

SENATE BILL NO. 169

INTRODUCED BY HARDING, HAND, ASAY,  
BARDANOUE, NATHE, O'CONNELL, BACHINI,  
HIRSCH, STORY, CAMPBELL, HANSON, KOEHNKE,  
C. SMITH, WINSLOW, KOLSTAD, TVEIT, MCCALLUM,  
BOYLAN, CRIPPEN, BENGTSON, DANIELS

BY REQUEST OF THE SECRETARY OF STATE

IN THE SENATE

January 19, 1985	Introduced and referred to Committee on State Administration.
February 11, 1985	Committee recommend bill do pass. Report adopted.  Statement of Intent attached.
February 12, 1985	Bill printed and placed on members' desks.
February 13, 1985	Second reading, do pass.
February 14, 1985	Considered correctly engrossed.
February 15, 1985	Third reading, passed. Ayes, 48; Noes, 0.  Transmitted to House.

IN THE HOUSE

February 27, 1985	Introduced and referred to Committee on State Administration.
March 13, 1985	Committee recommend bill be concurrred in. Report adopted.
March 14, 1985	Motion pass consideration.

March 15, 1985

Second reading, concurred in.

March 18, 1985

Third reading, concurred in.

Returned to Senate.

IN THE SENATE

March 18, 1985

Received from House.

March 19, 1985

Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. 169  
 2 INTRODUCED BY *Andrew Hank* *Conroy* *NATH*  
 3 *Clannell* BY REQUEST OF THE SECRETARY OF STATE *Doehner*  
 4 *Hinsok* *Stacy* *Conrad* *M. Hansen* *Fischer* *Smith*  
 5 *Winston* *Wasson* *Trout* *Bergman* *M. B. ...*  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW ELECTION  
 7 ADMINISTRATORS THE OPTION OF CONDUCTING CERTAIN SPECIFIC  
 8 ELECTIONS BY MAIL BALLOT; AMENDING SECTIONS 7-13-2236 AND  
 9 13-1-401, MCA; AND PROVIDING AN EFFECTIVE DATE."  
 10

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

11 NEW SECTION. Section 1. Statement of purpose. The  
 12 purpose of [this act] is to provide the option of conducting  
 13 certain specified elections using a procedure called a "mail  
 14 ballot election" and to provide the procedures therefor. The  
 15 provisions of [this act] recognize that sound public policy  
 16 concerning the conduct of elections often requires the  
 17 balancing of various elements of the public interest that  
 18 are sometimes in conflict. Among these factors are the  
 19 public's interest in fair and accurate elections, the  
 20 election of those who will govern or represent, and  
 21 cost-effective administration of all functions of  
 22 government, including the conduct of elections. The  
 23 provisions of [this act] further recognize that when these  
 24 and other factors are balanced, the conduct of elections by  
 25 mail ballot is potentially the most desirable of the

available options in certain circumstances.

NEW SECTION. Section 2. Definitions. As used in [this act], the following definitions apply:

(1) "Election day" is the date established by law on which a particular election would be held if that election were being conducted by means other than a mail ballot election.

(2) "Mail ballot election" means any election that involves either candidates or ballot issues and is conducted in compliance with the procedure specified in [section 3].

(3) "Return/verification envelope" means an envelope that contains a secrecy envelope and ballot and which 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.

(4) "Secrecy envelope" means an envelope used to contain the elector's ballot and that is designed to conceal the elector's vote and to prevent that elector's ballot from being distinguished from the ballots of other electors.

NEW SECTION. Section 3. Mail ballot election procedure. A mail ballot election must be conducted substantially as follows:



1 (1) Official ballots must be prepared and all other  
2 initial procedures followed as otherwise provided by law.

3 (2) An official ballot must be mailed to every  
4 qualified elector of the political subdivision conducting  
5 the election.

6 (3) The elector shall mark the ballot at home and  
7 place it in a secrecy envelope.

8 (4) The elector shall then place the secrecy envelope  
9 containing his ballot in a return/verification envelope and  
10 shall return it by mailing it or delivering it in person to  
11 a place of deposit designated by the election administrator  
12 so that it is received prior to a specified time on election  
13 day.

14 (5) Once returned, election officials shall first  
15 qualify the submitted ballot by examining the  
16 return/verification envelope to determine whether it is  
17 submitted by a qualified elector who has not previously  
18 voted.

19 (6) If the ballot so qualifies and is otherwise valid,  
20 officials shall then open the return/verification envelope  
21 and remove the secrecy envelope, which is then voted by  
22 depositing it unopened in an official ballot box.

23 (7) After the close of polls on election day, voted  
24 ballots must be counted and canvassed as otherwise provided  
25 by law.

1 NEW SECTION. Section 4. Mail ballot elections not  
2 mandatory -- when authorized -- when prohibited.  
3 (1) Conducting elections by mail ballot is only one option  
4 available to local officials and nothing in [this act]  
5 mandates that the procedure be used.

6 (2) The following elections may be conducted by mail  
7 ballot:

8 (a) an election in a political subdivision required to  
9 hold annual elections under 13-1-104(3), other than a school  
10 district;

11 (b) an election in a city of the third class, as  
12 defined in 7-1-4111(3), if all of the candidates whose names  
13 will appear on the ballot are candidates for offices to be  
14 elected without party designation;

15 (c) an election in a town as defined in 7-1-4111(4);

16 (d) an election conducted under 7-13-2236 in an  
17 unincorporated area; and

18 (e) a special election called by a local government  
19 unit for the sole purpose of submitting one or more ballot  
20 issues to its qualified electors if such special election is  
21 not held in conjunction with a statutorily scheduled  
22 election.

23 (3) The following elections may not be conducted by  
24 mail ballot:

25 (a) an election held for one of the purposes or at the

1 time provided in 13-1-104(1) and 13-1-107(1);

2 (b) an election held for one of the purposes or at the  
3 time provided in 13-1-104(2) and 13-1-107(2), except as  
4 specifically allowed by subsections (2)(b) and (2)(c) of  
5 this section;

6 (c) an election for any purpose conducted by or on  
7 behalf of a school district;

8 (d) an election being held under the provisions of the  
9 Montana Recall Act, in Title 2, chapter 16, part 6;

10 (e) an election involving candidates for public  
11 office, except as specifically allowed by subsections (2)(a)  
12 through (2)(c) of this section; and

13 (f) a special election being held in conjunction with  
14 a statutorily scheduled election.

15 NEW SECTION. Section 5. General election laws to  
16 apply. All laws applicable to elections when voting is not  
17 done by mail ballot and all penalties prescribed for  
18 violation of those laws apply to elections conducted by mail  
19 ballot to the extent they do not specifically conflict with  
20 the provisions of [this act] or are not otherwise provided  
21 for by [this act].

22 NEW SECTION. Section 6. Role of secretary of state.  
23 In addition to other powers and duties conveyed by law, the  
24 secretary of state, with advice from election  
25 administrators, shall:

1 (1) prescribe the form of materials to be used in the  
2 conduct of mail ballot elections;

3 (2) review written plans for the conduct of mail  
4 ballot elections as provided in [section 11]; and

5 (3) adopt rules consistent with [this act] to:

6 (a) establish and maintain uniformity in the conduct  
7 of mail ballot elections; and

8 (b) establish procedures for the conduct of mail  
9 ballot elections that:

10 (i) prevent fraud;

11 (ii) ensure the accurate handling and canvassing of  
12 mail ballots; and

13 (iii) ensure that the secrecy of voted ballots is  
14 maintained.

15 NEW SECTION. Section 7. How election initiated. A  
16 proposal to conduct an election under [this act] may be  
17 initiated by either the election administrator or the  
18 appropriate governing body as provided in [sections 8  
19 through 10].

20 NEW SECTION. Section 8. Initiation by governing body.  
21 (1) A political subdivision may, by resolution of the  
22 governing body addressed to the election administrator,  
23 request that a particular election be conducted under the  
24 provisions of [this act].

25 (2) No later than 70 days before election day, the

1 governing body shall transmit its request to the election  
2 administrator, who shall determine whether it is  
3 economically and administratively feasible to conduct the  
4 requested election by mail ballot.

5 (3) Except as provided in [section 10], the decision  
6 to conduct an election under the provisions of [this act] is  
7 within the sole discretion of the election administrator.

8 (4) Within 5 days after receiving a request, the  
9 election administrator shall respond in writing, stating  
10 that the request is either granted or denied for reasons  
11 specified. If granted, the election administrator shall  
12 prepare a plan as provided in [section 11].

13 NEW SECTION. Section 9. Initiation by election  
14 administrator. (1) Even if no request has been received  
15 from the governing body concerned, the election  
16 administrator may conduct any election authorized by  
17 [section 4] under [this act] if, in his discretion, that  
18 would be the most economically and administratively feasible  
19 way of conducting the election in question.

20 (2) If he decides to conduct an election pursuant to  
21 subsection (1), the election administrator shall prepare a  
22 written plan as provided in [section 11] and forward a copy  
23 to the governing body concerned, together with a written  
24 statement informing it of his decision to conduct the  
25 election by mail ballot and the reasons therefor and the

1 right of the governing body to object under [section 10].

2 NEW SECTION. Section 10. Objection of political  
3 subdivision. (1) A political subdivision may, by resolution  
4 of the governing body, object to the conduct of one of its  
5 elections under [this act]. The resolution must include a  
6 statement of the reasons for the objection.

7 (2) If such a resolution is filed with the election  
8 administrator no later than 55 days prior to election day,  
9 the election may not be conducted under [this act].

10 NEW SECTION. Section 11. Written plan for conduct of  
11 election -- amendments -- approval procedures. (1) The  
12 election administrator shall prepare a written plan,  
13 including a timetable, for the conduct of the election and  
14 shall submit it to the secretary of state at least 60 days  
15 prior to the date set for the election.

16 (2) The plan may be amended by the election  
17 administrator any time prior to the 35th day before election  
18 day by notifying the secretary of state in writing of any  
19 changes.

20 (3) Within 5 days of receiving the plan and as soon as  
21 possible after receiving any amendments, the secretary of  
22 state shall approve, disapprove, or recommend changes to the  
23 plan or amendments.

24 (4) When the written plan has been approved, the  
25 election administrator shall proceed to conduct the election

1 according to the approved plan.

2 NEW SECTION. Section 12. Proportional voting. The  
3 election administrator shall provide a method for  
4 proportional voting in his written plan for an election  
5 conducted under [this act] that requires votes to be cast in  
6 proportion to ownership or any factor other than one vote  
7 per person.

8 NEW SECTION. Section 13. Distributing materials to  
9 electors -- procedure. For each election conducted under  
10 [this act], the election administrator shall:

11 (1) mail a single packet to every qualified elector of  
12 the political subdivision conducting the election;

13 (2) ensure that each packet contains only one each of  
14 the following:

15 (a) an official ballot;

16 (b) a secrecy envelope;

17 (c) a return/verification envelope; and

18 (d) complete written instructions for voting and  
19 returning ballots; and

20 (3) ensure that each packet is:

21 (a) clearly marked on its face with the words "DO NOT  
22 FORWARD. RETURN TO SENDER. RETURN POSTAGE GUARANTEED.";

23 (b) addressed to a single individual elector at the  
24 most current address available from the official  
25 registration records; and

1 (c) deposited in the United States mail with  
2 sufficient prepaid postage for it to be delivered to the  
3 elector's address.

4 NEW SECTION. Section 14. When materials to be mailed.  
5 For any election conducted by mail, ballots must be mailed  
6 no sooner than the 25th day and no later than the 15th day  
7 before election day. All ballots must be mailed the same  
8 day.

9 NEW SECTION. Section 15. Voting by elector when  
10 absent from place of residence during conduct of election.

11 (1) A qualified elector who will be absent from the county  
12 during the time the election is being conducted may:

13 (a) vote in person in the election administrator's  
14 office as soon as ballots are available and until noon the  
15 day before the ballots are scheduled to be mailed; or

16 (b) make a written request, signed by the applicant  
17 and addressed to the election administrator, that the ballot  
18 be mailed to an address other than that which appears on the  
19 registration card. Written requests must be accepted until  
20 noon the day before the ballots are scheduled to be mailed.

