of State's Office</li><li>○ Intro to HJ 3 study tasks and discussion of study plan</li></ul>	<ul style="list-style-type: none"><li>○ Set HJ 3 as one of the committee's priorities, allocating 25% of staff time to the study tasks</li></ul>



### HJ 3 STUDY ON ACCESSIBILITY FOR DISABLED ELECTORS

*A final report of the State Administration and Veterans' Affairs Interim Committee: 2019-20*

Meeting Date	Agenda Items/Reports on HJ 3	Committee Actions
Sept. 3, 2019	<ul style="list-style-type: none"> <li>○ Staff overview and PowerPoint presentation on current laws and election accessibility provisions</li> <li>○ Review of federal and state disability rights provisions</li> <li>○ Voting systems by county</li> <li>○ Special districts by school districts</li> </ul>	<ul style="list-style-type: none"> <li>○ Reviewed and adopted a detailed study plan for HJ 3</li> </ul>
Oct. 29, 2019	<ul style="list-style-type: none"> <li>○ Focus on training for election administrators related to access for disabled electors and ballot marking devices</li> <li>○ Expert Panel: <ul style="list-style-type: none"> <li>- Mr. Dana Corson, Elections Director, Secretary of State's Office</li> <li>- Ms. Regina Plettenberg, Ravalli County election administrator</li> <li>- Ms. Nicole Thuotte, finance and elections specialist, OPI</li> <li>- Ms. Denise Williams, Montana Association of School Business Officials</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>○ Requested a survey on county, school, and special district elections</li> <li>○ Requested research on polling place exemptions</li> <li>○ Requested preliminary bill draft for discussion</li> </ul>
Jan. 16, 2020	<ul style="list-style-type: none"> <li>○ Survey results on county, school, and special district elections: number of registered electors, training, use of accessible ballot marking devices, and other accommodations</li> <li>○ Polling place accessibility exemptions</li> <li>○ LCsa01 - first draft of election law revisions on accessibility</li> <li>○ Stakeholder roundtable: <ul style="list-style-type: none"> <li>- all interested persons at the meeting - comments on LCsa01 (see minutes for full list of participants)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>○ Requested revisions to LCsa01 and drafting as an official preliminary committee bill</li> </ul>
June 17-18, 2020	<ul style="list-style-type: none"> <li>● Reviewed LCsa01 as revised to PD01 - committee bill (<i>*Note when PD01 became an official committee bill, it was renumbered to LC58</i>)</li> <li>● Received additional comments from stakeholders</li> </ul>	<ul style="list-style-type: none"> <li>● Requested further revisions to PD01/LC58</li> </ul>
Sept. 1, 2020	<ul style="list-style-type: none"> <li>● Reviewed the HJ 3 final report</li> <li>● Received final comments from stakeholders and made revisions</li> </ul>	<ul style="list-style-type: none"> <li>● Adopted PD01/LC58, as amended during the meeting, as an official committee bill</li> </ul>

# FINDINGS & RECOMMENDATIONS

## Report Organization

This section of the report summarizes the committee's findings and recommendations into four categories:

- A - Legal and technical updates
- B - Voter interface device availability
- C - Costs
- D - Alternative means of aiding disabled electors

Within each category, the report provides a background summary of the issues, the policy questions considered by the committee, and the committee's recommendations as reflected in the committee bill, PD01/LC58, at Appendix B.

## A - Legal and Technical Updates

### Issue Summary

The committee's review of Title 13 of the Montana Code Annotated (MCA) on elections revealed the need for legal and technical updates and clarifications in definitions, statutory organization, and federal law references.

Montana's election laws related to accessibility for disabled electors are primarily codified in Title 13, chapter 3, part 2, MCA. Section 13-3-201, MCA, states that the purpose of the part is "improving access to polling places for individuals with disabilities and elderly individuals". However, a new section enacted by SB 291 (2019) requiring voter interface devices (i.e., accessible ballot marking devices) was codified in the part. This expanded the scope of the part beyond the stated purpose of physical accessible polling places but did not update the purpose section for the part.

Additionally, the definition section for the part, section 13-3-202, MCA, defines "disability" as having specified impairments that include vision and hearing impairments, which are not directly related to making a polling place physically accessible. The term "elderly" is defined as someone 65 years of age or older and does not include any reference to a disability.

The definition of "election" for the part limits the applicability of all sections in the part to "a general, special, or primary election held in an even-numbered year", so it seems that the

provisions of the part were intended to apply only to federal elections. Because of this definition, it also seems that the accessibility provisions do not apply to school district, special district, or local government elections or any type of special election that might be held in an odd-numbered year. But, despite this definition, federal and state nondiscrimination laws and case law make it clear that rights for disabled electors apply to all elections.

In addition to the purpose of definition updates needed, references to federal law in other parts of Title 13 that relate to accessibility for disabled electors do not include citations to all applicable federal law even though those laws also apply.

Finally, some statutory provisions overlap or conflict and so should be eliminated or moved, while others lack needed internal references, and still others need clarification to conform with updated procedures specified in other sections.

## Policy Questions

The findings summarized above presented the committee with the following issues or questions, which were discussed with stakeholders during the study:

- How to revise definitions to encompass the full scope and purpose of existing statutes and laws.
- How to reorganize certain provisions to eliminate redundancy, move language to more appropriate sections, and address other technical concerns.
- How to appropriately reference applicable federal law.

## Recommendations

After hearing from stakeholders and discussing these issues over the course of several meetings, the committee recommends the following:

- Update the definition of disability based on the current definition and a condensed version of the federal Americans With Disabilities Act (ADA), move the definition to the general definition section so it applies to all provisions in Title 13, add language acknowledging additional types of impairments, and eliminate the unnecessary definition of "elderly".

- Expand the scope of Title 13, chapter 3, part 2, MCA, to include accessibility in the broader context (including the use of voter interface devices) so that the part is not only related to physical accessibility at polling places.
- Strike the limited definition of "election" in Title 13, chapter 3, part 2, so that the accessibility provisions in that part apply to all elections.
- Make the other technical revisions needed to clarify and clean up the statutory organization and language.

These recommendations are included in the committee's preliminary bill draft, PD01/LC58<sup>1</sup>, provided at Appendix B and are found in the following bill sections:

Section 1 - amending 13-1-101. Definitions.

Section 3 - amending 13-1-203. Secretary of state to advise, assist, and train.

Section 5 - amending 13-3-201. Purpose.

Section 6 - amending 13-3-202. Definitions.

Section 16 - amending 13-35-202. Conduct of election officials and election judges.

Section 17 - amending 13-35-208. Deceiving an elector.

