

HOUSE BILL 737

Introduced by Elliott

2/09	Introduced
2/09	Referred to State Administration
2/11	First Reading
2/11	Fiscal Note Requested
2/15	Fiscal Note Received
2/19	Hearing
2/20	Fiscal Note Printed
3/05	Tabled in Committee

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2 INTRODUCED BY House BILL NO. 737  
3 Critt

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ELECTORS WITH  
5 A "NONE OF THE ABOVE CANDIDATES" BALLOT CHOICE IN FEDERAL,  
6 STATE, COUNTY, AND MUNICIPAL PARTISAN AND NONPARTISAN  
7 PRIMARY AND GENERAL ELECTIONS; AMENDING SECTIONS 13-10-209,  
8 13-10-403, 13-12-203, 13-12-208, 13-12-209, 13-12-212,  
9 13-13-117, 13-14-115, 13-14-116, 13-15-101, 13-15-202,  
10 13-15-404, 13-15-501, AND 13-15-506, MCA; AND PROVIDING AN  
11 IMMEDIATE EFFECTIVE DATE."

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
14 NEW SECTION. Section 1. Short title. [Sections 1  
15 through 3] may be cited as "The "None of the Above  
16 Candidates" Act".

17 NEW SECTION. Section 2. "None of the above candidates"  
18 ballot choice for primary and general elections -- purpose  
19 and intent. The purpose of a "none of the above candidates"  
20 choice in elections is to provide voters with a choice to  
21 vote for none of the candidates running for a municipal,  
22 county, statewide, or federal public office and to require  
23 that votes for "none of the above candidates" be reported in  
24 the official canvass.

25 NEW SECTION. Section 3. General provisions. (1) The

1 provisions of [sections 1 through 3] apply only to elections  
2 for municipal, county, statewide, and federal offices.

3 (2) Ballots for municipal, county, statewide, and  
4 federal elections shall include a "none of the above  
5 candidates" choice for each office listed on the ballot as  
6 provided in 13-10-209, 13-12-203, 13-12-212, and 13-14-115.

7 (3) Votes for the category of "none of the above  
8 candidates" must be counted and reported in the official  
9 canvass in a manner consistent with the provisions of  
10 chapter 15.

11 **Section 4.** Section 13-10-209, MCA, is amended to read:

12 "13-10-209. Arrangement of ballots. (1) (a) Ballots for  
13 a primary election shall be arranged and printed in the same  
14 manner and number as provided in chapter 12 for general  
15 election ballots and shall include a "none of the above  
16 candidates" ballot choice, except there shall be separate  
17 ballots for each political party entitled to participate.  
18 The name of the political party shall be printed at the top  
19 of the separate ballot for that party and need not be  
20 printed opposite each candidate's name.

21 (b) Nonpartisan offices and ballot issues may be  
22 printed on separate ballots or may appear on the same ballot  
23 as partisan offices if:

- 24 (i) each section is clearly identified as separate; and  
25 (ii) such nonpartisan offices and ballot issues appear



1 on each party's ballot.

2 (2) It is not necessary to print a primary ballot for a  
3 political party which does not have candidates for more than  
4 half of the offices on the ballot in even-year elections if  
5 no more than one candidate files for nomination by that  
6 party for any of the offices on the ballot. The secretary of  
7 state shall certify that no primary election is necessary  
8 for that party if such is the case and shall certify or  
9 instruct the election administrator to certify the names of  
10 the candidates for that party for the general election  
11 ballot only.

12 (3) The separate ballots for each party shall be the  
13 same size and color. The stubs of each set of party ballots  
14 shall bear the same number. If printed as a separate ballot,  
15 the nonpartisan ballot shall be a different size or color  
16 than the party ballots, but the stubs shall be numbered in  
17 the same order as the party ballots.

18 (4) If a ballot issue is to be voted on at a primary  
19 election, it may be placed on the nonpartisan ballot or a  
20 separate ballot. A separate ballot may be a different size  
21 and color than the other ballots in the election, but the  
22 stubs shall be numbered in the same order.

23 (5) Each elector shall receive a set of party ballots  
24 and a nonpartisan and a ballot issue ballot if such ballots  
25 are printed."

1 **Section 5.** Section 13-10-403, MCA, is amended to read:  
2 "13-10-403. Form of ballot. The presidential preference  
3 ballot shall list all candidates nominated in accordance  
4 with the provisions of this part and shall, in addition,  
5 include a presidential ballot position which shall be  
6 designated as "no-preference none of the above candidates"  
7 and a blank write-in space."