21 (2) Ballots mailed to electors pursuant to this  
22 section must be mailed the same day that all other ballots  
23 are mailed.

24 NEW SECTION. Section 16. Voting mail ballots.

25 (1) Upon receipt of his ballot, the elector may vote by:

1 (a) marking the ballot in the manner specified;  
 2 (b) placing the marked ballot in the secrecy envelope,  
 3 free of any identifying marks;  
 4 (c) placing the secrecy envelope containing a single  
 5 ballot in the return/verification envelope;  
 6 (d) executing the affidavit printed on the  
 7 return/verification envelope; and  
 8 (e) returning the return/verification envelope with  
 9 the secrecy envelope containing the ballot enclosed, as  
 10 provided in [section 18].

11 (2) For the purpose of [this act], an official ballot  
 12 is voted when, after the requirements of [sections 22 and  
 13 24] have been satisfied, the return/verification envelope  
 14 has been opened by election officials and the secrecy  
 15 envelope containing the ballot has been deposited in the  
 16 official ballot box.

17 NEW SECTION. Section 17. Replacement ballots --  
 18 procedures. (1) An elector may obtain a replacement ballot  
 19 as provided in this section if his ballot is destroyed,  
 20 spoiled, lost, or not received by the elector.

21 (2) An elector seeking a replacement ballot shall sign  
 22 a sworn statement stating that the ballot was either  
 23 destroyed, spoiled, lost, or not received and shall present  
 24 the statement to the election administrator no later than 8  
 25 p.m. on election day.

1 (3) Upon receiving the sworn statement, the election  
 2 administrator shall issue a replacement ballot to the  
 3 elector. Each spoiled ballot must be returned before a new  
 4 one may be issued.

5 (4) The election administrator shall designate his  
 6 office or a central location in the political subdivision in  
 7 which the election is conducted as the single location for  
 8 obtaining a replacement ballot.

9 (5) A replacement ballot may also be issued pursuant  
 10 to [section 25].

11 (6) The election administrator shall keep a record of  
 12 each replacement ballot issued. If he later determines that  
 13 any elector to whom a replacement ballot has been issued has  
 14 attempted to vote more than once, he shall immediately  
 15 notify the county attorney and the secretary of state of  
 16 each instance.

17 NEW SECTION. Section 18. Returning marked ballots --  
 18 when -- where. (1) After complying with [section 16], an  
 19 elector may return his ballot on or before election day by  
 20 either:

21 (a) depositing the return/verification envelope in the  
 22 United States mail, with sufficient postage affixed; or  
 23 (b) returning it in person to any place of deposit  
 24 designated by the election administrator pursuant to  
 25 [section 19].



1 (2) In order to have his ballot counted, each elector  
2 must return it in such a manner that it is received prior to  
3 8 p.m. on election day.

4 NEW SECTION. Section 19. Places of deposit. (1) The  
5 election administrator shall designate his office and may  
6 designate one or more places in the political subdivision in  
7 which the election is being conducted as places of deposit  
8 where ballots may be returned in person by the elector.

9 (2) Prior to election day, ballots may be returned to  
10 any designated place of deposit only during regular business  
11 hours.

12 (3) On election day, each location designated as a  
13 place of deposit must be open as provided in 13-1-106, and  
14 ballots may be returned during those hours.

15 (4) The election administrator may designate certain  
16 locations as election day places of deposit, and any  
17 location so designated shall function as a place of deposit  
18 only on election day.

19 (5) The election administrator shall provide each  
20 designated place of deposit with an official ballot  
21 transport box secured as provided by law.

22 NEW SECTION. Section 20. Disposition of ballots  
23 returned in person. Ballots returned by the elector in  
24 person must be processed as follows:

25 (1) If returned to the election administrator's office

1 directly, the ballot must be processed in the same manner  
2 provided for ballots returned by mail except that, while the  
3 elector is present, officials shall:

4 (a) verify the signature pursuant to {section 22};

5 (b) resolve any questions as to the validity of the  
6 ballot; and

7 (c) deposit the unopened secrecy envelope containing  
8 the ballot in the official ballot box.

9 (2) If returned to a place of deposit other than the  
10 election administrator's office, the election official on  
11 location shall:

12 (a) keep a log of the names of all electors from whom  
13 he receives ballots;

14 (b) have the elector sign the log where his name has  
15 been entered;

16 (c) while the elector is present, compare the  
17 signature on the return/verification envelope with that  
18 entered in the log and resolve any discrepancies with the  
19 elector;

20 (d) deposit the unopened return/verification envelope  
21 in the sealed ballot transport box provided for that  
22 purpose; and

23 (e) securely retain all ballots until they are  
24 transported to the election administrator's office. The  
25 transport boxes must then be opened and the ballots disposed

1 of in the same manner provided for ballots returned by mail.

2 NEW SECTION. Section 21. Disposition of ballots  
3 returned by mail. (1) Upon receipt of each  
4 return/verification envelope, election officials shall:

5 (a) compare the name with the official register to  
6 determine that the person has not previously voted;

7 (b) verify the signature on the affidavit in the  
8 manner provided by [section 22];

9 (c) open the return/verification envelope and retain  
10 it as an official record;

11 (d) remove and examine the secrecy envelope to  
12 determine if the ballot is valid pursuant to [section 24];

13 (e) if the ballot is valid, record the name of the  
14 elector in the official register as having voted; and

15 (f) deposit the unopened secrecy envelope containing  
16 the ballot in the official ballot box.

17 (2) If at any point there is a question concerning a  
18 particular ballot, the election administrator may not  
19 deposit the ballot in question. The election administrator  
20 shall retain all materials relating to the questioned ballot  
21 until the question is resolved satisfactorily or the  
22 question is determined as provided in [section 26].

23 NEW SECTION. Section 22. Signature verification --  
24 procedures. (1) The election administrator shall verify the  
25 signature of each elector by comparing the affidavit printed

1 on the return/verification envelope to the signature on that  
2 elector's registration card or signature card provided under  
3 [section 23].

4 (2) If the election administrator is convinced that  
5 the individual signing the affidavit is the same as the one  
6 whose name appears on the registration card, he shall  
7 proceed to validate the ballot.

8 (3) If the election administrator is not convinced  
9 that the individual signing the return/verification envelope  
10 is the same as the one whose name appears on the  
11 registration card, he may not validate the ballot but  
12 instead shall:

13 (a) give notice to the elector as provided in [section  
14 25]; and

15 (b) if the discrepancy is not rectified to the  
16 election administrator's satisfaction, present the unopened  
17 envelope and the registration card to the canvassing board  
18 for a determination.

19 NEW SECTION. Section 23. Voting by nonregistered  
20 electors. (1) For any election being conducted under [this  
21 act] by a political subdivision that allows individuals to  
22 vote who are not registered electors, such an individual may  
23 vote by appearing in person at the election administrator's  
24 office and demonstrating that he possesses the  
25 qualifications which entitle him to vote.

1 (2) An individual complying with subsection (1) before  
2 official ballots are available may leave a card with the  
3 election administrator containing his signature and the  
4 address to which his ballot is to be mailed. The signature  
5 provided must then be used for verification when the mail  
6 ballot is returned.

7 (3) An individual complying with subsection (1) after  
8 official ballots are available and before the close of the  
9 polls on election day must be permitted to vote at that  
10 time.

11 NEW SECTION. Section 24. Valid ballots --  
12 requirements. (1) Only valid ballots may be counted in an  
13 election conducted under [this act].

14 (2) For the purpose of [this act], a ballot is valid  
15 only if:

16 (a) it is sealed in the secrecy envelope and returned  
17 in the return/verification envelope;

18 (b) the elector's signature on the affidavit on the  
19 return/verification envelope is verified pursuant to  
20 [section 22]; and

21 (c) it is received before 8 p.m. on election day.

22 (3) A ballot is invalid if:

23 (a) more than one ballot is enclosed in a single  
24 return/verification or secrecy envelope; or

25 (b) any identifying marks are placed on the ballot by

1 the elector.

2 NEW SECTION. Section 25. Notice to elector --  
3 opportunity to resolve questions. (1) As soon as possible  
4 after receipt of an elector's return/verification envelope,  
5 the election administrator shall give notice to the elector,  
6 either by telephone or by first-class mail, if the election  
7 administrator:

8 (a) is unable to verify the elector's signature under  
9 [section 22]; or

10 (b) has discovered a procedural mistake made by the  
11 elector that would invalidate his ballot under [section 24].

12 (2) The election administrator shall inform the  
13 elector that he may appear in person at the election  
14 administrator's office prior to 8 p.m. on election day and  
15 verify the signature or correct the mistake.

16 (3) Any elector so appearing must be permitted to:

17 (a) verify his signature, after proof of  
18 identification, by affirming that the signature is in fact  
19 his or completing a new registration card containing his  
20 current signature;

21 (b) correct any minor mistake if the correction would  
22 render the ballot valid; or

23 (c) if necessary, request and receive a replacement  
24 ballot and vote it at that time.

25 NEW SECTION. Section 26. Resolving issues in

1 question. Any questions concerning the validity of a ballot  
2 or signature must be resolved in the following manner:

3 (1) If the election administrator is unable to resolve  
4 the issue to his satisfaction, he shall give notice to the  
5 elector as provided in [section 25].

6 (2) If the elector fails to appear or, if even after  
7 such an appearance, the issue is still not resolved to the  
8 election administrator's satisfaction, the election  
9 administrator shall present the issue for a determination to  
10 the board of judges appointed to count the ballots.

11 (3) If the counting board is unable to resolve the  
12 issue to its satisfaction, it may not count the ballot in  
13 question. Instead, the election administrator shall present  
14 the issue to the board of canvassers for a determination of  
15 the issue.

16 (4) If the board of canvassers is unable to resolve  
17 the issue, the ballot must not be counted.

18 NEW SECTION. Section 27. Procedure at close of  
19 voting. After the close of voting on election day, election  
20 officials shall:

- 21 (1) open the official ballot boxes;  
22 (2) open each secrecy envelope, removing the ballot;  
23 and  
24 (3) proceed to count the votes as otherwise provided  
25 by law.

1 Section 28. Section 7-13-2236, MCA, is amended to  
2 read:

3 "7-13-2236. General district election. (1) The  
4 election of directors of the district shall be held every 4  
5 years with the election for local government officials  
6 provided for in 13-1-104(2).

7 (2) The election of directors of a district located in  
8 an unincorporated area may be conducted by mail ballot as  
9 provided in [sections 1 through 27]."

10 Section 29. Section 13-1-401, MCA, is amended to read:

11 "13-1-401. Manner of conducting general elections for  
12 political subdivisions required to hold annual elections.

13 (1) Any political subdivision required to hold annual  
14 elections under 13-1-104(3) may cooperate with school  
15 districts having similar district boundaries to hold the  
16 election at the same location. The election administrator or  
17 deputy election administrator appointed under the provisions  
18 of 13-1-301 shall cooperate with the school district  
19 election administrator to share costs, as provided in  
20 13-1-302.

21 (2) A political subdivision subject to 13-1-104(3)  
22 may, with the consent of the election administrator or  
23 deputy election administrator, conduct its annual election  
24 at an annual meeting of the political subdivision or at  
25 another convenient location within the political

1 subdivision.

2 (3) A political subdivision election subject to  
3 13-1-104(3) may be conducted by mail ballot as provided in  
4 [sections 1 through 27].

5 ~~†3†~~(4) The election administrator or deputy election  
6 administrator conducting an election under the provisions of  
7 subsection (1), ~~or (2), or (3)~~ shall give notice of the  
8 election not less than 20 days or more than 40 days before  
9 the day of the election by display advertisement at least  
10 two times in a newspaper of general circulation within the  
11 political subdivision. The election administrator or deputy  
12 election administrator may notify the public of the election  
13 by additional posting of notices or radio and television  
14 announcements."

15 NEW SECTION. Section 30. Codification instruction.  
16 Sections 1 through 27 are intended to be codified as an  
17 integral part of Title 13, and the provisions of Title 13  
18 apply to sections 1 through 27.