## B - Voter Interface Device Availability

### Issue Summary

A key finding of the study was that some election administrators, including some school districts, were unsure about whether they were required to provide a voter interface device at each polling place and during all mail ballot elections.<sup>2</sup>

Also, the committee found that section 13-3-208, MCA, which was enacted by SB 291 (2019), needed further work. The section specifies that at least one voter interface device (i.e., an AutoMark or ExpressVote) must be made available at each polling place. However, as previously mentioned, the section was codified in the part where the definition of "election" is

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<sup>1</sup> When PD01 became a committee bill request, it became LC58. It will receive a bill number when introduced during the session.

<sup>2</sup> See the survey results reported to SAVA at its January 16, 2020, meeting.

only general, special, and primary elections in even-numbered years. Additionally, the section does not address mail ballot elections or coordinate with the accessibility exception for rural polling places or when there is an undue burden.

Regarding the availability of voter interface devices during mail ballot elections, the committee was reminded of a state Human Rights Bureau decision discussed during the previous interim concerning a complaint from two disabled electors, both blind, alleging that the city of Helena discriminated against them by not providing for the use of an AutoMark in the Helena Citizens' Council "redo" election conducted by mail in mid-December 2007.<sup>3</sup>

The Office of Public Instruction and the Montana Association of Clerks and Records and Election Administrators helped conduct surveys of all counties and school districts to learn more about the number of electors voting in elections and accommodations for disabled electors in special district and school elections. Some of the highlights are listed below.

#### Special district elections<sup>4</sup>

- Most counties (35) have 10 or fewer special districts; 7 counties have from 11 and 20 special districts; and 7 counties have 20 or more special districts.
- Most counties (40) have special districts that have between 250 and 500 registered electors.
- Forty-five counties conducted special district elections in the last four years, of which 26 conducted the election by mail and three conducted the elections as polling place elections.
- With respect to training provided to election administrators about how to meet the needs of disabled electors in special district elections, 9 counties responded the training was poor, 17 responded the training was good, 15 responded the training was good, and 2 responded the training was excellent.

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<sup>3</sup> Order Granting and Denying Cross-Motions for Summary Judgment on Liability and Setting a Filing Deadline for Briefs on Certification or a Damages Hearing, *Maffit v. Helena*, No. 1139-2009 & 1140-2009 (Mont. Dep. Of Labor and Industry filed Nov. 3, 2009) <https://leg.mt.gov/content/Committees/Interim/2017-2018/State-Administrationand-Veterans-Affairs/Meetings/Sept-2018/Exhibits/CaseNo1139-2009and1140-2009.pdf>

<sup>4</sup> Forty-nine of Montana's 56 counties responded to the survey.

- With respect to what accommodations for disabled electors the county provided in the last special district election conducted by mail:
  - electronic ballots were provided in four counties;
  - curbside assistance was provided in 17 counties;
  - election judge assistance was provided in 14 counties; and
  - AutoMark machines were provided in six counties.
- Of the counties reporting they offered AutoMark ballot marking devices for disabled electors:
  - one county provided a curtain for privacy;
  - nine counties provided a table-top 2-sided or 3-sided privacy screen around the device;
  - six counties set up the machine so the back of the elector would be to the wall;
  - one county set the machine in an area away from other voters; and
  - no counties reported not providing any accommodation for privacy.
- When asked to identify the most significant challenges related to the county providing accommodations for disabled electors during special district elections:
  - 21 counties reported the financial burden of providing for and programming AutoMark devices; and
  - 18 counties reported they had never had an elector request to use an AutoMark for a mail ballot special district election.

School elections run by school election administrators<sup>5</sup>

- 28 of the responding school districts reported fewer than 500 registered electors, while 27 reported more than 1500 registered electors.
- 26 of the responding school districted conducted three elections in the last 3 years, 22 conducted no elections, 14 conducted two elections, 13 conducted one election, and 13 conducted four or more elections in the last 3 years.
- In 67 percent of the responding school districts, training for election judges was provided only by the county, while 23 percent reported that election judges received training provided by the county and the school district.

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<sup>5</sup> Eighty-eight of the Montana's 306 school districts responded to the survey.

- Most school districts with fewer than 500 registered electors reported that providing an accessible marking device for disabled electors would be a significant challenge, while the larger school districts reported it would be a moderate challenge. Only a few school districts reported it would not be a significant challenge.
- Fifty-seven of the responding school districts (nearly 80 percent) reported that the most significant challenge in providing accessible voting machines for school elections was costs and resources.
- Most school districts reported that providing privacy for disabled electors using accessible ballot marking devices would be a significant challenge.
- Comments submitted indicated many school districts were confused about whether an accessible ballot marking device needed to be provided in school elections conducted by mail.

The complete survey results are available as exhibits for the Jan. 16, 2020, committee meeting minutes log or on the committee's elections topic page accessible from the following link:

<https://leg.mt.gov/committees/interim/2019sava/>

## Policy Questions

Based on the findings summarized above, the committee discussed with stakeholders and interested persons, included representatives for disabled electors and county and school election administrators, the following issues and policy questions:

- Should there be an exception to the requirement that a voter interface device be made available at all polling places in all elections, including school and special purpose district elections?
- If there should be an exception, should the threshold for an exception be:
  - fewer than 200 registered electors in the jurisdiction, which is the current threshold in the rural polling place definition; or
  - fewer than 500 registered electors, which was recommended by some election administrators based on survey results and cost considerations.

With respect to voter interface devices for mail ballot elections, the policy question was what location or locations within a jurisdiction should a voter interface device be made available so that it was accessible to disabled electors.

## Recommendations

Based on discussion with stakeholders, including disabled electors and election administrators, the committee amended PD01/LC58 to eliminate an exception that would have provided that a voter interface device is not required if a polling place is inaccessible and has been granted an exemption. It was noted that a polling place might be physically inaccessible or have a minor issue that causes it to be designated as inaccessible, but that does not mean that an elector with a vision or hearing impairment, for example, would not want to use an accessible voting device to mark the elector's ballot.

With this change, the final recommendations regarding the availability of voter interface devices at polling places are that each election administrator in any election should ensure that:

- at least one voter interface device is available at each polling place; and
- in a mail ballot election, that voter interface devices shall be available at locations appropriate to provide accessibility for disabled electors.

However, a voter interface device should not be required at a polling place serving fewer than 200 registered electors.

See the following bill sections of PD01/LC58 at Appendix B:

Section 7 - amending 13-3-202. Definitions. Renumbered subsection (3) defining the term "rural polling place".

Section 9 - amending 13-3-208. Voter interface device availability. New subsection (2)(c) regarding exceptions.

Section 10 - amending 13-3-212. Exemption if no accessible polling place is reasonably available. The insertion of "school district" in the application of the exceptions.

Section 16 - amending 13-19-205. Written plan for conduct of election -- amendments - approval procedures.

## C - Costs for Voter Interface Devices

### Issue Summary

With respect to costs of voter interface devices, the committee reviewed its findings from last interim. In summary, the committee found:

- A new ExpressVote machine costs about \$3,500.