8 **Section 6.** Section 13-12-203, MCA, is amended to read:  
9 "13-12-203. Printing of candidate's name and party  
10 designation on ballot. (1) Except as provided in 13-10-209  
11 and 13-10-303, in partisan elections, candidates' names  
12 shall be printed under the title of the office sought, with  
13 the name of the party, in not more than three words, or  
14 "Independent" printed opposite the name.

15 (2) In nonpartisan elections, the candidates' names  
16 shall be printed under the title of the office sought, with  
17 no description or designation printed with the name unless  
18 partisan and nonpartisan offices appear on the same ballot.  
19 In such a case, the names of nonpartisan candidates shall  
20 have printed with them the words "Nominated without party  
21 designation".

22 (3) The election administrator shall ensure that:  
23 (a) every ballot in primary and general elections,  
24 including special elections, that lists the name or names of  
25 the candidate or candidates for a municipal, county,

1 statewide, or federal public office, including the names of  
 2 candidates for president or vice president of the United  
 3 States, shall include a ballot choice for "none of the above  
 4 candidates", which shall appear on the ballot directly below  
 5 the names of the candidates; and

6 (b) every sample ballot or other instruction to voters  
 7 prepared or approved by the secretary of state shall clearly  
 8 explain that the voter may mark his choice for the category  
 9 of "none of the above candidates" only if he has not voted  
 10 for any candidate for the office."

11 **Section 7.** Section 13-12-208, MCA, is amended to read:

12 "13-12-208. Provision for write-in votes. Below the  
 13 list of names of candidates and the "none of the above  
 14 candidates" ballot choice for each office there must be as  
 15 many blank spaces for write-in voting as there are officers  
 16 to be elected."

17 **Section 8.** Section 13-12-209, MCA, is amended to read:

18 "13-12-209. Paper ballots -- stub size -- content. (1)  
 19 Paper ballots shall be printed on the same sheet with a  
 20 stub, separated by perforation.

21 (2) The stub shall extend the entire width of the  
 22 ballot and have instructions printed on it.

23 (3) Upon the face of the stub shall be printed the  
 24 following:

25 This ballot should be marked with an "x" in the square

1 before the name of each individual or candidate for whom the  
 2 elector intends to vote or in the square before "none of the  
 3 above candidates" if the elector does not wish to vote for  
 4 any of the candidates listed for an office. The elector may  
 5 write in or affix a preprinted label in the blank spaces or  
 6 over any other name, the name of an individual for whom he  
 7 wishes to vote and vote by marking an "x" in the square  
 8 before the name. If a ballot contains a constitutional  
 9 amendment or other issue to be submitted to a vote of the  
 10 people, it is voted on by marking an "x" in the square  
 11 before the amendment or issue.

12 (4) On the stub shall be printed or stamped the  
 13 consecutive number of the ballot, beginning with number 1  
 14 and increasing in regular numerical order to the total  
 15 number of ballots required for the precinct."

16 **Section 9.** Section 13-12-212, MCA, is amended to read:

17 "13-12-212. Election administrator to provide printed  
 18 ballots -- other ballots prohibited. Except as otherwise  
 19 provided in the election laws of this state:

20 (1) the election administrator shall provide printed  
 21 ballots for every election. He shall have printed on the  
 22 ballot the names of all candidates for all offices to be  
 23 filled at the election, a "none of the above candidates"  
 24 ballot choice, and the title and other wording required by  
 25 law for all ballot issues.

1 (2) ballots other than those printed by the election  
2 administrator may not be cast or counted in any election."

3 **Section 10.** Section 13-13-117, MCA, is amended to read:

4 "13-13-117. Method of voting. (1) On receipt of his  
5 ballot, the elector must immediately retire to one of the  
6 booths and prepare his ballot.

7 (2) He shall prepare his ballot by marking an "x" in  
8 the square before the name of the individual or individuals  
9 for whom he intends to vote, or the elector may mark an "x"  
10 before "none of the above candidates" if he does not vote  
11 for any candidate for an office.

12 (3) If the ballot contains a ballot issue, he shall  
13 mark an "x" in the applicable square indicating his vote  
14 either for or against the issue.

15 (4) The elector may write the name of an individual for  
16 whom he wishes to vote in the blank space or affix a  
17 preprinted label in the blank space and may vote for that  
18 individual by marking an "x" before the name. When the  
19 ballot is marked in this manner, it must be counted the same  
20 as though the name were printed upon the ballot and marked  
21 by the elector, except as provided in 13-15-202.

22 (5) An elector voting a ballot that will be counted by  
23 an optical scan ballot tabulating device shall mark his  
24 ballot in the manner prescribed on his ballot. However, his  
25 ballot must not be invalidated if he marks the voting

1 positions with an "x".

