

# **HJR 46: Study of Election Laws**

## **Absentee Voting and Vacancies on Ballot**

Prepared for the State Administration and Veterans' Affairs Interim Committee  
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### Background

During work group meetings on the House Joint Resolution 46 study, participants discussed how to handle a situation in which a candidate dies after ballots have been printed and mailed to absentee voters. With an increasing number of Montanans permanently voting on an absentee basis, the question arose of how or whether absentee votes cast for a deceased candidate should be counted.

The State Administration and Veterans' Affairs Interim Committee asked for further information on how other states handle the matter.

### In Other States

A random sampling of state laws and offices of secretaries of state showed that this situation is handled in different ways by different states but typically in one of these methods:

- The situation is not specifically addressed in law, and ballots cast for a deceased candidate are either:
  - ▶ not counted; or
  - ▶ counted for the deceased candidate.
- Absentee ballots cast in advance of a candidate's death are counted for the candidate named to replace the deceased candidate on the ballot.

### In Montana

Montana law partially addresses this situation in two different statutes:

- 13-13-204, MCA, allows a person who has voted absentee to vote a different ballot in person if the absentee ballot contains printing errors or omissions. However, this section specifically states that the death of a candidate after ballots are printed does not constitute an error or omission in the ballot. Thus an absentee ballot cast in advance of a candidate's death could not be re-voted.
- 13-15-106, MCA, specifically addresses how absentee ballots cast for a candidate who was on a joint ticket (governor/lieutenant governor) must be handled. If a candidate for governor dies less than 85 days before a general election, the candidate for lieutenant governor automatically advances to the head of the ticket (13-10-328, MCA). Under 13-15-106, an absentee vote for the deceased gubernatorial candidate must be counted as a vote for the lieutenant governor and the candidate chosen to replace the lieutenant governor on the ticket. If the lieutenant governor dies, the vote for that candidate must be counted as a vote for the candidate chosen to replace the deceased candidate.

Both provisions were passed in 1997 as part of House Bill 182, following the 1996 death of gubernatorial candidate Chet Blaylock after the general-election ballots had been printed.

## Options for Montana

While Montana law clearly states how absentee ballots for a joint candidacy are to be handled, it does not specifically address the handling of ballots that may be voted before the death of a candidate for another office, such as a legislative or judicial office.

If SAVA would like to address the handling of absentee ballots in this area, it could do so in at least two different ways:

- Amend 13-13-204, MCA, to delete the provision that the death of a candidate is not an error or omission and to specifically allow absentee voters to request a replacement ballot if the ballot has changed because of the death of a candidate since the time they cast their ballots.
  
- Add additional provisions in Title 13, Chapter 15 — which governs the counting of ballots — to specify how to handle absentee ballots that have been voted prior to the death of a candidate not running on a joint ticket. The provisions could either:
  - ▶ require that the voted ballots be counted for the replacement candidate;
  - ▶ specify that the ballots be counted for the deceased candidate; or
  - ▶ specify that the ballots would not be counted.