

SENATE BILL 128

IN THE SENATE

January 16, 1979 Introduced and referred to
 Committee on State Adminis-
 tration.

January 30, 1979 Committee recommend bill, as
 amended.

February 1, 1979 Printed and placed on members'
 desks.

February 2, 1979 Second reading, as amended.

February 5, 1979 Considered correctly engrossed.

February 6, 1979 Third reading, passed.

IN THE HOUSE

February 7, 1979 Introduced and referred to
 Committee on State Adminis-
 tration.

March 2, 1979 Committee recommend bill,
 concurred.

March 3, 1979 Second reading, concurred.

March 6, 1979 Third reading, concurred.

IN THE SENATE

March 7, 1979 Returned from House, concurred.

March 7, 1979 Sent to enrolling.
 Correctly enrolled.
 Signed by President.

GOVERNOR

March 15, 1979 Delivered to Governor.

March 21, 1979 Governor veto.

IN THE SENATE

March 21, 1979 Override veto transmitted
 to House.

IN THE HOUSE

April 20, 1979 No action taken in House.

1 *Senate* BILL NO. *128*
2 INTRODUCED BY *Rasmussen Hager*

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THE PERSON
5 APPOINTED TO FILL A VACANCY IN AN ELECTIVE PARTISAN OFFICE
6 TO BE A MEMBER OF THE SAME POLITICAL PARTY AS HIS
7 PREDECESSOR; AMENDING SECTIONS 2-16-505, 2-16-506, 7-3-1217,
8 7-3-4219, 7-4-2106, 13-25-202, AND 69-1-106, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 NEW SECTION. Section 1. Vacancies in elective
12 partisan offices -- appointees to be of same political
13 party. Whenever a vacancy occurs in an office which is
14 filled by a partisan election and when the person whose
15 position is to be filled served as a member of a political
16 party, the individual appointed to fill the vacancy must be
17 a member of the same political party.

18 Section 2. Section 2-16-505, MCA, is amended to read:

19 "2-16-505. Filling vacancies in certain elective
20 offices. (1) A vacancy in the office of either the secretary
21 of state, state auditor, attorney general, clerk of the
22 supreme court, or superintendent of public instruction must
23 be filled by a person appointed by the governor, who holds
24 his office until the first Monday in January next after a
25 general election. At such election the office must be filled

1 by election for the unexpired term.

2 ~~(2) Whenever his predecessor served as a member of a~~
3 ~~political party, the appointee must be a member of the same~~
4 ~~political party."~~

5 Section 3. Section 2-16-506, MCA, is amended to read:

6 "2-16-506. Filling vacancies -- ~~appointee to be of~~
7 ~~same political party --~~ recess appointments. (1) When any
8 office becomes vacant and no mode is provided by law for
9 filling the vacancy, the governor shall fill the vacancy by
10 appointing a qualified person to fill the unexpired term of
11 the person whose office became vacant. ~~Whenever his~~
12 ~~predecessor served as a member of a political party, the~~
13 ~~appointee must be a member of the same political party.~~

14 (2) If the legislature or one house of the legislature
15 must confirm an appointment of a person appointed by the
16 governor to fill a vacancy, the governor may appoint the
17 person to assume office before the legislature meets in its
18 next regular session to consider the appointment. A person
19 so appointed is vested with all the functions of the office
20 upon assuming the office and is a de jure officer,
21 notwithstanding the fact that the legislature has not yet
22 confirmed the appointment. If the legislature does not
23 confirm the appointment, the governor shall make a new
24 appointment to fill the unexpired term."

25 Section 4. Section 7-3-1217, MCA, is amended to read:

1 *7-3-1217. Vacancies. (1) If a vacancy occurs in the
2 commission, except as the result of a recall election, some
3 eligible person shall be chosen by a majority vote of the
4 remaining members to fill the place for the unexpired term.