19 NEW SECTION. Section 31. Effective date. This act is  
20 effective July 1, 1985.

-End-

APPROVED BY COMMITTEE  
ON STATE ADMINISTRATION

1                   STATEMENT OF INTENT  
2                   SENATE BILL 169  
3                   Senate State Administration Committee

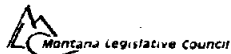
1    available options.

5           A statement of intent is required for this bill because  
6 section 6 grants the secretary of state authority to adopt  
7 rules for the conduct of mail ballot elections. It is  
8 intended that the authority to adopt rules extends only to  
9 the areas specifically provided for in section 6. Rules are  
10 to be adopted under the Montana Administrative Procedure  
11 Act. The rules must be consistent with the provisions of the  
12 act.

13           It is intended that use of the mail ballot option will  
14 be entirely optional and within the discretion of the  
15 applicable jurisdiction and election administrator.

16           It is intended that nothing in this act be interpreted  
17 as requiring either the election administrator or the  
18 applicable jurisdiction to select or use the mail ballot  
19 option.

20           It is intended that use of the mail ballot option is  
21 authorized only for the specific elections enumerated in  
22 this act. It is further intended that the elections for  
23 which the mail ballot option may be used will be only those  
24 elections for which special circumstances make the use of  
25 the mail ballot option potentially the most desirable of the



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7 BY REQUEST OF THE SECRETARY OF STATE  
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13

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

15 NEW SECTION. Section 1. Statement of purpose. The  
16 purpose of [this act] is to provide the option of conducting  
17 certain specified elections using a procedure called a "mail  
18 ballot election" and to provide the procedures therefor. The  
19 provisions of [this act] recognize that sound public policy  
20 concerning the conduct of elections often requires the  
21 balancing of various elements of the public interest that  
22 are sometimes in conflict. Among these factors are the  
23 public's interest in fair and accurate elections, the  
24 election of those who will govern or represent, and  
25 cost-effective administration of all functions of

1 government, including the conduct of elections. The  
2 provisions of [this act] further recognize that when these  
3 and other factors are balanced, the conduct of elections by  
4 mail ballot is potentially the most desirable of the  
5 available options in certain circumstances.

6 NEW SECTION. Section 2. Definitions. As used in [this  
7 act], the following definitions apply:

8 (1) "Election day" is the date established by law on  
9 which a particular election would be held if that election  
10 were being conducted by means other than a mail ballot  
11 election.

12 (2) "Mail ballot election" means any election that  
13 involves either candidates or ballot issues and is conducted  
14 in compliance with the procedure specified in [section 3].

15 (3) "Return/verification envelope" means an envelope  
16 that contains a secrecy envelope and ballot and which is  
17 designed to:

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

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

23 (4) "Secrecy envelope" means an envelope used to  
24 contain the elector's ballot and that is designed to conceal  
25 the elector's vote and to prevent that elector's ballot from

1 being distinguished from the ballots of other electors.

2 NEW SECTION. Section 3. Mail ballot election  
3 procedure. A mail ballot election must be conducted  
4 substantially as follows:

5 (1) Official ballots must be prepared and all other  
6 initial procedures followed as otherwise provided by law.

7 (2) An official ballot must be mailed to every  
8 qualified elector of the political subdivision conducting  
9 the election.

10 (3) The elector shall mark the ballot at home and  
11 place it in a secrecy envelope.

12 (4) The elector shall then place the secrecy envelope  
13 containing his ballot in a return/verification envelope and  
14 shall return it by mailing it or delivering it in person to  
15 a place of deposit designated by the election administrator  
16 so that it is received prior to a specified time on election  
17 day.

18 (5) Once returned, election officials shall first  
19 qualify the submitted ballot by examining the  
20 return/verification envelope to determine whether it is  
21 submitted by a qualified elector who has not previously  
22 voted.

23 (6) If the ballot so qualifies and is otherwise valid,  
24 officials shall then open the return/verification envelope  
25 and remove the secrecy envelope, which is then voted by

1 depositing it unopened in an official ballot box.

2 (7) After the close of polls on election day, voted  
3 ballots must be counted and canvassed as otherwise provided  
4 by law.

5 NEW SECTION. Section 4. Mail ballot elections not  
6 mandatory -- when authorized -- when prohibited.

7 (1) Conducting elections by mail ballot is only one option  
8 available to local officials and nothing in [this act]  
9 mandates that the procedure be used.

10 (2) The following elections may be conducted by mail  
11 ballot:

12 (a) an election in a political subdivision required to  
13 hold annual elections under 13-1-104(3), other than a school  
14 district;

15 (b) an election in a city of the third class, as  
16 defined in 7-1-4111(3), if all of the candidates whose names  
17 will appear on the ballot are candidates for offices to be  
18 elected without party designation;

19 (c) an election in a town as defined in 7-1-4111(4);

20 (d) an election conducted under 7-13-2236 in an  
21 unincorporated area; and

22 (e) a special election called by a local government  
23 unit for the sole purpose of submitting one or more ballot  
24 issues to its qualified electors if such special election is  
25 not held in conjunction with a statutorily scheduled



1 election.

2 (3) The following elections may not be conducted by  
3 mail ballot:

4 (a) an election held for one of the purposes or at the  
5 time provided in 13-1-104(1) and 13-1-107(1);

6 (b) an election held for one of the purposes or at the  
7 time provided in 13-1-104(2) and 13-1-107(2), except as  
8 specifically allowed by subsections (2)(b) and (2)(c) of  
9 this section;

10 (c) an election for any purpose conducted by or on  
11 behalf of a school district;

12 (d) an election being held under the provisions of the  
13 Montana Recall Act, in Title 2, chapter 16, part 6;

14 (e) an election involving candidates for public  
15 office, except as specifically allowed by subsections (2)(a)  
16 through (2)(c) of this section; and

17 (f) a special election being held in conjunction with  
18 a statutorily scheduled election.

19 NEW SECTION. Section 5. General election laws to  
20 apply. All laws applicable to elections when voting is not  
21 done by mail ballot and all penalties prescribed for  
22 violation of those laws apply to elections conducted by mail  
23 ballot to the extent they do not specifically conflict with  
24 the provisions of [this act] or are not otherwise provided  
25 for by [this act].

1 NEW SECTION. Section 6. Role of secretary of state.

2 In addition to other powers and duties conveyed by law, the  
3 secretary of state, with advice from election  
4 administrators, shall:

5 (1) prescribe the form of materials to be used in the  
6 conduct of mail ballot elections;

7 (2) review written plans for the conduct of mail  
8 ballot elections as provided in [section 11]; and

9 (3) adopt rules consistent with [this act] to:

10 (a) establish and maintain uniformity in the conduct  
11 of mail ballot elections; and

12 (b) establish procedures for the conduct of mail  
13 ballot elections that:

14 (i) prevent fraud;

15 (ii) ensure the accurate handling and canvassing of  
16 mail ballots; and

17 (iii) ensure that the secrecy of voted ballots is  
18 maintained.

19 NEW SECTION. Section 7. How election initiated. A  
20 proposal to conduct an election under [this act] may be  
21 initiated by either the election administrator or the  
22 appropriate governing body as provided in [sections 8  
23 through 10].

24 NEW SECTION. Section 8. Initiation by governing body.

25 (1) A political subdivision may, by resolution of the

1 governing body addressed to the election administrator,  
2 request that a particular election be conducted under the  
3 provisions of [this act].

4 (2) No later than 70 days before election day, the  
5 governing body shall transmit its request to the election  
6 administrator, who shall determine whether it is  
7 economically and administratively feasible to conduct the  
8 requested election by mail ballot.

9 (3) Except as provided in [section 10], the decision  
10 to conduct an election under the provisions of [this act] is  
11 within the sole discretion of the election administrator.

12 (4) Within 5 days after receiving a request, the  
13 election administrator shall respond in writing, stating  
14 that the request is either granted or denied for reasons  
15 specified. If granted, the election administrator shall  
16 prepare a plan as provided in [section 11].

17 NEW SECTION. Section 9. Initiation by election  
18 administrator. (1) Even if no request has been received  
19 from the governing body concerned, the election  
20 administrator may conduct any election authorized by  
21 [section 4] under [this act] if, in his discretion, that  
22 would be the most economically and administratively feasible  
23 way of conducting the election in question.

24 (2) If he decides to conduct an election pursuant to  
25 subsection (1), the election administrator shall prepare a

1 written plan as provided in [section 11] and forward a copy  
2 to the governing body concerned, together with a written  
3 statement informing it of his decision to conduct the  
4 election by mail ballot and the reasons therefor and the  
5 right of the governing body to object under [section 10].

6 NEW SECTION. Section 10. Objection of political  
7 subdivision. (1) A political subdivision may, by resolution  
8 of the governing body, object to the conduct of one of its  
9 elections under [this act]. The resolution must include a  
10 statement of the reasons for the objection.

11 (2) If such a resolution is filed with the election  
12 administrator no later than 55 days prior to election day,  
13 the election may not be conducted under [this act].

14 NEW SECTION. Section 11. Written plan for conduct of  
15 election -- amendments -- approval procedures. (1) The  
16 election administrator shall prepare a written plan,  
17 including a timetable, for the conduct of the election and  
18 shall submit it to the secretary of state at least 60 days  
19 prior to the date set for the election.

20 (2) The plan may be amended by the election  
21 administrator any time prior to the 35th day before election  
22 day by notifying the secretary of state in writing of any  
23 changes.

24 (3) Within 5 days of receiving the plan and as soon as  
25 possible after receiving any amendments, the secretary of

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

3 (4) When the written plan has been approved, the  
4 election administrator shall proceed to conduct the election  
5 according to the approved plan.

6 NEW SECTION. Section 12. Proportional voting. The  
7 election administrator shall provide a method for  
8 proportional voting in his written plan for an election  
9 conducted under [this act] that requires votes to be cast in  
10 proportion to ownership or any factor other than one vote  
11 per person.

12 NEW SECTION. Section 13. Distributing materials to  
13 electors -- procedure. For each election conducted under  
14 [this act], the election administrator shall:

15 (1) mail a single packet to every qualified elector of  
16 the political subdivision conducting the election;

17 (2) ensure that each packet contains only one each of  
18 the following:

19 (a) an official ballot;

20 (b) a secrecy envelope;

21 (c) a return/verification envelope; and

22 (d) complete written instructions for voting and  
23 returning ballots; and

24 (3) ensure that each packet is:

25 (a) clearly marked on its face with the words "DO NOT

1 FORWARD. RETURN TO SENDER. RETURN POSTAGE GUARANTEED.";

2 (b) addressed to a single individual elector at the  
3 most current address available from the official  
4 registration records; and

5 (c) deposited in the United States mail with  
6 sufficient prepaid postage for it to be delivered to the  
7 elector's address.

8 NEW SECTION. Section 14. When materials to be mailed.  
9 For any election conducted by mail, ballots must be mailed  
10 no sooner than the 25th day and no later than the 15th day  
11 before election day. All ballots must be mailed the same  
12 day.

13 NEW SECTION. Section 15. Voting by elector when  
14 absent from place of residence during conduct of election.

15 (1) A qualified elector who will be absent from the county  
16 during the time the election is being conducted may:

17 (a) vote in person in the election administrator's  
18 office as soon as ballots are available and until noon the  
19 day before the ballots are scheduled to be mailed; or

20 (b) make a written request, signed by the applicant  
21 and addressed to the election administrator, that the ballot  
22 be mailed to an address other than that which appears on the  
23 registration card. Written requests must be accepted until  
24 noon the day before the ballots are scheduled to be mailed.

25 (2) Ballots mailed to electors pursuant to this

1 section must be mailed the same day that all other ballots  
2 are mailed.

3 NEW SECTION. Section 16. Voting mail ballots.

4 (1) Upon receipt of his ballot, the elector may vote by:

5 (a) marking the ballot in the manner specified;

6 (b) placing the marked ballot in the secrecy envelope,  
7 free of any identifying marks;

8 (c) placing the secrecy envelope containing a single  
9 ballot in the return/verification envelope;

10 (d) executing the affidavit printed on the  
11 return/verification envelope; and

12 (e) returning the return/verification envelope with  
13 the secrecy envelope containing the ballot enclosed, as  
14 provided in [section 18].

