

House BILL NO. 182

INTRODUCED BY

Massolo Ahner *Wyatt*
Beck *Beaudry* *Slater* *Wyllie* *Rehbein*

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO GENERAL ELECTIONS IN WHICH A CANDIDATE DIES SHORTLY BEFORE THE ELECTION; PROVIDING FOR ELECTION OF THE GOVERNOR OR LIEUTENANT GOVERNOR WHEN THERE IS A VACANCY IN THE CANDIDACY; PROVIDING METHODS FOR CORRECTION OF BALLOTS; PROVIDING FOR VOTING IN PERSON BY ELECTORS WHO HAVE REQUESTED ABSENTEE BALLOTS; PROVIDING A METHOD OF CORRECTING AND VOTING ABSENTEE BALLOTS; PROVIDING FOR REQUEST OF AN ABSENTEE BALLOT; REQUIRING THE OPENING OF ABSENTEE BALLOTS AFTER CLOSING OF THE POLLS IN CERTAIN INSTANCES; AND AMENDING SECTIONS 13-10-327, 13-10-328, 13-12-204, 13-13-204, 13-13-212, 13-13-241, AND 13-25-101, MCA ."

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

Section 1. Section 13-10-327, MCA, is amended to read:

"13-10-327. **Vacancy after primary and prior to general election.** (1) ~~Except as provided in 13-10-328 for a vacancy in the candidacy of either governor or lieutenant governor caused by the death of a candidate,~~ if a party candidate dies or withdraws after the primary and before the general election, the affected political party shall appoint someone to replace the candidate in one of the following ways:

(a) For offices to be filled by the state at large, the state central committee shall make the appointment as provided by the rules of the party.

(b) For offices to be filled in districts including more than one county, a committee appointed by the county central committees of all counties in the district shall make the appointment. Procedures for the appointment of the committee and making the appointment ~~shall~~ must be provided in party rules.

(c) For offices to be filled in counties, municipalities, or districts wholly within a county, the appointment ~~shall~~ must be made under rules adopted by the county central committee.

(2) ~~Appointments~~ Except as provided in this section, appointments to fill vacancies must be made no later than 75 days before the election. A candidate may not officially withdraw 85 days or less before a general election. However, if a candidate for partisan office dies less than 85 days before the general election, the affected political party shall appoint a candidate within 5 days after being notified of the

1 vacancy. ~~The~~ One of the procedures provided in 13-12-204 ~~shall~~ must be used to place the name of the
2 appointee on the ballot if necessary.

3 (3) The appointing committee shall send a certificate to the officer with whom a declaration for
4 nomination for the office would be filed, with the information required on a declaration for nomination and
5 the name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed
6 and acknowledged acceptance of the appointment and the filing fee for the office.

7 (4) The officer receiving the certificate of appointment, accompanied by a statement of acceptance
8 and the filing fee, shall certify the name of the appointee for the ballot."
9

10 **Section 2.** Section 13-10-328, MCA, is amended to read:

11 "**13-10-328. Vacancy in governor or lieutenant governor candidacy.** ~~The~~ (1) Except as provided
12 in this section, death or withdrawal of a candidate for governor or lieutenant governor does not affect the
13 candidacy of the other joint candidate.

14 (2) If a candidate for the office of governor dies less than 85 days before a general election, the
15 candidate for lieutenant governor must be advanced on the ballot to the candidacy for governor and the
16 candidate for governor shall select an individual to be a candidate for lieutenant governor. If a candidate
17 for the office of lieutenant governor dies less than 85 days before a general election, the candidate for
18 governor shall select an individual to be a candidate for lieutenant governor. The name of a candidate for
19 governor or a candidate for lieutenant governor, or both, designated or selected pursuant to this section,
20 must be certified to the election administrators by the secretary of state, and one of the procedures
21 provided in 13-12-204 must be used to place the name of the new candidate on the ballot."
22

23 **Section 3.** Section 13-12-204, MCA, is amended to read:

24 "**13-12-204. ~~Labels to be printed and distributed where vacancy has been filled~~ Method of**
25 **correction of ballot.** ~~(+) If an appointment has been made to replace a candidate, as provided in 13-10-326~~
26 ~~or, 13-10-327, or 13-10-328, or if a candidate for lieutenant governor has been advanced to the candidacy~~
27 ~~for governor, as provided in 13-10-328, after the ballots have been printed but before the election, the~~
28 ~~election administrator;~~

29 (1) shall order labels printed containing the name of the new ~~nominee~~ candidate and any other
30 information required to go on the ballot.