5 ~~(2) If the vacant seat was filled on a partisan basis~~
6 ~~and the person whose position is being filled served as a~~
7 ~~member of a political party, the individual selected to fill~~
8 ~~the vacancy must be a member of the same political party.~~

9 ~~(2)(3)~~ Absence from all regular meetings for a period
10 of 90 days shall operate to vacate the seat of a member
11 unless such absence be authorized by the commission."

12 Section 5. Section 7-3-4218, MCA, is amended to read:

13 *7-3-4218. Vacancies. (1) Vacancies in the office of
14 mayor or councilmen shall be filled by appointment made by a
15 majority vote of the remaining members of the council. If in
16 filling such vacancy a tie vote should occur, then the
17 person to fill said vacancy shall be determined by lot in
18 such manner as said council may provide.

19 ~~(2) If the vacant seat was filled by a partisan~~
20 ~~election and the person whose position is to be filled~~
21 ~~served as a member of a political party, the individual~~
22 ~~selected to fill the vacancy must be a member of the same~~
23 ~~political party.~~

24 ~~(2)(3)~~ A person appointed to fill any such vacancy
25 shall hold his office until the next general election and

1 until his successor is elected and qualified. A person
2 elected to fill a vacancy shall hold office until the
3 expiration of the term for which the person he succeeds was
4 elected."

5 Section 6. Section 7-4-2106, MCA, is amended to read:

6 *7-4-2106. Vacancy on board of county commissioners.

7 (1) Whenever a vacancy occurs in the board of county
8 commissioners from a failure to elect or otherwise, the
9 district judge or judges in whose district the vacancy
10 occurs must fill the vacancy, and such appointee shall hold
11 office until the next general election.

12 ~~(2) Whenever his predecessor served as a member of a~~
13 ~~political party, the appointee must be a member of the same~~
14 ~~political party."~~

15 Section 7. Section 13-25-202, MCA, is amended to read:

16 *13-25-202. Vacancy in office of United States
17 senator. (1) If a vacancy occurs in the office of United
18 States senator, an election to fill the vacancy shall be
19 held at the next general election. If the election is
20 invalid or not held at that time, the election to fill the
21 vacancy shall be held at the next succeeding general
22 election.

23 (2) The governor may make a temporary appointment to
24 fill the vacancy until the election; ~~however, if his~~
25 ~~predecessor served as a member of a political party, the~~

1 ~~appointee must be a member of the same political party."~~

2 Section 8. Section 69-1-106, MCA, is amended to read:

3 "69-1-106. Vacancies. Any vacancy occurring in the
4 commission shall be filled by appointment by the governor.

5 ~~If his predecessor served as a member of a political party,~~
6 ~~the appointee must be a member of the same political party.~~

7 Such appointee shall hold office until the next general
8 election and until his successor is elected and qualified.

9 At the biennial election following the occurrence of any
10 vacancy in the commission, there shall be elected one member
11 to fill out the unexpired term for which such vacancy
12 exists."

-End-

Approved by Committee
on State Administration

SENATE BILL NO. 128

INTRODUCED BY RASMUSSEN, HAGER

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THE PERSON APPOINTED TO FILL A VACANCY IN AN ELECTIVE PARTISAN OFFICE TO BE A MEMBER OF THE SAME POLITICAL PARTY AS HIS PREDECESSOR; AMENDING SECTIONS 2-16-505, 2-16-506, 7-3-1217, 7-3-4218, 7-4-2106, 13-25-202, AND 69-1-106, MCA."

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

NEW SECTION. Section 1. Vacancies in elective partisan offices -- appointees to be of same political party. Whenever a vacancy occurs in an office which is filled by a partisan election and when the person whose position is to be filled served as a member of a political party, the individual appointed to fill the vacancy must be a member of the same political party.

Section 2. Section 2-16-505, MCA, is amended to read: "2-16-505. Filling vacancies in certain elective offices. (1) A vacancy in the office of either the secretary of state, state auditor, attorney general, clerk of the supreme court, or superintendent of public instruction must be filled by a person appointed by the governor, who holds his office until the first Monday in January next after a general election. At such election the office must be filled

by election for the unexpired term.