- An AutoMark (which is no longer in production but may still be purchased from an existing inventory) costs between \$1,500 and \$2,000.
- Maintenance costs for the ExpressVote and AutoMark devices vary depending on individual contracts between a county and the ES&S service provider.
- The cost to program an ExpressVote for an election is about \$500, depending on the complexity of the ballot.

## Policy Questions

Although each county already maintains an inventory of either AutoMark or ExpressVote machines to make them available for primary and general elections, a school district, city, or special purpose district either needs to purchase its own voter interface device for its elections, or pay the county a fee to cover the cost of using and programming one or more the county's devices for their elections.

The committee heard testimony from county and school election administrators that the cost of providing one or more voter interface devices could be a significant cost burden and, in some cases, might double election costs for smaller special purpose districts and schools.

The Office of Public Instruction also expressed concern that to set a budget for an election, a school district would need to know what the cost would be for renting a device from the county and programming a device. Also, counties wanted assurance that a jurisdiction renting the device would pay any replacement or maintenance costs resulting from the jurisdiction's use of the device.<sup>6</sup>

## Recommendations

Regarding election costs associated with voter interface devices, the committee recommends that responsibilities be outlined in statute to address the concerns summarized above and that each political subdivision and school district should remain responsible for its own election costs.

See the following bill section of PD01/LC58 at Appendix B:

Section 4 - amending 13-1-302. Election costs. New language inserted in subsections (4) and (5).

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<sup>6</sup> Costs were discussed at SAVA's Jan. 16, 2020, meeting as well as during its June 16, 2020, meeting.

## D - Alternative Means of Aiding Disabled Electors

### Issue Summary

**Curbside voting.** One of the alternative accommodations for disabled electors is the delivery of a ballot to the elector who comes to the polling location but who is unable to enter the building. This is often referred to as "curbside voting". This accommodation is provided for in section 13-13-118, MCA. The committee found that current statute is somewhat unclear about how the elector alerts election judges that the elector is in need of this service and that, as revealed in the committee's survey, election administrators had different approaches to providing this accommodation.

**Assistance in marking the ballot at the polling place.** A disabled elector entering a polling place may request assistance from election judges in marking a ballot. Section 13-13-119, MCA, provides for this accommodation. The committee found that the statute was unclear with respect to how this assistance was to be requested and provided and about the interaction of this provision with another statute allowing a disabled elector to designate an agent to provide a signature or other assistance during the registration and voting process.

**Designated agent.** Section 13-1-116, MCA, states that whenever a signature is required for registration and voting, an elector may provide a fingerprint or an identifying mark or may designate an agent "for the purpose of providing a signature or identifying mark...and for providing any other assistance to the elector throughout the registration and voting process". The statute further states that the use of an agent is "a reasonable accommodation" under the provisions of the state's human rights law that prohibit illegal discrimination. The committee found that aid to an elector under section 13-13-119, MCA, was intended for those disabled electors who had not already designated an agent and that although some clarification was appropriate, no substantive policy changes were needed.

**Alternatives when there is an inaccessible polling place.** Current law provides that each polling place must be surveyed for physical accessibility. This requirement is related to the federal ADA. Based on the survey results, each polling place is classified as either accessible or inaccessible. Under section 13-3-212, MCA, if an election administrator desires to designate a location that is inaccessible as a polling place, the election administrator must apply to the secretary of state for an exemption. The secretary of state may grant the exemption if all potential polling places have been surveyed and it is determined that:

- an accessible polling place is not available in the county and the county cannot safely or reasonably make a polling place temporarily accessible; or

- the location is a rural polling place (defined as serving fewer than 200 registered electors) and designation of an accessible facility would require excessive travel or impose other hardships for the majority of qualified electors.

The committee found an inconsistent timeline with respect to a disabled elector's right to be assigned to an accessible polling place. Under 13-3-105, MCA, an election administrator is required to publish the location and accessibility designation for each polling place. This notice must be made not more than 10 days or less than 2 days prior to an election. However, under 13-3-213, MCA, if a disabled elector is assigned to an inaccessible polling place and desires to vote at an accessible polling place, the elector must request to be reassigned to the nearest accessible polling place at least 7 days preceding the election.

## Policy Questions

The policy questions discussed by the committee with stakeholders and interested persons included whether and how to improve statutory language and consistency with respect to:

- a disabled elector arranging for curbside voting;
- assistance from election judges at the polling place versus assistance from a designated agent; and
- a disabled elector requesting to be assigned to an accessible polling place when initially assigned to an inaccessible polling place.

## Recommendations

The committee recommends the following:

- Provisions concerning curbside voting should be clarified to specify that an elector may contact the election administrator to arrange for the ballot to be delivered outside the polling place, but that specific methods for making such arrangements should be left to election administrators.
- Provisions related to aid in marking the ballot at the polling place and designated agents should be deconflicted and clarified.
- The deadline for a disabled elector to request to be assigned to an accessible polling place should be reduced to 2 business days before an election to be consistent with the notification deadline and that these deadlines be based on business days to ensure that the deadlines do not fall on a weekend.

With respect to these recommendations, see the following bill sections of PD01/LC58 at Appendix B:

Section 2 - amending 13-1-116. Fingerprint, mark, or agent for disabled electors -- rulemaking.

Section 5 - amending 13-3-105. Designation of polling place.

Section 11 - amending 13-3-213. Alternative means for casting ballot.

Section 12 - amending 13-13--118. Taking ballot to disabled elector.

Section 13 - amending 13-13--119. Aid to disabled elector.

Section 14 - amending 13-13-229. Voting performed before absentee election board or authorized election official.

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# **Appendix A**

House Joint Resolution 3  
Study of accessibility for disabled electors





A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM LEGISLATIVE STUDY ON ACCESSIBILITY FOR ELECTORS WITH DISABILITIES.

WHEREAS, the State Administration and Veterans' Affairs Interim Committee during the 2017-2018 interim learned about accessible voting technology for electors with disabilities and conducted a preliminary review of related state statutes; and

WHEREAS, the preliminary review revealed that Montana statutes could be updated with respect to federal law references and statutory language concerning accessible voting machines and technology; and

WHEREAS, the review also raised significant policy questions about how to improve accessibility for electors with disabilities; and

WHEREAS, an interim study would allow for a systematic review of federal and state laws concerning accessibility for electors with disabilities and a careful examination of related policy issues with the participation of all interested stakeholder groups.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to:

- (1) examine federal and state laws related to accessibility for electors with disabilities;
- (2) solicit and consider comments, concerns, and suggestions from all interested stakeholder groups, including but not limited to the elections staff in the Office of the Secretary of State, the Office of Public Instruction, election administrators, counties, school districts, elderly electors, and electors with disabilities;
- (3) identify and analyze relevant policy and logistical issues and options; and
- (4) if appropriate, develop a committee bill to update or revise related state laws based on the committee's study findings and recommendations.

BE IT FURTHER RESOLVED, that all aspects of the study be concluded prior to September 15, 2020.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 67th Legislature.