15 (2) For the purpose of [this act], an official ballot  
16 is voted when, after the requirements of [sections 22 and  
17 24] have been satisfied, the return/verification envelope  
18 has been opened by election officials and the secrecy  
19 envelope containing the ballot has been deposited in the  
20 official ballot box.

21 NEW SECTION. Section 17. Replacement ballots --  
22 procedures. (1) An elector may obtain a replacement ballot  
23 as provided in this section if his ballot is destroyed,  
24 spoiled, lost, or not received by the elector.

25 (2) An elector seeking a replacement ballot shall sign

1 a sworn statement stating that the ballot was either  
2 destroyed, spoiled, lost, or not received and shall present  
3 the statement to the election administrator no later than 8  
4 p.m. on election day.

5 (3) Upon receiving the sworn statement, the election  
6 administrator shall issue a replacement ballot to the  
7 elector. Each spoiled ballot must be returned before a new  
8 one may be issued.

9 (4) The election administrator shall designate his  
10 office or a central location in the political subdivision in  
11 which the election is conducted as the single location for  
12 obtaining a replacement ballot.

13 (5) A replacement ballot may also be issued pursuant  
14 to [section 25].

15 (6) The election administrator shall keep a record of  
16 each replacement ballot issued. If he later determines that  
17 any elector to whom a replacement ballot has been issued has  
18 attempted to vote more than once, he shall immediately  
19 notify the county attorney and the secretary of state of  
20 each instance.

21 NEW SECTION. Section 18. Returning marked ballots --  
22 when -- where. (1) After complying with [section 16], an  
23 elector may return his ballot on or before election day by  
24 either:

25 (a) depositing the return/verification envelope in the

1 United States mail, with sufficient postage affixed; or  
 2 (b) returning it in person to any place of deposit  
 3 designated by the election administrator pursuant to  
 4 [section 19].  
 5 (2) In order to have his ballot counted, each elector  
 6 must return it in such a manner that it is received prior to  
 7 8 p.m. on election day.  
 8 NEW SECTION. Section 19. Places of deposit. (1) The  
 9 election administrator shall designate his office and may  
 10 designate one or more places in the political subdivision in  
 11 which the election is being conducted as places of deposit  
 12 where ballots may be returned in person by the elector.  
 13 (2) Prior to election day, ballots may be returned to  
 14 any designated place of deposit only during regular business  
 15 hours.  
 16 (3) On election day, each location designated as a  
 17 place of deposit must be open as provided in 13-1-106, and  
 18 ballots may be returned during those hours.  
 19 (4) The election administrator may designate certain  
 20 locations as election day places of deposit, and any  
 21 location so designated shall function as a place of deposit  
 22 only on election day.  
 23 (5) The election administrator shall provide each  
 24 designated place of deposit with an official ballot  
 25 transport box secured as provided by law.

1 NEW SECTION. Section 20. Disposition of ballots  
 2 returned in person. Ballots returned by the elector in  
 3 person must be processed as follows:  
 4 (1) If returned to the election administrator's office  
 5 directly, the ballot must be processed in the same manner  
 6 provided for ballots returned by mail except that, while the  
 7 elector is present, officials shall:  
 8 (a) verify the signature pursuant to [section 22];  
 9 (b) resolve any questions as to the validity of the  
 10 ballot; and  
 11 (c) deposit the unopened secrecy envelope containing  
 12 the ballot in the official ballot box.  
 13 (2) If returned to a place of deposit other than the  
 14 election administrator's office, the election official on  
 15 location shall:  
 16 (a) keep a log of the names of all electors from whom  
 17 he receives ballots;  
 18 (b) have the elector sign the log where his name has  
 19 been entered;  
 20 (c) while the elector is present, compare the  
 21 signature on the return/verification envelope with that  
 22 entered in the log and resolve any discrepancies with the  
 23 elector;  
 24 (d) deposit the unopened return/verification envelope  
 25 in the sealed ballot transport box provided for that

1 purpose; and

2 (e) securely retain all ballots until they are  
3 transported to the election administrator's office. The  
4 transport boxes must then be opened and the ballots disposed  
5 of in the same manner provided for ballots returned by mail.

6 NEW SECTION. Section 21. Disposition of ballots  
7 returned by mail. (1) Upon receipt of each  
8 return/verification envelope, election officials shall:

9 (a) compare the name with the official register to  
10 determine that the person has not previously voted;

11 (b) verify the signature on the affidavit in the  
12 manner provided by [section 22];

13 (c) open the return/verification envelope and retain  
14 it as an official record;

15 (d) remove and examine the secrecy envelope to  
16 determine if the ballot is valid pursuant to [section 24];

17 (e) if the ballot is valid, record the name of the  
18 elector in the official register as having voted; and

19 (f) deposit the unopened secrecy envelope containing  
20 the ballot in the official ballot box.

21 (2) If at any point there is a question concerning a  
22 particular ballot, the election administrator may not  
23 deposit the ballot in question. The election administrator  
24 shall retain all materials relating to the questioned ballot  
25 until the question is resolved satisfactorily or the

1 question is determined as provided in [section 26].

2 NEW SECTION. Section 22. Signature verification --  
3 procedures. (1) The election administrator shall verify the  
4 signature of each elector by comparing the affidavit printed  
5 on the return/verification envelope to the signature on that  
6 elector's registration card or signature card provided under  
7 [section 23].

8 (2) If the election administrator is convinced that  
9 the individual signing the affidavit is the same as the one  
10 whose name appears on the registration card, he shall  
11 proceed to validate the ballot.

12 (3) If the election administrator is not convinced  
13 that the individual signing the return/verification envelope  
14 is the same as the one whose name appears on the  
15 registration card, he may not validate the ballot but  
16 instead shall:

17 (a) give notice to the elector as provided in [section  
18 25]; and

19 (b) if the discrepancy is not rectified to the  
20 election administrator's satisfaction, present the unopened  
21 envelope and the registration card to the canvassing board  
22 for a determination.

23 NEW SECTION. Section 23. Voting by nonregistered  
24 electors. (1) For any election being conducted under [this  
25 act] by a political subdivision that allows individuals to

1 vote who are not registered electors, such an individual may  
2 vote by appearing in person at the election administrator's  
3 office and demonstrating that he possesses the  
4 qualifications which entitle him to vote.

5 (2) An individual complying with subsection (1) before  
6 official ballots are available may leave a card with the  
7 election administrator containing his signature and the  
8 address to which his ballot is to be mailed. The signature  
9 provided must then be used for verification when the mail  
10 ballot is returned.

11 (3) An individual complying with subsection (1) after  
12 official ballots are available and before the close of the  
13 polls on election day must be permitted to vote at that  
14 time.

15 NEW SECTION. Section 24. Valid ballots --  
16 requirements. (1) Only valid ballots may be counted in an  
17 election conducted under [this act].

18 (2) For the purpose of [this act], a ballot is valid  
19 only if:

20 (a) it is sealed in the secrecy envelope and returned  
21 in the return/verification envelope;

22 (b) the elector's signature on the affidavit on the  
23 return/verification envelope is verified pursuant to  
24 [section 22]; and

25 (c) it is received before 8 p.m. on election day.

1 (3) A ballot is invalid if:

2 (a) more than one ballot is enclosed in a single  
3 return/verification or secrecy envelope; or

4 (b) any identifying marks are placed on the ballot by  
5 the elector.

6 NEW SECTION. Section 25. Notice to elector --  
7 opportunity to resolve questions. (1) As soon as possible  
8 after receipt of an elector's return/verification envelope,  
9 the election administrator shall give notice to the elector,  
10 either by telephone or by first-class mail, if the election  
11 administrator:

12 (a) is unable to verify the elector's signature under  
13 [section 22]; or

14 (b) has discovered a procedural mistake made by the  
15 elector that would invalidate his ballot under [section 24].

16 (2) The election administrator shall inform the  
17 elector that he may appear in person at the election  
18 administrator's office prior to 8 p.m. on election day and  
19 verify the signature or correct the mistake.

20 (3) Any elector so appearing must be permitted to:

21 (a) verify his signature, after proof of  
22 identification, by affirming that the signature is in fact  
23 his or completing a new registration card containing his  
24 current signature;

25 (b) correct any minor mistake if the correction would

1 render the ballot valid; or

2 (c) if necessary, request and receive a replacement  
3 ballot and vote it at that time.

4 NEW SECTION. Section 26. Resolving issues in  
5 question. Any questions concerning the validity of a ballot  
6 or signature must be resolved in the following manner:

7 (1) If the election administrator is unable to resolve  
8 the issue to his satisfaction, he shall give notice to the  
9 elector as provided in [section 25].

10 (2) If the elector fails to appear or, if even after  
11 such an appearance, the issue is still not resolved to the  
12 election administrator's satisfaction, the election  
13 administrator shall present the issue for a determination to  
14 the board of judges appointed to count the ballots.

15 (3) If the counting board is unable to resolve the  
16 issue to its satisfaction, it may not count the ballot in  
17 question. Instead, the election administrator shall present  
18 the issue to the board of canvassers for a determination of  
19 the issue.

20 (4) If the board of canvassers is unable to resolve  
21 the issue, the ballot must not be counted.

22 NEW SECTION. Section 27. Procedure at close of  
23 voting. After the close of voting on election day, election  
24 officials shall:

25 (1) open the official ballot boxes;

1 (2) open each secrecy envelope, removing the ballot;  
2 and

3 (3) proceed to count the votes as otherwise provided  
4 by law.

5 Section 28. Section 7-13-2236, MCA, is amended to  
6 read:

7 "7-13-2236. General district election. (1) The  
8 election of directors of the district shall be held every 4  
9 years with the election for local government officials  
10 provided for in 13-1-104(2).

11 (2) The election of directors of a district located in  
12 an unincorporated area may be conducted by mail ballot as  
13 provided in [sections 1 through 27]."

14 Section 29. Section 13-1-401, MCA, is amended to read:

15 "13-1-401. Manner of conducting general elections for  
16 political subdivisions required to hold annual elections.

17 (1) Any political subdivision required to hold annual  
18 elections under 13-1-104(3) may cooperate with school  
19 districts having similar district boundaries to hold the  
20 election at the same location. The election administrator or  
21 deputy election administrator appointed under the provisions  
22 of 13-1-301 shall cooperate with the school district  
23 election administrator to share costs, as provided in  
24 13-1-302.

25 (2) A political subdivision subject to 13-1-104(3)



1 may, with the consent of the election administrator or  
2 deputy election administrator, conduct its annual election  
3 at an annual meeting of the political subdivision or at  
4 another convenient location within the political  
5 subdivision.

6 (3) A political subdivision election subject to  
7 13-1-104(3) may be conducted by mail ballot as provided in  
8 [sections 1 through 27].

9 ~~(3)~~(4) The election administrator or deputy election  
10 administrator conducting an election under the provisions of  
11 subsection (1), or (2), or (3) shall give notice of the  
12 election not less than 20 days or more than 40 days before  
13 the day of the election by display advertisement at least  
14 two times in a newspaper of general circulation within the  
15 political subdivision. The election administrator or deputy  
16 election administrator may notify the public of the election  
17 by additional posting of notices or radio and television  
18 announcements."

19 NEW SECTION. Section 30. Codification instruction.  
20 Sections 1 through 27 are intended to be codified as an  
21 integral part of Title 13, and the provisions of Title 13  
22 apply to sections 1 through 27.

23 NEW SECTION. Section 31. Effective date. This act is  
24 effective July 1, 1985.

-End-

## 1 STATEMENT OF INTENT

## 2 SENATE BILL 169

## 3 Senate State Administration Committee

1 available options.