~~(2) Whenever his predecessor served as a member of a political party, the appointee must be a member of the same political party."~~

Section 3. Section 2-16-506, MCA, is amended to read: "2-16-506. Filling vacancies -- ~~appointee to be of same political party --~~ recess appointments. (1) When any office becomes vacant and no mode is provided by law for filling the vacancy, the governor shall fill the vacancy by appointing a qualified person to fill the unexpired term of the person whose office became vacant. ~~Whenever his predecessor served as a member of a political party, the appointee must be a member of the same political party.~~

(2) If the legislature or one house of the legislature must confirm an appointment of a person appointed by the governor to fill a vacancy, the governor may appoint the person to assume office before the legislature meets in its next regular session to consider the appointment. A person so appointed is vested with all the functions of the office upon assuming the office and is a de jure officer, notwithstanding the fact that the legislature has not yet confirmed the appointment. If the legislature does not confirm the appointment, the governor shall make a new appointment to fill the unexpired term."

Section 4. Section 7-3-1217, MCA, is amended to read:

1 "7-3-1217. Vacancies. (1) If a vacancy occurs in the
2 commission, except as the result of a recall election, some
3 eligible person shall be chosen by a majority vote of the
4 remaining members to fill the place for the unexpired term.

5 ~~(2) If the vacant seat was filled on a partisan basis~~
6 ~~and the person whose position is being filled served as a~~
7 ~~member of a political party, the individual selected to fill~~
8 ~~the vacancy must be a member of the same political party.~~

9 ~~(2)(3)~~ Absence from all regular meetings for a period
10 of 90 days shall operate to vacate the seat of a member
11 unless such absence be authorized by the commission."

12 Section 5. Section 7-3-4218, MCA, is amended to read:

13 "7-3-4218. Vacancies. (1) Vacancies in the office of
14 mayor or councilmen shall be filled by appointment made by a
15 majority vote of the remaining members of the council. If in
16 filling such vacancy a tie vote should occur, then the
17 person to fill said vacancy shall be determined by lot in
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3 expiration of the term for which the person he succeeds was
4 elected."

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6 "7-4-2106. Vacancy on board of county commissioners.
7 (1) Whenever a vacancy occurs in the board of county
8 commissioners from a failure to elect or otherwise, the
9 district judge or judges in whose district the vacancy
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11 office until the next general election.

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15 Section 7. Section 13-25-202, MCA, is amended to read:

16 "13-25-202. Vacancy in office of United States
17 senator. (1) If a vacancy occurs in the office of United
18 States senator, an election to fill the vacancy shall be
19 held at the next general election. If the election is
20 invalid or not held at that time, the election to fill the
21 vacancy shall be held at the next succeeding general
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24 fill the vacancy until the election; ~~however, if his~~ ~~THE~~
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2 ~~party."~~

3 Section 8. Section 69-1-106, MCA, is amended to read:

4 "69-1-106. Vacancies. Any vacancy occurring in the
5 commission shall be filled by appointment by the governor.
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9 next general election and until his successor is elected and
10 qualified. At the biennial election following the occurrence
11 of any vacancy in the commission, there shall be elected one
12 member to fill out the unexpired term for which such vacancy
13 exists."

-End-

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6 INDIVIDUALS PROVIDED BY THE STATE CENTRAL COMMITTEE OF THE
7 PREDECESSOR'S POLITICAL PARTY. WHENEVER THE GOVERNOR IS
8 UNABLE TO SELECT AN APPOINTEE FROM THE SUBMITTED LIST, THE
9 GOVERNOR SHALL REQUEST A SECOND LIST OF THREE NAMES FROM THE
10 STATE CENTRAL COMMITTEE OF THE PREDECESSOR'S POLITICAL
11 PARTY. THE SECOND LIST MAY NOT CONTAIN ANY OF THE NAMES
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6 Section 8. Section 69-1-106, MCA, is amended to read:

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24 out the unexpired term for which such vacancy exists."