- END -



## **Appendix B**

PD01/LC58

Committee bill recommending revisions to  
laws related to accessibility for disabled electors



1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
(Primary Sponsor)

3 BY REQUEST OF THE STATE ADMINISTRATION AND VETERAN AFFAIRS INTERIM COMMITTEE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ELECTION LAWS RELATED TO  
6 ACCESSIBILITY FOR DISABLED ELECTORS AND THE AVAILABILITY OF VOTER INTERFACE DEVICES;  
7 REVISING DEFINITIONS; CLARIFYING PROVISIONS ON DESIGNATED AGENTS; REVISING  
8 REFERENCES TO APPLICABLE FEDERAL LAWS; REVISING ELECTION COST PROVISIONS; REVISING  
9 TIMELINES; APPLYING ACCESSIBILITY PROVISIONS TO ALL ELECTIONS AND REQUIRING VOTER  
10 INTERFACE DEVICES BE AVAILABLE FOR ALL ELECTIONS; PROVIDING AND REVISING EXCEPTIONS;  
11 REVISING ACCESSIBILITY OF POLLING PLACES; REVISING ALTERNATIVE METHODS FOR DISABLED  
12 ELECTORS TO CAST BALLOTS AND RECEIVE ASSISTANCE; REVISING THE PENALTY PROVISION FOR  
13 DECEIVING A DISABLED ELECTOR; AMENDING SECTIONS 13-1-101, 13-1-116, 13-1-203, 13-1-302, 13-3-  
14 105, 13-3-201, 13-3-202, 13-3-206, 13-3-208, 13-3-212, 13-3-213, 13-13-118, 13-13-119, 13-13-229, 13-13-  
15 246, 13-19-205, 13-35-202, AND 13-35-208, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18

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

20 **"13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the  
21 following definitions apply:

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

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

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

27 (4) "Application for voter registration" means a voter registration form prescribed by the secretary of  
28 state that is completed and signed by an elector, is submitted to the election administrator, and contains voter

1 registration information subject to verification as provided by law.

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

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

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

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

14 (8) "Candidate" means:

15 (a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or  
16 appointment as a candidate for public office as required by law;

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

22 (i) solicitation is made;

23 (ii) contribution is received and retained; or

24 (iii) expenditure is made; or

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

26 (9) (a) "Contribution" means:

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

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

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

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

(b) The term does not mean services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual.

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

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

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

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

(a) impaired vision;

(b) impaired hearing;

(c) impaired mobility. Individuals having impaired mobility include those who require use of a wheelchair and those who are ambulatory but are physically impaired because of age, disability, or disease.

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

~~(12)~~(13) "Election" means a general, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

~~(13)~~(14) (a) "Election administrator" means, except as provided in subsection ~~(13)(b)~~ (14)(b), the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections not administered by the county, the term means the school district clerk.

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

~~(44)(15)~~ (a) "Election communication" means the following forms of communication to support or oppose a candidate or ballot issue:

- (i) a paid advertisement broadcast over radio, television, cable, or satellite;
- (ii) paid placement of content on the internet or other electronic communication network;
- (iii) a paid advertisement published in a newspaper or periodical or on a billboard;
- (iv) a mailing; or
- (v) printed materials.

(b) The term does not mean:

- (i) an activity or communication for the purpose of encouraging individuals to register to vote or to vote, if that activity or communication does not mention or depict a clearly identified candidate or ballot issue;
- (ii) a communication that does not support or oppose a candidate or ballot issue;
- (iii) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation;
- (iv) a communication by any membership organization or corporation to its members, stockholders, or employees; or
- (v) a communication that the commissioner determines by rule is not an election communication.

~~(45)(16)~~ "Election judge" means a person who is appointed pursuant to Title 13, chapter 4, part 1, to perform duties as specified by law.

~~(46)(17)~~ (a) "Electioneering communication" means a paid communication that is publicly distributed by radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the district voting on the candidate or ballot issue, and that:

- (i) refers to one or more clearly identified candidates in that election;

(ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that election; or

(iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.

(b) The term does not mean:

(i) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation unless the facilities are owned or controlled by a candidate or political committee;

(ii) a communication by any membership organization or corporation to its members, stockholders, or employees;

(iii) a commercial communication that depicts a candidate's name, image, likeness, or voice only in the candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy;

(iv) a communication that constitutes a candidate debate or forum or that solely promotes a candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or

(v) a communication that the commissioner determines by rule is not an electioneering communication.

~~(47)(18)~~ "Elector" means an individual qualified to vote under state law.

~~(48)(19)~~ (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value:

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

(ii) used or intended for use in making independent expenditures or in producing electioneering communications.

(b) The term does not mean:

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

(ii) payments by a candidate for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

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

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

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

~~(19)(20)~~ "Federal election" means an election in even-numbered years in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

~~(20)(21)~~ "General election" means an election that is held for offices that first appear on a primary election ballot, unless the primary is canceled as authorized by law, and that is held on a date specified in 13-1-104.

~~(24)(22)~~ "Inactive elector" means an individual who failed to respond to confirmation notices and whose name was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

~~(22)(23)~~ "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

~~(23)(24)~~ (a) "Incidental committee" means a political committee that is not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues but that may incidentally become a political committee by receiving a contribution or making an expenditure.

(b) For the purpose of this subsection ~~(23)~~ (24), the primary purpose is determined by the commissioner by rule and includes criteria such as the allocation of budget, staff, or members' activity or the statement of purpose or goal of the person or individuals that form the committee.

~~(24)(25)~~ "Independent committee" means a political committee organized for the primary purpose of receiving contributions and making expenditures that is not controlled either directly or indirectly by a candidate and that does not coordinate with a candidate in conjunction with the making of expenditures except pursuant to the limits set forth in 13-37-216(1).

~~(25)(26)~~ "Independent expenditure" means an expenditure for an election communication to support or oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue committee.

~~(26)(27)~~ "Individual" means a human being.

~~(27)(28)~~ "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

~~(28)(29)~~ "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by



1 mailing ballots to all active electors.

2 ~~(29)~~(30) "Person" means an individual, corporation, association, firm, partnership, cooperative,  
3 committee, including a political committee, club, union, or other organization or group of individuals or a  
4 candidate as defined in subsection (8).

5 ~~(30)~~(31) "Place of deposit" means a location designated by the election administrator pursuant to 13-  
6 19-307 for a mail ballot election conducted under Title 13, chapter 19.

7 ~~(34)~~(32) (a) "Political committee" means a combination of two or more individuals or a person other  
8 than an individual who receives a contribution or makes an expenditure:

9 (i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a  
10 petition for nomination;

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

12 (iii) to prepare or disseminate an election communication, an electioneering communication, or an  
13 independent expenditure.

14 (b) Political committees include ballot issue committees, incidental committees, independent  
15 committees, and political party committees.