4  
5 A statement of intent is required for this bill because  
6 section 6 grants the secretary of state authority to adopt  
7 rules for the conduct of mail ballot elections. It is  
8 intended that the authority to adopt rules extends only to  
9 the areas specifically provided for in section 6. Rules are  
10 to be adopted under the Montana Administrative Procedure  
11 Act. The rules must be consistent with the provisions of the  
12 act.

13 It is intended that use of the mail ballot option will  
14 be entirely optional and within the discretion of the  
15 applicable jurisdiction and election administrator.

16 It is intended that nothing in this act be interpreted  
17 as requiring either the election administrator or the  
18 applicable jurisdiction to select or use the mail ballot  
19 option.

20 It is intended that use of the mail ballot option is  
21 authorized only for the specific elections enumerated in  
22 this act. It is further intended that the elections for  
23 which the mail ballot option may be used will be only those  
24 elections for which special circumstances make the use of  
25 the mail ballot option potentially the most desirable of the

THIRD READING

## 1 SENATE BILL NO. 169

2 INTRODUCED BY HARDING, HAND, ASAY,

3 BARDANOUE, NATHE, O'CONNELL, BACHINI,

4 HIRSCH, STORY, CAMPBELL, HANSON, KOEHNKE,

5 C. SMITH, WINSLOW, KOLSTAD, TVEIT, MCCALLUM

6 BOYLAN, CRIPPEN, BENGTSON, DANIELS

7 BY REQUEST OF THE SECRETARY OF STATE

8  
9 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW ELECTION  
10 ADMINISTRATORS THE OPTION OF CONDUCTING CERTAIN SPECIFIC  
11 ELECTIONS BY MAIL BALLOT; AMENDING SECTIONS 7-13-2236 AND  
12 13-1-401, MCA; AND PROVIDING AN EFFECTIVE DATE."  
13

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

15 NEW SECTION. Section 1. Statement of purpose. The  
16 purpose of [this act] is to provide the option of conducting  
17 certain specified elections using a procedure called a "mail  
18 ballot election" and to provide the procedures therefor. The  
19 provisions of [this act] recognize that sound public policy,  
20 concerning the conduct of elections often requires the  
21 balancing of various elements of the public interest that  
22 are sometimes in conflict. Among these factors are the  
23 public's interest in fair and accurate elections, the  
24 election of those who will govern or represent, and  
25 cost-effective administration of all functions of

1 government, including the conduct of elections. The  
2 provisions of [this act] further recognize that when these  
3 and other factors are balanced, the conduct of elections by  
4 mail ballot is potentially the most desirable of the  
5 available options in certain circumstances.

6 NEW SECTION. Section 2. Definitions. As used in [this  
7 act], the following definitions apply:

8 (1) "Election day" is the date established by law on  
9 which a particular election would be held if that election  
10 were being conducted by means other than a mail ballot  
11 election.

12 (2) "Mail ballot election" means any election that  
13 involves either candidates or ballot issues and is conducted  
14 in compliance with the procedure specified in [section 3].

15 (3) "Return/verification envelope" means an envelope  
16 that contains a secrecy envelope and ballot and which is  
17 designed to:

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

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

23 (4) "Secrecy envelope" means an envelope used to  
24 contain the elector's ballot and that is designed to conceal  
25 the elector's vote and to prevent that elector's ballot from

1 being distinguished from the ballots of other electors.

2 NEW SECTION. Section 3. Mail ballot election  
3 procedure. A mail ballot election must be conducted  
4 substantially as follows:

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6 initial procedures followed as otherwise provided by law.

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8 qualified elector of the political subdivision conducting  
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10 (3) The elector shall mark the ballot at home and  
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12 (4) The elector shall then place the secrecy envelope  
13 containing his ballot in a return/verification envelope and  
14 shall return it by mailing it or delivering it in person to  
15 a place of deposit designated by the election administrator  
16 so that it is received prior to a specified time on election  
17 day.

18 (5) Once returned, election officials shall first  
19 qualify the submitted ballot by examining the  
20 return/verification envelope to determine whether it is  
21 submitted by a qualified elector who has not previously  
22 voted.

23 (6) If the ballot so qualifies and is otherwise valid,  
24 officials shall then open the return/verification envelope  
25 and remove the secrecy envelope, which is then voted by

1 depositing it unopened in an official ballot box.

2 (7) After the close of polls on election day, voted  
3 ballots must be counted and canvassed as otherwise provided  
4 by law.

5 NEW SECTION. Section 4. Mail ballot elections not  
6 mandatory -- when authorized -- when prohibited.

7 (1) Conducting elections by mail ballot is only one option  
8 available to local officials and nothing in [this act]  
9 mandates that the procedure be used.

10 (2) The following elections may be conducted by mail  
11 ballot:

12 (a) an election in a political subdivision required to  
13 hold annual elections under 13-1-104(3), other than a school  
14 district;

15 (b) an election in a city of the third class, as  
16 defined in 7-1-4111(3), if all of the candidates whose names  
17 will appear on the ballot are candidates for offices to be  
18 elected without party designation;

19 (c) an election in a town as defined in 7-1-4111(4);

20 (d) an election conducted under 7-13-2236 in an  
21 unincorporated area; and

22 (e) a special election called by a local government  
23 unit for the sole purpose of submitting one or more ballot  
24 issues to its qualified electors if such special election is  
25 not held in conjunction with a statutorily scheduled

1 election.

2 (3) The following elections may not be conducted by  
3 mail ballot:

4 (a) an election held for one of the purposes or at the  
5 time provided in 13-1-104(1) and 13-1-107(1);

6 (b) an election held for one of the purposes or at the  
7 time provided in 13-1-104(2) and 13-1-107(2), except as  
8 specifically allowed by subsections (2)(b) and (2)(c) of  
9 this section;

10 (c) an election for any purpose conducted by or on  
11 behalf of a school district;

12 (d) an election being held under the provisions of the  
13 Montana Recall Act, in Title 2, chapter 16, part 6;

14 (e) an election involving candidates for public  
15 office, except as specifically allowed by subsections (2)(a)  
16 through (2)(c) of this section; and

17 (f) a special election being held in conjunction with  
18 a statutorily scheduled election.

19 NEW SECTION. Section 5. General election laws to  
20 apply. All laws applicable to elections when voting is not  
21 done by mail ballot and all penalties prescribed for  
22 violation of those laws apply to elections conducted by mail  
23 ballot to the extent they do not specifically conflict with  
24 the provisions of [this act] or are not otherwise provided  
25 for by [this act].

1 NEW SECTION. Section 6. Role of secretary of state.

2 In addition to other powers and duties conveyed by law, the  
3 secretary of state, with advice from election  
4 administrators, shall:

5 (1) prescribe the form of materials to be used in the  
6 conduct of mail ballot elections;

7 (2) review written plans for the conduct of mail  
8 ballot elections as provided in [section 11]; and

9 (3) adopt rules consistent with [this act] to:

10 (a) establish and maintain uniformity in the conduct  
11 of mail ballot elections; and

12 (b) establish procedures for the conduct of mail  
13 ballot elections that:

14 (i) prevent fraud;

15 (ii) ensure the accurate handling and canvassing of  
16 mail ballots; and

17 (iii) ensure that the secrecy of voted ballots is  
18 maintained.

19 NEW SECTION. Section 7. How election initiated. A  
20 proposal to conduct an election under [this act] may be  
21 initiated by either the election administrator or the  
22 appropriate governing body as provided in [sections 8  
23 through 10].

24 NEW SECTION. Section 8. Initiation by governing body.

25 (1) A political subdivision may, by resolution of the

1 governing body addressed to the election administrator,  
2 request that a particular election be conducted under the  
3 provisions of [this act].

4 (2) No later than 70 days before election day, the  
5 governing body shall transmit its request to the election  
6 administrator, who shall determine whether it is  
7 economically and administratively feasible to conduct the  
8 requested election by mail ballot.

9 (3) Except as provided in [section 10], the decision  
10 to conduct an election under the provisions of [this act] is  
11 within the sole discretion of the election administrator.

12 (4) Within 5 days after receiving a request, the  
13 election administrator shall respond in writing, stating  
14 that the request is either granted or denied for reasons  
15 specified. If granted, the election administrator shall  
16 prepare a plan as provided in [section 11].

17 NEW SECTION. Section 9. Initiation by election  
18 administrator. (1) Even if no request has been received  
19 from the governing body concerned, the election  
20 administrator may conduct any election authorized by  
21 [section 4] under [this act] if, in his discretion, that  
22 would be the most economically and administratively feasible  
23 way of conducting the election in question.

24 (2) If he decides to conduct an election pursuant to  
25 subsection (1), the election administrator shall prepare a

1 written plan as provided in [section 11] and forward a copy  
2 to the governing body concerned, together with a written  
3 statement informing it of his decision to conduct the  
4 election by mail ballot and the reasons therefor and the  
5 right of the governing body to object under [section 10].

6 NEW SECTION. Section 10. Objection of political  
7 subdivision. (1) A political subdivision may, by resolution  
8 of the governing body, object to the conduct of one of its  
9 elections under [this act]. The resolution must include a  
10 statement of the reasons for the objection.

11 (2) If such a resolution is filed with the election  
12 administrator no later than 55 days prior to election day,  
13 the election may not be conducted under [this act].

14 NEW SECTION. Section 11. Written plan for conduct of  
15 election -- amendments -- approval procedures. (1) The  
16 election administrator shall prepare a written plan,  
17 including a timetable, for the conduct of the election and  
18 shall submit it to the secretary of state at least 60 days  
19 prior to the date set for the election.

20 (2) The plan may be amended by the election  
21 administrator any time prior to the 35th day before election  
22 day by notifying the secretary of state in writing of any  
23 changes.

24 (3) Within 5 days of receiving the plan and as soon as  
25 possible after receiving any amendments, the secretary of

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

3 (4) When the written plan has been approved, the  
4 election administrator shall proceed to conduct the election  
5 according to the approved plan.

6 NEW SECTION. Section 12. Proportional voting. The  
7 election administrator shall provide a method for  
8 proportional voting in his written plan for an election  
9 conducted under [this act] that requires votes to be cast in  
10 proportion to ownership or any factor other than one vote  
11 per person.

12 NEW SECTION. Section 13. Distributing materials to  
13 electors -- procedure. For each election conducted under  
14 [this act], the election administrator shall:

15 (1) mail a single packet to every qualified elector of  
16 the political subdivision conducting the election;

17 (2) ensure that each packet contains only one each of  
18 the following:

19 (a) an official ballot;

20 (b) a secrecy envelope;

21 (c) a return/verification envelope; and

22 (d) complete written instructions for voting and  
23 returning ballots; and

24 (3) ensure that each packet is:

25 (a) clearly marked on its face with the words "DO NOT

1 FORWARD. RETURN TO SENDER. RETURN POSTAGE GUARANTEED.";

2 (b) addressed to a single individual elector at the  
3 most current address available from the official  
4 registration records; and

5 (c) deposited in the United States mail with  
6 sufficient prepaid postage for it to be delivered to the  
7 elector's address.

8 NEW SECTION. Section 14. When materials to be mailed.  
9 For any election conducted by mail, ballots must be mailed  
10 no sooner than the 25th day and no later than the 15th day  
11 before election day. All ballots must be mailed the same  
12 day.

13 NEW SECTION. Section 15. Voting by elector when  
14 absent from place of residence during conduct of election.

15 (1) A qualified elector who will be absent from the county  
16 during the time the election is being conducted may:

17 (a) vote in person in the election administrator's  
18 office as soon as ballots are available and until noon the  
19 day before the ballots are scheduled to be mailed; or

20 (b) make a written request, signed by the applicant  
21 and addressed to the election administrator, that the ballot  
22 be mailed to an address other than that which appears on the  
23 registration card. Written requests must be accepted until  
24 noon the day before the ballots are scheduled to be mailed.

25 (2) Ballots mailed to electors pursuant to this

1 section must be mailed the same day that all other ballots  
2 are mailed.