-End-

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2 INTRODUCED BY RASMUSSEN, HAGER

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1 ~~the vacancy must be a member of the same political party AND~~
 2 ~~SHALL BE SELECTED FROM A LIST OF THREE INDIVIDUALS PROVIDED~~
 3 ~~BY THE COUNTY CENTRAL COMMITTEE OF THE PREDECESSOR'S~~
 4 ~~POLITICAL PARTY. WHENEVER THE APPOINTING BOARD IS UNABLE TO~~
 5 ~~SELECT AN APPOINTEE FROM THE SUBMITTED LIST, THEY SHALL~~
 6 ~~REQUEST A SECOND LIST OF THREE NAMES FROM THE COUNTY CENTRAL~~
 7 ~~COMMITTEE OF THE PREDECESSOR'S POLITICAL PARTY. THE SECOND~~
 8 ~~LIST MAY NOT CONTAIN ANY OF THE NAMES SUBMITTED ON THE FIRST~~
 9 ~~LIST. THE APPOINTING BOARD SHALL THEN SELECT AN APPOINTEE~~
 10 ~~FROM THE INDIVIDUALS NAMED ON BOTH LISTS.~~

11 ~~(2)(3) Absence from all regular meetings for a period~~
 12 ~~of 90 days shall operate to vacate the seat of a member~~
 13 ~~unless such absence be authorized by the commission."~~

14 Section 5. Section 7-3-4218, MCA, is amended to read:

15 "7-3-4218. Vacancies. (1) Vacancies in the office of
 16 mayor or councilmen shall be filled by appointment made by a
 17 majority vote of the remaining members of the council. If in
 18 filling such vacancy a tie vote should occur, then the
 19 person to fill said vacancy shall be determined by lot in
 20 such manner as said council may provide.

21 ~~(2) If the vacant seat was filled by a partisan~~
 22 ~~election and the person whose position is to be filled~~
 23 ~~served as a member of a political party, the individual~~
 24 ~~selected to fill the vacancy must be a member of the same~~
 25 ~~political party AND SHALL BE SELECTED FROM A LIST OF THREE~~

1 INDIVIDUALS PROVIDED BY THE COUNTY CENTRAL COMMITTEE OF THE
 2 PREDECESSOR'S POLITICAL PARTY. WHENEVER THE APPOINTING BOARD
 3 IS UNABLE TO SELECT AN APPOINTEE FROM THE SUBMITTED LIST,
 4 THEY SHALL REQUEST A SECOND LIST OF THREE NAMES FROM THE
 5 COUNTY CENTRAL COMMITTEE OF THE PREDECESSOR'S POLITICAL
 6 PARTY. THE SECOND LIST MAY NOT CONTAIN ANY OF THE NAMES
 7 SUBMITTED ON THE FIRST LIST. THE APPOINTING BOARD SHALL THEN
 8 SELECT AN APPOINTEE FROM THE INDIVIDUALS NAMED ON BOTH
 9 LISTS.

10 (2)(1) A person appointed to fill any such vacancy
 11 shall hold his office until the next general election and
 12 until his successor is elected and qualified. A person
 13 elected to fill a vacancy shall hold office until the
 14 expiration of the term for which the person he succeeds was
 15 elected."

16 Section 6. Section 7-4-2106, MCA, is amended to read:

17 "7-4-2106. Vacancy on board of county commissioners.
 18 (1) Whenever a vacancy occurs in the board of county
 19 commissioners from a failure to elect or otherwise, the
 20 district judge or judges in whose district the vacancy
 21 occurs must fill the vacancy, and such appointee shall hold
 22 office until the next general election.