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

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

20 ~~(32)~~(33) "Political party committee" means a political committee formed by a political party organization  
21 and includes all county and city central committees.

22 ~~(33)~~(34) "Political party organization" means a political organization that:

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

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

26 ~~(34)~~(35) "Political subdivision" means a county, consolidated municipal-county government,  
27 municipality, special purpose district, or any other unit of government, except school districts, having authority  
28 to hold an election.

~~(35)~~(36) "Polling place election" means an election primarily conducted at polling places rather than by mail under the provisions of Title 13, chapter 19.

~~(36)~~(37) "Primary" or "primary election" means an election held on a date specified in 13-1-107 to nominate candidates for offices filled at a general election.

~~(37)~~(38) "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not been verified as provided by law.

~~(38)~~(39) "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose identity or eligibility has not yet been verified as provided by law.

~~(39)~~(40) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

~~(40)~~(41) "Random-sample audit" means an audit involving a manual count of ballots from designated races and ballot issues in precincts selected through a random process as provided in 13-17-503.

~~(41)~~(42) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

~~(42)~~(43) "Regular school election" means the school trustee election provided for in 20-20-105(1).

~~(43)~~(44) "School election" has the meaning provided in 20-1-101.

~~(44)~~(45) "School election filing officer" means the filing officer with whom the declarations for nomination for school district office were filed or with whom the school ballot issue was filed.

~~(45)~~(46) "School recount board" means the board authorized pursuant to 20-20-420 to perform recount duties in school elections.

~~(46)~~(47) "Signature envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:

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

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

~~(47)~~(48) "Special election" means an election held on a day other than the day specified for a primary election, general election, or regular school election.

~~(48)~~(49) "Special purpose district" means an area with special boundaries created as authorized by

1 law for a specialized and limited purpose.

2 ~~(49)(50)~~ "Statewide voter registration list" means the voter registration list established and maintained  
3 pursuant to 13-2-107 and 13-2-108.

4 ~~(50)(51)~~ "Support or oppose", including any variations of the term, means:

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

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

13 ~~(51)(52)~~ "Valid vote" means a vote that has been counted as valid or determined to be valid as  
14 provided in 13-15-206.

15 ~~(52)(53)~~ "Voted ballot" means a ballot that is:

16 (a) deposited in the ballot box at a polling place;

17 (b) received at the election administrator's office; or

18 (c) returned to a place of deposit.

19 ~~(53)(54)~~ "Voter interface device" means a voting system that:

20 (a) is accessible to electors with disabilities;

21 (b) communicates voting instructions and ballot information to a voter;

22 (c) allows the voter to select and vote for candidates and issues and to verify and change selections;

23 and

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

26 ~~(54)(55)~~ "Voting system" or "system" means any machine, device, technology, or equipment used to  
27 automatically record, tabulate, or process the vote of an elector cast on a paper ballot."

28

1           **Section 2.** Section 13-1-116, MCA, is amended to read:

2           **"13-1-116. Fingerprint, mark, or agent for disabled electors -- rulemaking.** (1) Except as  
3 otherwise specified by law, the provisions of this section apply.

4           (2) Whenever a signature is required by an elector under a provision of this title and the elector is  
5 unable because of a disability to provide a signature, the elector may provide a fingerprint, subject to  
6 subsection (6), or an identifying mark or may request that an agent, election administrator, or election judge  
7 sign for the elector as provided in this section.

8           (3) If an elector is unable to provide a fingerprint or an identifying mark and the elector has not  
9 established an agent pursuant to subsection (4), the election administrator or an election judge may sign for the  
10 elector after reviewing and verifying the elector's identification.

11           (4) (a) An elector who is unable to provide a signature may apply to the election administrator to have  
12 another person designated as an agent for purposes of providing a signature or identifying mark required  
13 pursuant to this title and for providing any other assistance to the elector throughout the registration and voting  
14 process. The individual designated as an elector's agent may not be the elector's employer, an agent of the  
15 elector's employer, or an officer or agent of the elector's union. The use of an agent is a reasonable  
16 accommodation under the provisions of 49-2-101(19)(b).

17           (b) An application for designation of an agent by an elector under this section must be made on a  
18 form prescribed by the secretary of state. The secretary of state shall by rule establish the criteria that must be  
19 met and the process that must be followed in order for a person to become a designated agent for a disabled  
20 elector pursuant to this subsection (4).

21           (5) If an election administrator or election judge signs or marks a document for an elector pursuant to  
22 this section, the election administrator or election judge shall initial the signature or mark.

23           (6) A disabled elector may not be required to provide a fingerprint."  
24

25           **Section 3.** Section 13-1-203, MCA, is amended to read:

26           **"13-1-203. Secretary of state to advise, assist, and train.** (1) The secretary of state shall advise  
27 and assist election administrators, including administrators of school elections under Title 20, chapter 20, with  
28 regard to:

1 (a) the application, operation, and interpretation of Title 13, except for chapter 35, 36, or 37;

2 (b) the implementation and operation of the National Voter Registration Act of 1993, Public Law 103-  
3 31, the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq., the Voting Rights Act of 1965, 52  
4 U.S.C 10101, et seq., the Voting Accessibility for the Elderly and Handicapped Act of 1984, 52 U.S.C. 20101, et  
5 seq., and the Help America Vote Act of 2002, Public Law 107-252; and

6 (c) the procedures adopted pursuant to 13-17-211.

7 (2) The secretary of state shall prepare and distribute training materials for election judges to be  
8 trained pursuant to 13-4-203. Sufficient copies of the materials to supply all election judges in the county and to  
9 provide a small extra supply must be sent to each election administrator.

10 (3) (a) The secretary of state shall hold at least one training session every 2 years to instruct election  
11 administrators and their staffs on how to conduct and administer primary and general elections. The training  
12 must also include instruction on the use of the statewide voter registration system. The training may be held in  
13 various locations around the state. The training must also be offered online and through teleconferencing.

14 (b) Costs of the biennial training, including the materials, must be paid by the secretary of state.

15 (4) In addition to completing the biennial training under subsection (3), each election administrator  
16 shall complete 6 hours of election-related continuing education each year that is approved by the secretary of  
17 state. Costs for the continuing education must be paid by the counties.

18 (5) The secretary of state shall:

19 (a) certify for election administration purposes each election administrator who attends the biennial  
20 training and completes the required continuing education; and

21 (b) provide a certificate of completion to election staff who attend the biennial election training  
22 described in subsection (3).

23 (6) An election administrator may require that election staff complete the continuing education  
24 described in subsection (4) and provide a certificate of completion to staff who complete it."  
25

26 **Section 4.** Section 13-1-302, MCA, is amended to read:

27 **"13-1-302. Election costs.** (1) Unless specifically provided otherwise, all costs of the regularly  
28 scheduled primary and general elections shall be paid by the counties and other political subdivisions for which

1 the elections are held. Each political subdivision shall bear its proportionate share of the costs as determined by  
2 the county governing body.