3 NEW SECTION. Section 16. Voting mail ballots.

4 (1) Upon receipt of his ballot, the elector may vote by:

5 (a) marking the ballot in the manner specified;

6 (b) placing the marked ballot in the secrecy envelope,  
7 free of any identifying marks;

8 (c) placing the secrecy envelope containing a single  
9 ballot in the return/verification envelope;

10 (d) executing the affidavit printed on the  
11 return/verification envelope; and

12 (e) returning the return/verification envelope with  
13 the secrecy envelope containing the ballot enclosed, as  
14 provided in [section 18].

15 (2) For the purpose of [this act], an official ballot  
16 is voted when, after the requirements of [sections 22 and  
17 24] have been satisfied, the return/verification envelope  
18 has been opened by election officials and the secrecy  
19 envelope containing the ballot has been deposited in the  
20 official ballot box.

21 NEW SECTION. Section 17. Replacement ballots --  
22 procedures. (1) An elector may obtain a replacement ballot  
23 as provided in this section if his ballot is destroyed,  
24 spoiled, lost, or not received by the elector.

25 (2) An elector seeking a replacement ballot shall sign

1 a sworn statement stating that the ballot was either  
2 destroyed, spoiled, lost, or not received and shall present  
3 the statement to the election administrator no later than 8  
4 p.m. on election day.

5 (3) Upon receiving the sworn statement, the election  
6 administrator shall issue a replacement ballot to the  
7 elector. Each spoiled ballot must be returned before a new  
8 one may be issued.

9 (4) The election administrator shall designate his  
10 office or a central location in the political subdivision in  
11 which the election is conducted as the single location for  
12 obtaining a replacement ballot.

13 (5) A replacement ballot may also be issued pursuant  
14 to [section 25].

15 (6) The election administrator shall keep a record of  
16 each replacement ballot issued. If he later determines that  
17 any elector to whom a replacement ballot has been issued has  
18 attempted to vote more than once, he shall immediately  
19 notify the county attorney and the secretary of state of  
20 each instance.

21 NEW SECTION. Section 18. Returning marked ballots --  
22 when -- where. (1) After complying with [section 16], an  
23 elector may return his ballot on or before election day by  
24 either:

25 (a) depositing the return/verification envelope in the



1 United States mail, with sufficient postage affixed; or  
 2 (b) returning it in person to any place of deposit  
 3 designated by the election administrator pursuant to  
 4 [section 19].

5 (2) In order to have his ballot counted, each elector  
 6 must return it in such a manner that it is received prior to  
 7 8 p.m. on election day.

8 NEW SECTION. Section 19. Places of deposit. (1) The  
 9 election administrator shall designate his office and may  
 10 designate one or more places in the political subdivision in  
 11 which the election is being conducted as places of deposit  
 12 where ballots may be returned in person by the elector.

13 (2) Prior to election day, ballots may be returned to  
 14 any designated place of deposit only during regular business  
 15 hours.

16 (3) On election day, each location designated as a  
 17 place of deposit must be open as provided in 13-1-106, and  
 18 ballots may be returned during those hours.

19 (4) The election administrator may designate certain  
 20 locations as election day places of deposit, and any  
 21 location so designated shall function as a place of deposit  
 22 only on election day.

23 (5) The election administrator shall provide each  
 24 designated place of deposit with an official ballot  
 25 transport box secured as provided by law.

1 NEW SECTION. Section 20. Disposition of ballots  
 2 returned in person. Ballots returned by the elector in  
 3 person must be processed as follows:

4 (1) If returned to the election administrator's office  
 5 directly, the ballot must be processed in the same manner  
 6 provided for ballots returned by mail except that, while the  
 7 elector is present, officials shall:

8 (a) verify the signature pursuant to [section 22];

9 (b) resolve any questions as to the validity of the  
 10 ballot; and

11 (c) deposit the unopened secrecy envelope containing  
 12 the ballot in the official ballot box.

13 (2) If returned to a place of deposit other than the  
 14 election administrator's office, the election official on  
 15 location shall:

16 (a) keep a log of the names of all electors from whom  
 17 he receives ballots;

18 (b) have the elector sign the log where his name has  
 19 been entered;

20 (c) while the elector is present, compare the  
 21 signature on the return/verification envelope with that  
 22 entered in the log and resolve any discrepancies with the  
 23 elector;

24 (d) deposit the unopened return/verification envelope  
 25 in the sealed ballot transport box provided for that

1 purpose; and

2 (e) securely retain all ballots until they are  
3 transported to the election administrator's office. The  
4 transport boxes must then be opened and the ballots disposed  
5 of in the same manner provided for ballots returned by mail.

6 NEW SECTION. Section 21. Disposition of ballots  
7 returned by mail. (1) Upon receipt of each  
8 return/verification envelope, election officials shall:

9 (a) compare the name with the official register to  
10 determine that the person has not previously voted;

11 (b) verify the signature on the affidavit in the  
12 manner provided by [section 22];

13 (c) open the return/verification envelope and retain  
14 it as an official record;

15 (d) remove and examine the secrecy envelope to  
16 determine if the ballot is valid pursuant to [section 24];

17 (e) if the ballot is valid, record the name of the  
18 elector in the official register as having voted; and

19 (f) deposit the unopened secrecy envelope containing  
20 the ballot in the official ballot box.

21 (2) If at any point there is a question concerning a  
22 particular ballot, the election administrator may not  
23 deposit the ballot in question. The election administrator  
24 shall retain all materials relating to the questioned ballot  
25 until the question is resolved satisfactorily or the

1 question is determined as provided in [section 26].

2 NEW SECTION. Section 22. Signature verification --  
3 procedures. (1) The election administrator shall verify the  
4 signature of each elector by comparing the affidavit printed  
5 on the return/verification envelope to the signature on that  
6 elector's registration card or signature card provided under  
7 [section 23].

8 (2) If the election administrator is convinced that  
9 the individual signing the affidavit is the same as the one  
10 whose name appears on the registration card, he shall  
11 proceed to validate the ballot.

12 (3) If the election administrator is not convinced  
13 that the individual signing the return/verification envelope  
14 is the same as the one whose name appears on the  
15 registration card, he may not validate the ballot but  
16 instead shall:

17 (a) give notice to the elector as provided in [section  
18 25]; and

19 (b) if the discrepancy is not rectified to the  
20 election administrator's satisfaction, present the unopened  
21 envelope and the registration card to the canvassing board  
22 for a determination.

23 NEW SECTION. Section 23. Voting by nonregistered  
24 electors. (1) For any election being conducted under [this  
25 act] by a political subdivision that allows individuals to

1 vote who are not registered electors, such an individual may  
2 vote by appearing in person at the election administrator's  
3 office and demonstrating that he possesses the  
4 qualifications which entitle him to vote.

5 (2) An individual complying with subsection (1) before  
6 official ballots are available may leave a card with the  
7 election administrator containing his signature and the  
8 address to which his ballot is to be mailed. The signature  
9 provided must then be used for verification when the mail  
10 ballot is returned.

11 (3) An individual complying with subsection (1) after  
12 official ballots are available and before the close of the  
13 polls on election day must be permitted to vote at that  
14 time.

15 NEW SECTION. Section 24. Valid ballots --  
16 requirements. (1) Only valid ballots may be counted in an  
17 election conducted under [this act].

18 (2) For the purpose of [this act], a ballot is valid  
19 only if:

20 (a) it is sealed in the secrecy envelope and returned  
21 in the return/verification envelope;

22 (b) the elector's signature on the affidavit on the  
23 return/verification envelope is verified pursuant to  
24 [section 22]; and

25 (c) it is received before 8 p.m. on election day.

1 (3) A ballot is invalid if:

2 (a) more than one ballot is enclosed in a single  
3 return/verification or secrecy envelope; or

4 (b) any identifying marks are placed on the ballot by  
5 the elector.

6 NEW SECTION. Section 25. Notice to elector --  
7 opportunity to resolve questions. (1) As soon as possible  
8 after receipt of an elector's return/verification envelope,  
9 the election administrator shall give notice to the elector,  
10 either by telephone or by first-class mail, if the election  
11 administrator:

12 (a) is unable to verify the elector's signature under  
13 [section 22]; or

14 (b) has discovered a procedural mistake made by the  
15 elector that would invalidate his ballot under [section 24].

16 (2) The election administrator shall inform the  
17 elector that he may appear in person at the election  
18 administrator's office prior to 8 p.m. on election day and  
19 verify the signature or correct the mistake.

20 (3) Any elector so appearing must be permitted to:

21 (a) verify his signature, after proof of  
22 identification, by affirming that the signature is in fact  
23 his or completing a new registration card containing his  
24 current signature;

25 (b) correct any minor mistake if the correction would

1 render the ballot valid; or  
 2 (c) if necessary, request and receive a replacement  
 3 ballot and vote it at that time.

4 NEW SECTION. Section 26. Resolving issues in  
 5 question. Any questions concerning the validity of a ballot  
 6 or signature must be resolved in the following manner:

7 (1) If the election administrator is unable to resolve  
 8 the issue to his satisfaction, he shall give notice to the  
 9 elector as provided in [section 25].

10 (2) If the elector fails to appear or, if even after  
 11 such an appearance, the issue is still not resolved to the  
 12 election administrator's satisfaction, the election  
 13 administrator shall present the issue for a determination to  
 14 the board of judges appointed to count the ballots.

15 (3) If the counting board is unable to resolve the  
 16 issue to its satisfaction, it may not count the ballot in  
 17 question. Instead, the election administrator shall present  
 18 the issue to the board of canvassers for a determination of  
 19 the issue.

20 (4) If the board of canvassers is unable to resolve  
 21 the issue, the ballot must not be counted.

22 NEW SECTION. Section 27. Procedure at close of  
 23 voting. After the close of voting on election day, election  
 24 officials shall:

25 (1) open the official ballot boxes;

1 (2) open each secrecy envelope, removing the ballot;  
 2 and

3 (3) proceed to count the votes as otherwise provided  
 4 by law.

5 Section 28. Section 7-13-2236, MCA, is amended to  
 6 read:

7 "7-13-2236. General district election. (1) The  
 8 election of directors of the district shall be held every 4  
 9 years with the election for local government officials  
 10 provided for in 13-1-104(2).

11 (2) The election of directors of a district located in  
 12 an unincorporated area may be conducted by mail ballot as  
 13 provided in [sections 1 through 27]."

14 Section 29. Section 13-1-401, MCA, is amended to read:

15 "13-1-401. Manner of conducting general elections for  
 16 political subdivisions required to hold annual elections.

17 (1) Any political subdivision required to hold annual  
 18 elections under 13-1-104(3) may cooperate with school  
 19 districts having similar district boundaries to hold the  
 20 election at the same location. The election administrator or  
 21 deputy election administrator appointed under the provisions  
 22 of 13-1-301 shall cooperate with the school district  
 23 election administrator to share costs, as provided in  
 24 13-1-302.

25 (2) A political subdivision subject to 13-1-104(3)

1 may, with the consent of the election administrator or  
2 deputy election administrator, conduct its annual election  
3 at an annual meeting of the political subdivision or at  
4 another convenient location within the political  
5 subdivision.

6 (3) A political subdivision election subject to  
7 13-1-104(3) may be conducted by mail ballot as provided in  
8 [sections 1 through 27].

9 ~~(3)~~(4) The election administrator or deputy election  
10 administrator conducting an election under the provisions of  
11 subsection (1), or (2), or (3) shall give notice of the  
12 election not less than 20 days or more than 40 days before  
13 the day of the election by display advertisement at least  
14 two times in a newspaper of general circulation within the  
15 political subdivision. The election administrator or deputy  
16 election administrator may notify the public of the election  
17 by additional posting of notices or radio and television  
18 announcements."

19 NEW SECTION. Section 30. Codification instruction.  
20 Sections 1 through 27 are intended to be codified as an  
21 integral part of Title 13, and the provisions of Title 13  
22 apply to sections 1 through 27.

23 NEW SECTION. Section 31. Effective date. This act is  
24 effective July 1, 1985.

-End-

1                   STATEMENT OF INTENT  
 2                   SENATE BILL 169  
 3                   Senate State Administration Committee  
 4

1   available options.