2 (6) After preparing his ballot, the elector must fold  
3 it so the face of the ballot will be concealed and the  
4 official stamp may be seen and hand it to the election  
5 judges.

6 (7) The judge receiving the ballots shall remove the  
7 stubs in sight of the elector and deposit each ballot in the  
8 ballot box and each stub in a box for detached stubs. The  
9 judge must place the ballots in the ballot box immediately  
10 without opening or examining them.

11 (8) No individual except an election judge may put a  
12 ballot, any paper resembling a ballot, or anything other  
13 than a ballot in a ballot box.

14 (9) Any elector who spoils his ballot may, on returning  
15 the spoiled ballot, receive another in place of it."

16 **Section 11.** Section 13-14-115, MCA, is amended to read:

17 "13-14-115. Preparation and distribution of nonpartisan  
18 primary ballots. (1) The election administrators shall  
19 arrange, prepare, and distribute primary ballots for  
20 nonpartisan offices, designated "nonpartisan primary  
21 ballots". They shall be arranged as other primary ballots,  
22 include a "none of the above candidates" ballot choice for  
23 each office, and be without political designation.

24 (2) The number of nonpartisan primary ballots and  
25 sample ballots furnished shall be the same as other primary

1 ballots.

2 (3) The governing body of a political subdivision may  
3 determine that a primary need not be held if:

4 (a) the number of candidates for an office exceeds  
5 twice the number to be elected to that office in no more  
6 than one-half of the offices on the ballot;

7 (b) the number of candidates in excess of twice the  
8 number to be elected is not more than one for any office on  
9 the ballot; and

10 (c) the governing body passes a resolution not more  
11 than 7 days after the close of filing by candidates for  
12 election, stating that a primary election need not be held."

13 **Section 12.** Section 13-14-116, MCA, is amended to read:

14 "13-14-116. Counting and canvassing of nonpartisan  
15 ballots. (1) After closing the polls, the election officers  
16 shall separately count, canvass, record, and certify  
17 nonpartisan ballots, showing the number of votes cast for  
18 each person and for the category of "none of the above  
19 candidates", except as provided in 13-15-202.

20 (2) Nonpartisan ballots, stubs, and unused ballots must  
21 be disposed of in the same manner as other ballots, stubs,  
22 and unused ballots. Returns must be made as provided by  
23 law."

24 **Section 13.** Section 13-15-101, MCA, is amended to read:

25 "13-15-101. Votes to be publicly counted upon closing

1 of polls. (1) When the polls are closed, the election judges  
2 shall immediately count the votes. The count shall be public  
3 and continue without adjournment until completed and the  
4 result is publicly declared.

5 (2) Immediately after all the ballots are counted by  
6 precinct, the election judges shall copy the total votes  
7 cast for each candidate, for the category of "none of the  
8 above candidates", and for and against each proposition on  
9 the return forms furnished by the election administrator.

10 (3) The election judges shall immediately post one of  
11 the return forms at the place of counting and return a copy  
12 to the election administrator. Both forms shall be signed by  
13 all the election judges completing the count."

14 **Section 14.** Section 13-15-202, MCA, is amended to read:

15 "13-15-202. Counting votes cast -- pollbook. (1) (a)  
16 When the procedures required by 13-15-201 are completed, the  
17 election judges shall count and determine the votes cast for  
18 each individual or for the category of "none of the above  
19 candidates", except as provided in subsection (1)(b).

20 (b) The judges may not count or record write-in votes  
21 for candidates who have not filed a declaration of intent as  
22 provided in 13-10-211, except for write-in votes cast:

23 (i) for the office of precinct committeeman or  
24 committeewoman in a primary election;

25 (ii) for an office for which no candidate has filed a

1 declaration or petition for nomination or a declaration of  
2 intent; or

3 (iii) on a federal write-in absentee ballot as provided  
4 in 13-13-273.

5 (2) In counting, the ballots shall be opened singly by  
6 one of the election judges and the contents read aloud to  
7 the other judges.

8 (3) A ballot or part of a ballot is void and shall not  
9 be counted if the elector's choice cannot be determined. If  
10 part of a ballot is sufficiently plain to determine the  
11 elector's intention, the election judges shall count that  
12 part.

13 (4) As the ballots are read, two judges must write on a  
14 tally sheet the name of every individual and the office  
15 voted for and keep tallies of the number of votes for each  
16 individual and for the category of "none of the above  
17 candidates", except as provided in subsection (1)(b).

18 (5) The tally sheets shall be compared and their  
19 correctness ascertained, and the judges shall immediately  
20 write in the pollbook:

21 (a) the names of all individuals who received votes,  
22 including as a name the category of "none of the above  
23 candidates";

24 (b) the offices for which they received votes;

25 (c) total votes received by each individual and by the

1 category of "none of the above candidates", as shown by the  
2 tally sheets.