3 (2) A political subdivision holding an annual election with a regularly scheduled school election shall  
4 bear its proportionate share of the costs as determined by the county election administrator and the school  
5 district election administrator.

6 (3) The political subdivision for which a special election is held shall bear all costs of the election, or  
7 its proportionate share as determined by the county governing body if held in conjunction with any other  
8 election.

9 (4) Costs of elections may not include the services of the election administrator or capital  
10 expenditures. A county may not charge a political subdivision or school district for the purchase or routine  
11 maintenance of a voter interface device. However, the county may charge for the cost of programming a device  
12 for the election and for replacement, repairs, or maintenance required due to the political subdivision's or school  
13 district's use of the device.

14 (5) The county governing body shall set a schedule of fees for services provided to school districts by  
15 the election administrator. Before finalizing a contract to conduct a school election pursuant to a request under  
16 20-20-417, the county shall provide the school district with an estimate of costs for each county voter interface  
17 device to be used for the election. When a school district is conducting its own election, the school district shall  
18 request from the county an estimate of the cost for using a county voter interface device. The county shall  
19 provide the estimate within 30 days of receiving the school district's request.

20 (6) Election costs shall be paid from county funds, and any shares paid by other political subdivisions  
21 shall be credited to the fund from which the costs were paid.

22 (7) The proportionate costs referred to in subsection (1) of this section shall be only those additional  
23 costs incurred as a result of the political subdivision holding its election in conjunction with the primary or  
24 general election."  
25

26 **Section 5.** Section 13-3-105, MCA, is amended to read:

27 **"13-3-105. Designation of polling place.** (1) The county governing body shall designate the polling  
28 place for each precinct no later than 30 days before a primary election. The same polling place must be used

1 for both the primary and general election if at all possible. Changes may be made by the governing body in  
2 designated polling places up to 10 days before an election if a designated polling place is not available. Polling  
3 places may be located outside the boundaries of a precinct.

4 (2) Not more than 10 days or less than 2 business days before an election, the election administrator  
5 shall publish in a newspaper of general circulation in the county a statement of the locations of the precinct  
6 polling places. The election administrator shall include in the published notice the accessibility designation for  
7 each polling place according to the classification in 13-3-207. Notice may also be given as provided in 2-3-105  
8 through 2-3-107.

9 (3) An election administrator may make changes in the location of a polling place if an emergency  
10 occurs 10 days or less before an election. Notice must be posted at both the old and new polling places, and  
11 other notice may be given by whatever means available.

12 (4) (a) Any building may be used as a polling place. The building must be furnished at no charge as  
13 long as no structural changes are required in order to use the building as a polling place.

14 (b) If the building regularly used as a designated polling place is not available for an election because  
15 of an unforeseen or temporary circumstance and no other suitable building is available free of charge, the  
16 county may pay for use of a building as a temporary polling place for that election provided that the building  
17 meets the polling place standards under this chapter. If a county pays for the use of a building as a temporary  
18 polling place because of an unforeseen or temporary circumstance, the county shall provide with its regular  
19 report on election costs to the secretary of state any costs incurred for use of a building pursuant to this  
20 subsection (4)(b).

21 (5) The exterior of the voting systems, or of the booths in which they are placed, and every part of the  
22 polling place must be in plain view of the election judges."  
23

24 **Section 6.** Section 13-3-201, MCA, is amended to read:

25 **"13-3-201. Purpose.** The purpose of this part is to promote the fundamental right to vote by improving  
26 access to polling places and accessible voting technology for individuals with disabilities ~~and elderly individuals~~.  
27 The provisions of this part acknowledge that, in certain cases, it may not be possible to locate a polling place  
28 that meets the standards for accessibility, either because an accessible polling place does not exist or, if it

1 does, its location in the precinct would require undue travel for a majority of the electors. In those cases when  
2 an accessible polling place is not available, this part provides voters with disabilities ~~and elderly voters~~ an  
3 alternative means for casting a ballot on election day."

4  
5 **Section 7.** Section 13-3-202, MCA, is amended to read:

6 **"13-3-202. Definitions.** As used in this part, unless the context indicates otherwise, the following  
7 definitions apply:

8 (1) "Accessible" means accessible to individuals with disabilities ~~and elderly individuals~~ for purposes  
9 of voting as determined in accordance with standards established by the secretary of state under 13-3-205.

10 ~~(2) "Disability" means a temporary or permanent physical impairment such as:~~

11 ~~(a) impaired vision;~~

12 ~~(b) impaired hearing; or~~

13 ~~(c) impaired mobility. Individuals having impaired mobility include those who require use of a~~  
14 ~~wheelchair and those who are ambulatory but are physically impaired because of age, disability, or disease.~~

15 ~~(3) "Elderly" means 65 years of age or older.~~

16 ~~(4) "Election" means a general, special, or primary election held in an even-numbered year.~~

17 ~~(5)(2) "Inaccessible" means not accessible under standards adopted pursuant to 13-3-205.~~

18 ~~(6)(3) "Rural polling place" means a location that is expected to serve less than 200 registered~~  
19 ~~electors."~~

20  
21 **Section 8.** Section 13-3-206, MCA, is amended to read:

22 **"13-3-206. Survey of polling places to determine accessibility -- procedures.** (1) The election  
23 administrator ~~in each county~~ shall conduct an onsite survey of each polling place used in an election to  
24 determine whether it meets the standards for accessibility established under 13-3-205.

25 (2) Each election administrator shall conduct the survey in a manner that represents the path of travel  
26 that an elector would reasonably be expected to take in order to reach the polling place on election day.

27 (3) A polling place that has been surveyed pursuant to this section need not be surveyed again  
28 unless:



1 (a) the conditions of accessibility change; or

2 (b) the initial survey results are inaccurate."

3  
4 **Section 9.** Section 13-3-208, MCA, is amended to read:

5 **"13-3-208. ~~Accessible voting technology~~Voter interface device availability.** (1) The intent of this  
6 section is to:

7 (a) ensure that disabled electors have access to voting technology that allows the electors to cast  
8 ballots independently, privately, and securely;

9 (b) provide that votes cast using accessible voting technology are collected and counted in a manner  
10 that preserves secrecy; and

11 (c) comply with applicable federal and state law concerning accessibility for disabled electors.

12 (2) ~~(a) County~~Except as provided in subsection (2)(c):

13 (i) the election administrators-administrator shall ensure that at least one voter interface device is  
14 available at each polling place-; and

15 (ii) in a mail ballot election, the election administrator shall ensure that voter interface devices are  
16 available at locations appropriate to provide accessibility for disabled electors.

17 (b) Each voter interface device must be set up and located within the polling place-in a manner that  
18 allows any elector using the device to cast a ballot independently and privately, including the provision of  
19 accommodations to provide a physical barrier or other method to ensure that the screen of the device is  
20 blocked from the view of ~~other voters in the polling place~~ others.