5           A statement of intent is required for this bill because  
 6 section 6 grants the secretary of state authority to adopt  
 7 rules for the conduct of mail ballot elections. It is  
 8 intended that the authority to adopt rules extends only to  
 9 the areas specifically provided for in section 6. Rules are  
 10 to be adopted under the Montana Administrative Procedure  
 11 Act. The rules must be consistent with the provisions of the  
 12 act.

13           It is intended that use of the mail ballot option will  
 14 be entirely optional and within the discretion of the  
 15 applicable jurisdiction and election administrator.

16           It is intended that nothing in this act be interpreted  
 17 as requiring either the election administrator or the  
 18 applicable jurisdiction to select or use the mail ballot  
 19 option.

20           It is intended that use of the mail ballot option is  
 21 authorized only for the specific elections enumerated in  
 22 this act. It is further intended that the elections for  
 23 which the mail ballot option may be used will be only those  
 24 elections for which special circumstances make the use of  
 25 the mail ballot option potentially the most desirable of the



## 1 SENATE BILL NO. 169

2 INTRODUCED BY HARDING, HAND, ASAY,

3 BARDANOUVE, NATHE, O'CONNELL, BACHINI,

4 HIRSCH, STORY, CAMPBELL, HANSON, KOEHNKE,

5 C. SMITH, WINSLOW, KOLSTAD, TVEIT, MCCALLUM

6 BOYLAN, CRIPPEN, BENGTON, DANIELS

7 BY REQUEST OF THE SECRETARY OF STATE

8  
 9 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW ELECTION  
 10 ADMINISTRATORS THE OPTION OF CONDUCTING CERTAIN SPECIFIC  
 11 ELECTIONS BY MAIL BALLOT; AMENDING SECTIONS 7-13-2236 AND  
 12 13-1-401, MCA; AND PROVIDING AN EFFECTIVE DATE."  
 13

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

15 NEW SECTION. Section 1. Statement of purpose. The  
 16 purpose of [this act] is to provide the option of conducting  
 17 certain specified elections using a procedure called a "mail  
 18 ballot election" and to provide the procedures therefor. The  
 19 provisions of [this act] recognize that sound public policy  
 20 concerning the conduct of elections often requires the  
 21 balancing of various elements of the public interest that  
 22 are sometimes in conflict. Among these factors are the  
 23 public's interest in fair and accurate elections, the  
 24 election of those who will govern or represent, and  
 25 cost-effective administration of all functions of

1 government, including the conduct of elections. The  
 2 provisions of [this act] further recognize that when these  
 3 and other factors are balanced, the conduct of elections by  
 4 mail ballot is potentially the most desirable of the  
 5 available options in certain circumstances.

6 NEW SECTION. Section 2. Definitions. As used in [this  
 7 act], the following definitions apply:

8 (1) "Election day" is the date established by law on  
 9 which a particular election would be held if that election  
 10 were being conducted by means other than a mail ballot  
 11 election.

12 (2) "Mail ballot election" means any election that  
 13 involves either candidates or ballot issues and is conducted  
 14 in compliance with the procedure specified in [section 3].

15 (3) "Return/verification envelope" means an envelope  
 16 that contains a secrecy envelope and ballot and which is  
 17 designed to:

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

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

23 (4) "Secrecy envelope" means an envelope used to  
 24 contain the elector's ballot and that is designed to conceal  
 25 the elector's vote and to prevent that elector's ballot from

1 being distinguished from the ballots of other electors.

2 NEW SECTION. Section 3. Mail ballot election  
3 procedure. A mail ballot election must be conducted  
4 substantially as follows:

5 (1) Official ballots must be prepared and all other  
6 initial procedures followed as otherwise provided by law.

7 (2) An official ballot must be mailed to every  
8 qualified elector of the political subdivision conducting  
9 the election.

10 (3) The elector shall mark the ballot at home and  
11 place it in a secrecy envelope.

12 (4) The elector shall then place the secrecy envelope  
13 containing his ballot in a return/verification envelope and  
14 shall return it by mailing it or delivering it in person to  
15 a place of deposit designated by the election administrator  
16 so that it is received prior to a specified time on election  
17 day.

18 (5) Once returned, election officials shall first  
19 qualify the submitted ballot by examining the  
20 return/verification envelope to determine whether it is  
21 submitted by a qualified elector who has not previously  
22 voted.

23 (6) If the ballot so qualifies and is otherwise valid,  
24 officials shall then open the return/verification envelope  
25 and remove the secrecy envelope, which is then voted by

1 depositing it unopened in an official ballot box.

2 (7) After the close of polls on election day, voted  
3 ballots must be counted and canvassed as otherwise provided  
4 by law.

5 NEW SECTION. Section 4. Mail ballot elections not  
6 mandatory -- when authorized -- when prohibited.

7 (1) Conducting elections by mail ballot is only one option  
8 available to local officials and nothing in [this act]  
9 mandates that the procedure be used.

10 (2) The following elections may be conducted by mail  
11 ballot:

12 (a) an election in a political subdivision required to  
13 hold annual elections under 13-1-104(3), other than a school  
14 district;

15 (b) an election in a city of the third class, as  
16 defined in 7-1-4111(3), if all of the candidates whose names  
17 will appear on the ballot are candidates for offices to be  
18 elected without party designation;

19 (c) an election in a town as defined in 7-1-4111(4);

20 (d) an election conducted under 7-13-2236 in an  
21 unincorporated area; and

22 (e) a special election called by a local government  
23 unit for the sole purpose of submitting one or more ballot  
24 issues to its qualified electors if such special election is  
25 not held in conjunction with a statutorily scheduled



1 election.

2 (3) The following elections may not be conducted by  
3 mail ballot:

4 (a) an election held for one of the purposes or at the  
5 time provided in 13-1-104(1) and 13-1-107(1);

6 (b) an election held for one of the purposes or at the  
7 time provided in 13-1-104(2) and 13-1-107(2), except as  
8 specifically allowed by subsections (2)(b) and (2)(c) of  
9 this section;

10 (c) an election for any purpose conducted by or on  
11 behalf of a school district;

12 (d) an election being held under the provisions of the  
13 Montana Recall Act, in Title 2, chapter 16, part 6;

14 (e) an election involving candidates for public  
15 office, except as specifically allowed by subsections (2)(a)  
16 through (2)(c) of this section; and

17 (f) a special election being held in conjunction with  
18 a statutorily scheduled election.

19 NEW SECTION. Section 5. General election laws to  
20 apply. All laws applicable to elections when voting is not  
21 done by mail ballot and all penalties prescribed for  
22 violation of those laws apply to elections conducted by mail  
23 ballot to the extent they do not specifically conflict with  
24 the provisions of [this act] or are not otherwise provided  
25 for by [this act].

1 NEW SECTION. Section 6. Role of secretary of state.

2 In addition to other powers and duties conveyed by law, the  
3 secretary of state, with advice from election  
4 administrators, shall:

5 (1) prescribe the form of materials to be used in the  
6 conduct of mail ballot elections;

7 (2) review written plans for the conduct of mail  
8 ballot elections as provided in [section 11]; and

9 (3) adopt rules consistent with [this act] to:

10 (a) establish and maintain uniformity in the conduct  
11 of mail ballot elections; and

12 (b) establish procedures for the conduct of mail  
13 ballot elections that:

14 (i) prevent fraud;

15 (ii) ensure the accurate handling and canvassing of  
16 mail ballots; and

17 (iii) ensure that the secrecy of voted ballots is  
18 maintained.

19 NEW SECTION. Section 7. How election initiated. A  
20 proposal to conduct an election under [this act] may be  
21 initiated by either the election administrator or the  
22 appropriate governing body as provided in [sections 8  
23 through 10].

24 NEW SECTION. Section 8. Initiation by governing body.

25 (1) A political subdivision may, by resolution of the

1 governing body addressed to the election administrator,  
2 request that a particular election be conducted under the  
3 provisions of [this act].

4 (2) No later than 70 days before election day, the  
5 governing body shall transmit its request to the election  
6 administrator, who shall determine whether it is  
7 economically and administratively feasible to conduct the  
8 requested election by mail ballot.

9 (3) Except as provided in [section 10], the decision  
10 to conduct an election under the provisions of [this act] is  
11 within the sole discretion of the election administrator.

12 (4) Within 5 days after receiving a request, the  
13 election administrator shall respond in writing, stating  
14 that the request is either granted or denied for reasons  
15 specified. If granted, the election administrator shall  
16 prepare a plan as provided in [section 11].

17 NEW SECTION. Section 9. Initiation by election  
18 administrator. (1) Even if no request has been received  
19 from the governing body concerned, the election  
20 administrator may conduct any election authorized by  
21 [section 4] under [this act] if, in his discretion, that  
22 would be the most economically and administratively feasible  
23 way of conducting the election in question.

24 (2) If he decides to conduct an election pursuant to  
25 subsection (1), the election administrator shall prepare a

1 written plan as provided in [section 11] and forward a copy  
2 to the governing body concerned, together with a written  
3 statement informing it of his decision to conduct the  
4 election by mail ballot and the reasons therefor and the  
5 right of the governing body to object under [section 10].

6 NEW SECTION. Section 10. Objection of political  
7 subdivision. (1) A political subdivision may, by resolution  
8 of the governing body, object to the conduct of one of its  
9 elections under [this act]. The resolution must include a  
10 statement of the reasons for the objection.

11 (2) If such a resolution is filed with the election  
12 administrator no later than 55 days prior to election day,  
13 the election may not be conducted under [this act].

14 NEW SECTION. Section 11. Written plan for conduct of  
15 election -- amendments -- approval procedures. (1) The  
16 election administrator shall prepare a written plan,  
17 including a timetable, for the conduct of the election and  
18 shall submit it to the secretary of state at least 60 days  
19 prior to the date set for the election.

20 (2) The plan may be amended by the election  
21 administrator any time prior to the 35th day before election  
22 day by notifying the secretary of state in writing of any  
23 changes.

24 (3) Within 5 days of receiving the plan and as soon as  
25 possible after receiving any amendments, the secretary of

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

3 (4) When the written plan has been approved, the  
4 election administrator shall proceed to conduct the election  
5 according to the approved plan.

6 NEW SECTION. Section 12. Proportional voting. The  
7 election administrator shall provide a method for  
8 proportional voting in his written plan for an election  
9 conducted under [this act] that requires votes to be cast in  
10 proportion to ownership or any factor other than one vote  
11 per person.

12 NEW SECTION. Section 13. Distributing materials to  
13 electors -- procedure. For each election conducted under  
14 [this act], the election administrator shall:

15 (1) mail a single packet to every qualified elector of  
16 the political subdivision conducting the election;

17 (2) ensure that each packet contains only one each of  
18 the following:

19 (a) an official ballot;

20 (b) a secrecy envelope;

21 (c) a return/verification envelope; and

22 (d) complete written instructions for voting and  
23 returning ballots; and

24 (3) ensure that each packet is:

25 (a) clearly marked on its face with the words "DO NOT

1 FORWARD. RETURN TO SENDER. RETURN POSTAGE GUARANTEED.";

2 (b) addressed to a single individual elector at the  
3 most current address available from the official  
4 registration records; and

5 (c) deposited in the United States mail with  
6 sufficient prepaid postage for it to be delivered to the  
7 elector's address.

8 NEW SECTION. Section 14. When materials to be mailed.  
9 For any election conducted by mail, ballots must be mailed  
10 no sooner than the 25th day and no later than the 15th day  
11 before election day. All ballots must be mailed the same  
12 day.

13 NEW SECTION. Section 15. Voting by elector when  
14 absent from place of residence during conduct of election.

15 (1) A qualified elector who will be absent from the county  
16 during the time the election is being conducted may:

17 (a) vote in person in the election administrator's  
18 office as soon as ballots are available and until noon the  
19 day before the ballots are scheduled to be mailed; or

20 (b) make a written request, signed by the applicant  
21 and addressed to the election administrator, that the ballot  
22 be mailed to an address other than that which appears on the  
23 registration card. Written requests must be accepted until  
24 noon the day before the ballots are scheduled to be mailed.

25 (2) Ballots mailed to electors pursuant to this

1 section must be mailed the same day that all other ballots  
2 are mailed.