3 (6) In making the count in precincts where voting  
4 machines are used, the votes cast by absentee ballot shall  
5 be added to the votes cast on the voting machines.

6 (7) A ballot or vote rejected by the election judges  
7 may not be included in the count."

8 **Section 15.** Section 13-15-404, MCA, is amended to read:

9 "**13-15-404. Information to be entered on record.** (1)  
10 The secretary of the board shall prepare and file in the  
11 official records of his office a report of the canvass which  
12 lists:

13 (a) the total number of electors voting in each  
14 precinct, district, or portion of a district in the county  
15 and the total in the county;

16 (b) the name of each individual, including as a name  
17 the category of "none of the above candidates", receiving  
18 votes and the office for which the votes were received;

19 (c) the number and title of each ballot issue;

20 (d) the votes by precinct, district, or portion of a  
21 district within the county for each individual, for the  
22 category of "none of the above candidates", and for and  
23 against each ballot issue;

24 (e) the total votes in the county for each individual,  
25 for the category of "none of the above candidates", and for

1 and against each ballot issue; and

2 (f) for municipal elections, the total number of  
3 electors voting in each municipality and the votes by  
4 municipality for each individual, for the category of "none  
5 of the above candidates", and for and against each ballot  
6 issue.

7 (2) Write-in votes for an individual shall be entered  
8 in the report in the same place as the votes for other  
9 individuals for the same office but shall be identified as  
10 write-in votes."

11 **Section 16.** Section 13-15-501, MCA, is amended to read:  
12 "13-15-501. Certification of canvass to state  
13 canvassers. (1) The board of county canvassers shall certify  
14 the vote for each individual, including the category of  
15 "none of the above candidates" as provided in [sections 1  
16 through 3], for whom votes were cast for the offices of  
17 president and vice president of the United States,  
18 congressional offices, state or district offices voted for  
19 in more than one county, members of the legislature, judges  
20 of the district court, and for and against ballot issues  
21 voted on in more than one county to the board of state  
22 canvassers. The certification shall contain all the  
23 information required in 13-15-404 for such candidates and  
24 issues.

25 (2) The secretary of the board shall send the

1 certification to the secretary of state by certified mail in  
2 an envelope marked "election returns".

3 **Section 17.** Section 13-15-506, MCA, is amended to read:

4 "13-15-506. Report of the canvass. (1) The secretary of  
5 the board shall prepare and file in the official records of  
6 his office a report of the canvass which lists:

7 (a) the total number of electors voting in each county  
8 and in each legislative house district and the total in the  
9 state;

10 (b) the name of each individual, including as a name  
11 the category of "none of the above candidates", receiving  
12 votes and the office for which the votes were received;

13 (c) the number and title of each ballot issue; and

14 (d) the votes by county and legislative house district  
15 and the total votes for each individual, for the category of  
16 "none of the above candidates", and for and against each  
17 ballot issue.

18 (2) Write-in votes for an individual shall be entered  
19 in the report in the same place as votes of other  
20 individuals for the same office but shall be identified as  
21 write-in votes."

22 **NEW SECTION. Section 18.** Codification instruction.  
23 [Sections 1 through 3] are intended to be codified as an  
24 integral part of Title 13, and the provisions of Title 13  
25 apply to [sections 1 through 3].



LC 0198/01

- 1        NEW SECTION.    **Section 19.**    Effective date. [This act] is
  - 2        effective on passage and approval.
- End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0737, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

The bill would provide electors with a "none of the above candidates" ballot choice in federal, state, county, and municipal partisan and nonpartisan primary and general elections.

ASSUMPTIONS:

1. The placement of "none of the above" on the ballot will not cause additional run-off or special elections and thus will have no fiscal impact on the Secretary of State's office or other state agencies.
2. Counties may have some expenditure impact in ballot production due to the additional option in each race.

FISCAL IMPACT:

None.


EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Counties may experience cost increases for sample ballot and election day ballot production due to the addition of "none of the above candidates" as an option in each race.

TECHNICAL NOTES:

1. The bill does not provide clear direction regarding the disposition of a situation in which "none of the above candidates" receives the most votes in a specific race.
2. Provisions of the bill that impact federal races may contradict federal law, particularly in presidential elections when Montana reports to the Electoral College.

  
ROD SUNDSTED, BUDGET DIRECTOR      2/14-91  
Office of Budget and Program Planning      DATE

  
JIM ELLIOTT, PRIMARY SPONSOR      2/15/91  
Fiscal Note for HB0737, as introduced      DATE      **HB 737**