21 (c) A voter interface device is not required:

22 (i) if there are fewer than 200 registered electors eligible to vote in the election; or

23 (ii) for an irrigation district election.

24 (3) Subject to subsection (4):

25 (a) votes on a ballot produced by a voter interface device may be counted manually or using an  
26 automatic tabulating system;

27 (b) ballots counted manually must be counted in accordance with 13-15-206; and

28 (c) if ballots produced by a voter interface device cannot be processed through an automatic tabulator

1 used in the county and the election administrator does not provide for the ballots to be counted manually, the  
2 election administrator may provide for the votes on each ballot produced by the device to be transcribed to the  
3 standard ballot form used in the precinct so that the ballots may be processed through an automatic tabulator  
4 used in the county.

5 (4) (a) If the voter interface device produces a ballot form that is distinguishable from the standard  
6 ballot form used in the precinct, the county election administrator shall take measures to protect the secrecy of  
7 the votes cast by an elector using the device.

8 (b) Measures to ensure secrecy may provide that votes on a ballot produced by the voter interface  
9 device are transcribed to the standard ballot form used in the precinct so that the ballots are indistinguishable  
10 from and counted with the other ballots.

11 (c) Measures must also include encouraging a portion of the nondisabled electors to use the device to  
12 cast their ballot.

13 (5) Any transcription of votes conducted pursuant to this section must be conducted in secret by at  
14 least three election officials in substantially the same manner as provided for in 13-13-246."

15  
16 **Section 10.** Section 13-3-212, MCA, is amended to read:

17 **"13-3-212. Exemption if no accessible polling place is reasonably available.** (1) If an election  
18 administrator desires to designate as a polling place a location that is inaccessible, the election administrator  
19 shall make a request in writing to the secretary of state asking that an inaccessible polling place be exempt  
20 from the standards for accessibility.

21 (2) The secretary of state may grant an exemption pursuant to rules adopted under 13-3-205 if all  
22 potential polling places have been surveyed and it is determined that:

23 (a) an accessible polling place is not available and the county or school district cannot safely or  
24 reasonably make a polling place temporarily accessible in the area involved; or

25 (b) the location is a rural polling place and designation of an accessible facility as a polling place will  
26 require excessive travel or impose other hardships for the majority of qualified electors in the precinct or school  
27 district."

1           **Section 11.** Section 13-3-213, MCA, is amended to read:

2           **"13-3-213. Alternative means for casting ballot.** (1) The election administrator shall provide  
3 individuals with disabilities ~~and elderly individuals~~ an alternative means for casting a ballot on election day if  
4 they are assigned to an inaccessible polling place. These alternative means for casting a ballot include:

5           (a) delivery of a ballot to the elector as provided in 13-13-118;

6           (b) voting by absentee ballot in person at a designated voting station at the county election  
7 administrator's office; and

8           (c) prearranged assignment to an accessible polling place within the county.

9           (2) An elector with a disability ~~or an elderly elector~~ assigned to an inaccessible polling place who  
10 desires to vote at an accessible polling place:

11           (a) shall request assignment to an accessible polling place by notifying the election administrator in  
12 writing at least ~~7-2~~ business days preceding the election;

13           (b) must be assigned to the nearest accessible polling place for the purpose of voting in the election;

14           (c) shall sign the elector's name on a special addendum to the official precinct register as required in  
15 subsection (4); and

16           (d) must receive the same ballot to which the elector is otherwise entitled.

17           (3) For the purpose of subsection (2), the ballot cast at an alternative polling place must be processed  
18 and counted in the same manner as an absentee ballot.

19           (4) The name of an elector who has been assigned to vote in a precinct other than the precinct in  
20 which the person is registered, as provided in subsection (2), must be printed on a special addendum to the  
21 precinct register in a form prescribed by the secretary of state."

22  
23           **Section 12.** Section 13-13-118, MCA, is amended to read:

24           **"13-13-118. Taking ballot to disabled elector.** (1) ~~The chief election judge may appoint two election~~  
25 ~~judges who represent different political parties to take a ballot to an~~ An elector able to come to the premises  
26 where a polling place is located but unable to enter the polling place because of a disability may contact the  
27 election administrator prior to coming to the premises and request that a ballot be delivered to the elector  
28 outside the building where the polling place is located. The chief election judge shall appoint two election

~~judges who, if possible, represent different political parties to take the ballot to the elector. If election judges who represent different political parties are not available, the chief election judge shall appoint two election judges to assist the elector.~~ The elector may request assistance in marking the ballot as provided in 13-13-119.

(2) The judges shall have the elector sign an oath form stating that the elector is entitled to vote and shall write in the precinct register by the elector's name "voted on the premises by oath" and sign their names.

(3) When the ballot or ballots are marked ~~and folded~~, the judges shall place each ballot in a secrecy sleeve and immediately take ~~them the ballot~~ into the polling place and give ~~them the ballot~~ to the judge at the ballot box. Any challenge to the elector's right to vote must be resolved as provided in Title 13, chapter 13, part 3."

**Section 13.** Section 13-13-119, MCA, is amended to read:

**"13-13-119. Aid to disabled elector.** (1) ~~When a disabled elector enters a polling place, an election judge shall ask the elector if the elector wants assistance.~~

~~(2) An election judge or an individual chosen by the disabled elector as specified in subsection (5) may aid an elector who, because of physical disability or inability to read or write, needs~~ A disabled elector may request assistance in marking the elector's ballot.

~~(3)(2)~~ The elector has not designated an agent:

(a) the election judges shall require a declaration of disability by the elector. The declaration must be made under oath, which must be administered by an election judge.

~~(4)~~ The elector may be assisted by two judges who represent different parties. If election judges who represent different political parties are not available, the chief election judge shall appoint two election judges to assist the elector. The judges shall certify on the precinct register opposite the disabled elector's name that the ballot was marked with their assistance. The judges may not reveal information regarding the ballot.

~~(5)(b)~~ ~~Instead of assistance as provided in subsection (4), the elector may request the assistance of any individual the elector designates to the judges~~ designate an agent, as provided in 13-1-116, to aid the elector in the marking of the elector's ballot. An individual designated to assist the elector shall sign the individual's name on the precinct register beside the name of the elector assisted. ~~The individual chosen may not be the elector's employer, an agent of the elector's employer, or an officer or agent of the elector's union.~~

1           ~~(6)~~(3) No ~~elector-one~~ other than the elector who requires assistance may divulge to anyone within the  
2     polling place the name of any candidate for whom the elector intends to vote or may ask or receive the  
3     assistance of any individual within the polling place in the preparation of the elector's ballot."  
4

5           **Section 14.** Section 13-13-229, MCA, is amended to read:

6           **"13-13-229. Voting performed before absentee election board or authorized election official. (1)**

7     Pursuant to 13-13-212(2), the elector may request that an absentee election board or an authorized election  
8     official personally deliver a ballot to the elector.