3 NEW SECTION. Section 16. Voting mail ballots.

4 (1) Upon receipt of his ballot, the elector may vote by:

5 (a) marking the ballot in the manner specified;

6 (b) placing the marked ballot in the secrecy envelope,  
7 free of any identifying marks;

8 (c) placing the secrecy envelope containing a single  
9 ballot in the return/verification envelope;

10 (d) executing the affidavit printed on the  
11 return/verification envelope; and

12 (e) returning the return/verification envelope with  
13 the secrecy envelope containing the ballot enclosed, as  
14 provided in [section 18].

15 (2) For the purpose of [this act], an official ballot  
16 is voted when, after the requirements of [sections 22 and  
17 24] have been satisfied, the return/verification envelope  
18 has been opened by election officials and the secrecy  
19 envelope containing the ballot has been deposited in the  
20 official ballot box.

21 NEW SECTION. Section 17. Replacement ballots --  
22 procedures. (1) An elector may obtain a replacement ballot  
23 as provided in this section if his ballot is destroyed,  
24 spoiled, lost, or not received by the elector.

25 (2) An elector seeking a replacement ballot shall sign

1 a sworn statement stating that the ballot was either  
2 destroyed, spoiled, lost, or not received and shall present  
3 the statement to the election administrator no later than 8  
4 p.m. on election day.

5 (3) Upon receiving the sworn statement, the election  
6 administrator shall issue a replacement ballot to the  
7 elector. Each spoiled ballot must be returned before a new  
8 one may be issued.

9 (4) The election administrator shall designate his  
10 office or a central location in the political subdivision in  
11 which the election is conducted as the single location for  
12 obtaining a replacement ballot.

13 (5) A replacement ballot may also be issued pursuant  
14 to [section 25].

15 (6) The election administrator shall keep a record of  
16 each replacement ballot issued. If he later determines that  
17 any elector to whom a replacement ballot has been issued has  
18 attempted to vote more than once, he shall immediately  
19 notify the county attorney and the secretary of state of  
20 each instance.

21 NEW SECTION. Section 18. Returning marked ballots --  
22 when -- where. (1) After complying with [section 16], an  
23 elector may return his ballot on or before election day by  
24 either:

25 (a) depositing the return/verification envelope in the

1 United States mail, with sufficient postage affixed; or  
 2 (b) returning it in person to any place of deposit  
 3 designated by the election administrator pursuant to  
 4 [section 19].  
 5 (2) In order to have his ballot counted, each elector  
 6 must return it in such a manner that it is received prior to  
 7 8 p.m. on election day.  
 8 NEW SECTION. Section 19. Places of deposit. (1) The  
 9 election administrator shall designate his office and may  
 10 designate one or more places in the political subdivision in  
 11 which the election is being conducted as places of deposit  
 12 where ballots may be returned in person by the elector.  
 13 (2) Prior to election day, ballots may be returned to  
 14 any designated place of deposit only during regular business  
 15 hours.  
 16 (3) On election day, each location designated as a  
 17 place of deposit must be open as provided in 13-1-106, and  
 18 ballots may be returned during those hours.  
 19 (4) The election administrator may designate certain  
 20 locations as election day places of deposit, and any  
 21 location so designated shall function as a place of deposit  
 22 only on election day.  
 23 (5) The election administrator shall provide each  
 24 designated place of deposit with an official ballot  
 25 transport box secured as provided by law.

1 NEW SECTION. Section 20. Disposition of ballots  
 2 returned in person. Ballots returned by the elector in  
 3 person must be processed as follows:  
 4 (1) If returned to the election administrator's office  
 5 directly, the ballot must be processed in the same manner  
 6 provided for ballots returned by mail except that, while the  
 7 elector is present, officials shall:  
 8 (a) verify the signature pursuant to [section 22];  
 9 (b) resolve any questions as to the validity of the  
 10 ballot; and  
 11 (c) deposit the unopened secrecy envelope containing  
 12 the ballot in the official ballot box.  
 13 (2) If returned to a place of deposit other than the  
 14 election administrator's office, the election official on  
 15 location shall:  
 16 (a) keep a log of the names of all electors from whom  
 17 he receives ballots;  
 18 (b) have the elector sign the log where his name has  
 19 been entered;  
 20 (c) while the elector is present, compare the  
 21 signature on the return/verification envelope with that  
 22 entered in the log and resolve any discrepancies with the  
 23 elector;  
 24 (d) deposit the unopened return/verification envelope  
 25 in the sealed ballot transport box provided for that

1 purpose; and

2 (e) securely retain all ballots until they are  
3 transported to the election administrator's office. The  
4 transport boxes must then be opened and the ballots disposed  
5 of in the same manner provided for ballots returned by mail.

6 NEW SECTION. Section 21. Disposition of ballots  
7 returned by mail. (1) Upon receipt of each  
8 return/verification envelope, election officials shall:

9 (a) compare the name with the official register to  
10 determine that the person has not previously voted;

11 (b) verify the signature on the affidavit in the  
12 manner provided by [section 22];

13 (c) open the return/verification envelope and retain  
14 it as an official record;

15 (d) remove and examine the secrecy envelope to  
16 determine if the ballot is valid pursuant to [section 24];

17 (e) if the ballot is valid, record the name of the  
18 elector in the official register as having voted; and

19 (f) deposit the unopened secrecy envelope containing  
20 the ballot in the official ballot box.

21 (2) If at any point there is a question concerning a  
22 particular ballot, the election administrator may not  
23 deposit the ballot in question. The election administrator  
24 shall retain all materials relating to the questioned ballot  
25 until the question is resolved satisfactorily or the

1 question is determined as provided in [section 26].

2 NEW SECTION. Section 22. Signature verification --  
3 procedures. (1) The election administrator shall verify the  
4 signature of each elector by comparing the affidavit printed  
5 on the return/verification envelope to the signature on that  
6 elector's registration card or signature card provided under  
7 [section 23].

8 (2) If the election administrator is convinced that  
9 the individual signing the affidavit is the same as the one  
10 whose name appears on the registration card, he shall  
11 proceed to validate the ballot.

12 (3) If the election administrator is not convinced  
13 that the individual signing the return/verification envelope  
14 is the same as the one whose name appears on the  
15 registration card, he may not validate the ballot but  
16 instead shall:

17 (a) give notice to the elector as provided in [section  
18 25]; and

19 (b) if the discrepancy is not rectified to the  
20 election administrator's satisfaction, present the unopened  
21 envelope and the registration card to the canvassing board  
22 for a determination.

23 NEW SECTION. Section 23. Voting by nonregistered  
24 electors. (1) For any election being conducted under [this  
25 act] by a political subdivision that allows individuals to

1 vote who are not registered electors, such an individual may  
2 vote by appearing in person at the election administrator's  
3 office and demonstrating that he possesses the  
4 qualifications which entitle him to vote.

5 (2) An individual complying with subsection (1) before  
6 official ballots are available may leave a card with the  
7 election administrator containing his signature and the  
8 address to which his ballot is to be mailed. The signature  
9 provided must then be used for verification when the mail  
10 ballot is returned.

11 (3) An individual complying with subsection (1) after  
12 official ballots are available and before the close of the  
13 polls on election day must be permitted to vote at that  
14 time.

15 NEW SECTION. Section 24. Valid ballots --  
16 requirements. (1) Only valid ballots may be counted in an  
17 election conducted under [this act].

18 (2) For the purpose of [this act], a ballot is valid  
19 only if:

20 (a) it is sealed in the secrecy envelope and returned  
21 in the return/verification envelope;

22 (b) the elector's signature on the affidavit on the  
23 return/verification envelope is verified pursuant to  
24 [section 22]; and

25 (c) it is received before 8 p.m. on election day.

1 (3) A ballot is invalid if:

2 (a) more than one ballot is enclosed in a single  
3 return/verification or secrecy envelope; or

4 (b) any identifying marks are placed on the ballot by  
5 the elector.

6 NEW SECTION. Section 25. Notice to elector --  
7 opportunity to resolve questions. (1) As soon as possible  
8 after receipt of an elector's return/verification envelope,  
9 the election administrator shall give notice to the elector,  
10 either by telephone or by first-class mail, if the election  
11 administrator:

12 (a) is unable to verify the elector's signature under  
13 [section 22]; or

14 (b) has discovered a procedural mistake made by the  
15 elector that would invalidate his ballot under [section 24].

16 (2) The election administrator shall inform the  
17 elector that he may appear in person at the election  
18 administrator's office prior to 8 p.m. on election day and  
19 verify the signature or correct the mistake.

20 (3) Any elector so appearing must be permitted to:

21 (a) verify his signature, after proof of  
22 identification, by affirming that the signature is in fact  
23 his or completing a new registration card containing his  
24 current signature;

25 (b) correct any minor mistake if the correction would

1 render the ballot valid; or

2 (c) if necessary, request and receive a replacement  
3 ballot and vote it at that time.

4 NEW SECTION. Section 26. Resolving issues in  
5 question. Any questions concerning the validity of a ballot  
6 or signature must be resolved in the following manner:

7 (1) If the election administrator is unable to resolve  
8 the issue to his satisfaction, he shall give notice to the  
9 elector as provided in [section 25].

10 (2) If the elector fails to appear or, if even after  
11 such an appearance, the issue is still not resolved to the  
12 election administrator's satisfaction, the election  
13 administrator shall present the issue for a determination to  
14 the board of judges appointed to count the ballots.

15 (3) If the counting board is unable to resolve the  
16 issue to its satisfaction, it may not count the ballot in  
17 question. Instead, the election administrator shall present  
18 the issue to the board of canvassers for a determination of  
19 the issue.

20 (4) If the board of canvassers is unable to resolve  
21 the issue, the ballot must not be counted.

22 NEW SECTION. Section 27. Procedure at close of  
23 voting. After the close of voting on election day, election  
24 officials shall:

25 (1) open the official ballot boxes;

1 (2) open each secrecy envelope, removing the ballot;  
2 and

3 (3) proceed to count the votes as otherwise provided  
4 by law.

5 Section 28. Section 7-13-2236, MCA, is amended to  
6 read:

7 "7-13-2236. General district election. (1) The  
8 election of directors of the district shall be held every 4  
9 years with the election for local government officials  
10 provided for in 13-1-104(2).

11 (2) The election of directors of a district located in  
12 an unincorporated area may be conducted by mail ballot as  
13 provided in [sections 1 through 27]."

14 Section 29. Section 13-1-401, MCA, is amended to read:

15 "13-1-401. Manner of conducting general elections for  
16 political subdivisions required to hold annual elections.

17 (1) Any political subdivision required to hold annual  
18 elections under 13-1-104(3) may cooperate with school  
19 districts having similar district boundaries to hold the  
20 election at the same location. The election administrator or  
21 deputy election administrator appointed under the provisions  
22 of 13-1-301 shall cooperate with the school district  
23 election administrator to share costs, as provided in  
24 13-1-302.

25 (2) A political subdivision subject to 13-1-104(3)



1 may, with the consent of the election administrator or  
2 deputy election administrator, conduct its annual election  
3 at an annual meeting of the political subdivision or at  
4 another convenient location within the political  
5 subdivision.

6 (3) A political subdivision election subject to  
7 13-1-104(3) may be conducted by mail ballot as provided in  
8 [sections 1 through 27].

9 ~~(3)~~(4) The election administrator or deputy election  
10 administrator conducting an election under the provisions of  
11 subsection (1), or (2), or (3) shall give notice of the  
12 election not less than 20 days or more than 40 days before  
13 the day of the election by display advertisement at least  
14 two times in a newspaper of general circulation within the  
15 political subdivision. The election administrator or deputy  
16 election administrator may notify the public of the election  
17 by additional posting of notices or radio and television  
18 announcements."

19 NEW SECTION. Section 30. Codification instruction.  
20 Sections 1 through 27 are intended to be codified as an  
21 integral part of Title 13, and the provisions of Title 13  
22 apply to sections 1 through 27.

23 NEW SECTION. Section 31. Effective date. This act is  
24 effective July 1, 1985.

-End-