23 (2) Whenever his predecessor served as a member of a
 24 political party, the appointee must be a member of the same
 25 political party AND SHALL BE SELECTED FROM A LIST OF THREE

1 INDIVIDUALS PROVIDED BY THE COUNTY CENTRAL COMMITTEE OF THE
 2 PREDECESSOR'S POLITICAL PARTY. WHENEVER THE APPOINTING BOARD
 3 IS UNABLE TO SELECT AN APPOINTEE FROM THE SUBMITTED LIST,
 4 THEY SHALL REQUEST A SECOND LIST OF THREE NAMES FROM THE
 5 COUNTY CENTRAL COMMITTEE OF THE PREDECESSOR'S POLITICAL
 6 PARTY. THE SECOND LIST MAY NOT CONTAIN ANY OF THE NAMES
 7 SUBMITTED ON THE FIRST LIST. THE APPOINTING BOARD SHALL THEN
 8 SELECT AN APPOINTEE FROM THE INDIVIDUALS NAMED ON BOTH
 9 LISTS."

10 Section 7. Section 13-25-202, MCA, is amended to read:

11 "13-25-202. Vacancy in office of United States
 12 senator. (1) If a vacancy occurs in the office of United
 13 States senator, an election to fill the vacancy shall be
 14 held at the next general election. If the election is
 15 invalid or not held at that time, the election to fill the
 16 vacancy shall be held at the next succeeding general
 17 election.

18 (2) The governor may make a temporary appointment to
 19 fill the vacancy until the election; however, if his THE
 20 APPOINTEE'S predecessor served as a member of a political
 21 party, the appointee must be a member of the same political
 22 party AND SHALL BE SELECTED FROM A LIST OF THREE INDIVIDUALS
 23 PROVIDED BY THE STATE CENTRAL COMMITTEE OF THE PREDECESSOR'S
 24 POLITICAL PARTY. WHENEVER THE GOVERNOR IS UNABLE TO SELECT
 25 AN APPOINTEE FROM THE SUBMITTED LIST, THE GOVERNOR SHALL

1 REQUEST A SECOND LIST OF THREE NAMES FROM THE STATE CENTRAL
2 COMMITTEE OF THE PREDECESSOR'S POLITICAL PARTY. THE SECOND
3 LIST MAY NOT CONTAIN ANY OF THE NAMES SUBMITTED ON THE FIRST
4 LIST. THE GOVERNOR SHALL THEN SELECT AN APPOINTEE FROM THE
5 INDIVIDUALS NAMED ON BOTH LISTS."

6 Section 8. Section 69-1-106, MCA, is amended to read:
7 "69-1-106. Vacancies. Any vacancy occurring in the
8 commission shall be filled by appointment by the governor.
9 ~~If his~~ THE APPOINTEE'S predecessor served as a member of a
10 political party, the appointee must be a member of the same
11 political party AND SHALL BE SELECTED FROM A LIST OF THREE
12 INDIVIDUALS PROVIDED BY THE STATE CENTRAL COMMITTEE OF THE
13 PREDECESSOR'S POLITICAL PARTY. WHENEVER THE GOVERNOR IS
14 UNABLE TO SELECT AN APPOINTEE FROM THE SUBMITTED LIST, THE
15 GOVERNOR SHALL REQUEST A SECOND LIST OF THREE NAMES FROM THE
16 STATE CENTRAL COMMITTEE OF THE PREDECESSOR'S POLITICAL
17 PARTY. THE SECOND LIST MAY NOT CONTAIN ANY OF THE NAMES
18 SUBMITTED ON THE FIRST LIST. THE GOVERNOR SHALL THEN SELECT
19 AN APPOINTEE FROM THE INDIVIDUALS NAMED ON BOTH LISTS. Such
20 appointee shall hold office until the next general election
21 and until his successor is elected and qualified. At the
22 biennial election following the occurrence of any vacancy in
23 the commission, there shall be elected one member to fill
24 out the unexpired term for which such vacancy exists."

-End-