9           (2) The manner and procedure of voting by use of an absentee ballot under this section must be the  
10    same as provided in 13-13-201, except that the elector shall hand the marked ballot in the sealed signature  
11    envelope to the absentee election board or authorized election official, and the board or official shall deliver the  
12    sealed signature envelope to the election administrator or to the election judges of the precinct in which the  
13    elector is registered.

14          (3) An absentee ballot cast by a qualified elector pursuant to this section may not be rejected by the  
15    election administrator if the ballot was in the possession of the board or an authorized election official before  
16    the time designated for the closing of the polls.

17          (4) An elector who needs assistance in marking the elector's ballot because of ~~physical incapacity a~~  
18    ~~disability~~ or inability to read or write may receive assistance from the elector's designated agent, as provided for  
19    in 13-1-116, or from the absentee election board or authorized election official appointed to personally deliver  
20    the ballot. Any assistance given an elector pursuant to this section must be provided in substantially the same  
21    manner as required in 13-13-119."  
22

23          **Section 15.** Section 13-13-246, MCA, is amended to read:

24          **"13-13-246. Electronic ballots for disabled persons -- procedures -- definition -- rulemaking. (1)**

25    (a) Upon a written or an in-person request from a legally registered or provisionally registered elector with a  
26    disability, an election administrator shall provide the elector with an electronic ballot.

27    (b) The request may be made by electronic mail.

28    (2) (a) After receiving a request and verifying that the elector is legally registered or provisionally

1 registered, the election administrator shall provide to the elector an electronic ballot, instructions for completing  
2 the ballot, a secrecy envelope or page, and a transmittal cover sheet that includes an elector affirmation. If the  
3 elector is provisionally registered, the election administrator shall include instructions about what information  
4 the elector shall include with the voted ballot pursuant to 13-13-201(4).

5 (b) The election administrator shall maintain an official log of all ballots provided pursuant to this  
6 section.

7 (c) After voting the ballot, the elector shall print the ballot, place it in the secrecy envelope or under  
8 the secrecy page, sign the affirmation, including by fingerprint, mark, or agent pursuant to 13-1-116, or provide  
9 a driver's license number or the last four digits of the elector's social security number. If the elector is  
10 provisionally registered, the elector shall also return sufficient voter identification and eligibility information to  
11 allow the election administrator to determine pursuant to rules adopted under 13-2-109 that the elector is legally  
12 registered. The elector shall return the voted ballot and affirmation in a manner that ensures both are received  
13 by 8 p.m. on election day.

14 (d) An elector may return the voted ballot and affirmation in the regular mail provided they are  
15 received at the office of the election administrator by 8 p.m. on election day. A valid ballot must be counted if it  
16 is received at the office of the election administrator by 8 p.m. on election day.

17 (3) After receiving a ballot and secrecy envelope and if the validity of the ballot is confirmed pursuant  
18 to 13-13-241, the election administrator shall log the receipt of the ballot and process it as required in Title 13,  
19 chapter 13. If the ballot is rejected, the election administrator shall notify the elector pursuant to 13-13-245.

20 (4) (a) When performing the procedures prescribed in 13-13-241(7) to open secrecy envelopes, an  
21 election official shall place in a secure absentee ballot envelope any ballot returned pursuant to this section that  
22 requires transcription. No sooner than the time provided in 13-13-241(7), the election administrator shall  
23 transcribe the returned ballots using the procedure prescribed below and in accordance with any rules  
24 established by the secretary of state to ensure the security of the ballots and the secrecy of the votes.

25 (b) No fewer than three election officials shall participate in the transcription process to transfer the  
26 elector's vote from the received ballot to the standard ballot used in the precinct.

27 (c) A number must be written on the secrecy envelope or page that contains the original voted  
28 electronic ballot, and the same number must be placed on the transcribed ballot and in the official log.

(d) The election officials who transcribed the original voted electronic ballot shall sign the log next to the number.

(e) No one participating in the ballot transmission process may reveal any information about the ballot.

(5) The secretary of state shall adopt rules to implement and administer this section, including rules to ensure the security of the ballots and the secrecy of the votes.

~~(6) For the purposes of this section, "disability" has the meaning provided in 13-3-202."~~

**Section 16.** Section 13-19-205, MCA, is amended to read:

**"13-19-205. Written plan for conduct of election -- amendments -- approval procedures.** (1) The election administrator shall prepare a written plan for the conduct of each election to be conducted by mail and shall submit the plan to the secretary of state in a manner that ensures that it is received at least 60 days prior to the date set for the election. There must be a separate plan for each type of election held even if held on the same day.

(2) The written plan must include:

(a) a timetable for the election;

(b) a plan for providing voter interface devices as required in 13-3-208; and

~~(b)(c)~~ sample written instructions that will be sent to the electors. The instructions must include but are not limited to:

(i) information on the estimated amount of postage required to return the ballot;

(ii) (A) the location of the places of deposit and the days and times when ballots may be returned to the places of deposit, if the information is available; or

(B) if the information on location and hours of places of deposit is not available, a section that will allow the information to be added before the instructions are mailed to electors; and

(iii) any applicable instructions specified under 13-13-214(4).

(3) The plan may be amended by the election administrator at any time prior to the 35th day before election day by notifying the secretary of state in writing of any changes.

(4) Within 5 days of receiving the plan and as soon as possible after receiving any amendments, the

1 secretary of state shall approve, disapprove, or recommend changes to the plan or amendments.

2 (5) When the written plan and any amendments have been approved, the election administrator shall  
3 proceed to conduct the election according to the approved plan unless the election is canceled for any reason  
4 provided by law."

5  
6 **Section 17.** Section 13-35-202, MCA, is amended to read:

7 **"13-35-202. Conduct of election officials and election judges.** An election officer or judge of an  
8 election may not:

- 9 (1) deposit in a ballot box a paper ballot that is not marked as official;  
10 (2) examine an elector's ballot before putting the ballot in the ballot box;  
11 (3) look at any mark made by the elector upon the ballot;  
12 (4) make or place any mark or device on any ballot with the intent to ascertain how the elector has  
13 voted;  
14 (5) allow any individual other than the elector to be present at the marking of the ballot except as  
15 provided in 13-1-116, 13-13-118, and 13-13-119, and 13-13-229; or  
16 (6) make a false statement in a certificate regarding affirmation."

17  
18 **Section 18.** Section 13-35-208, MCA, is amended to read:

19 **"13-35-208. ~~Deceiving an~~ Deception of elector.** A person who assists a disabled elector pursuant to  
20 13-1-116, 13-13-118, 13-13-119, or 13-13-229, and who deceives an the elector voting under 13-13-118 or 13-  
21 13-119 is guilty of a misdemeanor."

22  
23 NEW SECTION. **Section 19. Effective date.** [This act] is effective January 1, 2022.

24  
25 - END -