1 ~~(2) The~~ if labels are printed, the election administrator shall affix the labels in the proper place on
 2 each ballot or deliver the labels to the chief election judges to be affixed in the proper place on each ballot
 3 before it is given to the elector.

4 (2) must have the entire ballot reprinted; or

5 (3) must have a separate ballot prepared only for the office for which the new candidate is a
 6 candidate."

7

8 **Section 4.** Section 13-13-204, MCA, is amended to read:

9 **"13-13-204. Authority to vote in person -- printing error or ballot destroyed -- failure to receive**
 10 **ballot -- effect of absentee elector's death.** (1) If an elector has voted by absentee ballot but the absentee
 11 ballot contains printing errors or omissions, or contains the name of a candidate who has died since the
 12 printing of the ballot, the elector may vote in person in any manner at ~~his~~ the elector's polling place.

13 (2) If an elector does not receive ~~his~~ an absentee ballot or if the absentee ballot was destroyed,
 14 ~~he~~ the elector may appear at ~~his~~ the appropriate polling place on election day and vote in person after
 15 signing an affidavit, in the form prescribed by the secretary of state, swearing that ~~his~~ the elector's ballot
 16 has not been received or was destroyed. Before the ballot is given to the elector, the election judge shall
 17 write upon the back of the ballot the number of the ballot. The ballot may be cast out if it appears to the
 18 court to have been wrongfully or illegally voted.

19 (3) If an elector votes by absentee ballot and dies between the time of balloting and election day,
 20 ~~his~~ the deceased elector's ballot does not count."

21

22 **NEW SECTION.** **Section 5. Manner of voting by elector in general election when candidate has**
 23 **died.** An elector voting in a general election in which a candidate other than a candidate for governor or
 24 lieutenant governor has died after the primary election but before the general election may, if the elector
 25 receives an absentee ballot that has not been corrected by one of the methods provided in 13-12-204,
 26 cross out the name of the deceased candidate and write in the name of a new candidate who has been
 27 designated or selected as a candidate in accordance with this title.

28

29 **NEW SECTION.** **Section 6. Counting of absentee ballot for deceased joint candidate in general**
 30 **election.** (1) An absentee ballot voted in a general election, as provided in subsection (2) or (3), for a

1 candidate for governor or lieutenant governor who dies after printing of the ballot but before the election
2 must be counted as provided in subsection (2) or (3).

3 (2) A vote for a deceased candidate for governor must be counted as a vote for the lieutenant
4 governor candidate as governor and as a vote for the candidate chosen pursuant to 13-10-328 for
5 lieutenant governor.

6 (3) A vote for a deceased candidate for lieutenant governor must be counted as a vote for the
7 candidate chosen pursuant to 13-10-328 for lieutenant governor.

8

9 **Section 7.** Section 13-13-212, MCA, is amended to read:

10 **"13-13-212. Application for absentee ballot.** (1) Application for absentee ballots ~~shall~~ must be
11 made by a written request signed by the applicant and addressed to or transmitted by facsimile to the
12 election administrator of the applicant's county of residence.

13 (2) Application for an absentee ballot may be made by any elector in the United States service by
14 the federal ~~post card~~ postcard application or by any written request signed by the applicant and addressed
15 to or transmitted by facsimile to the election administrator of the applicant's county of residence.

16 (3) If an elector requests an absentee ballot because of a sudden illness or health emergency, the
17 application for an absentee ballot may be made by written request signed by the elector at the time that
18 the ballot is delivered in person by the special absentee election board provided for in 13-13-225. ~~Such~~ The
19 elector may request by telephone, facsimile transmission, or other means to have a ballot and application
20 personally delivered ~~to him~~ by the special absentee election board at ~~his~~ the elector's place of confinement,
21 hospitalization, or residence within the county. ~~Such a~~ A request may be made no later than noon on
22 election day.

23 (4) An elector who has made a request for an absentee ballot by one of the methods provided in
24 this section may, in the event of the death of a candidate after the primary election but before the general
25 election, make a request for a replacement ballot. The request for a replacement ballot may be made orally
26 to the election administrator."

27

28 **Section 8.** Section 13-13-241, MCA, is amended to read:

29 **"13-13-241. Examination of absentee ballot envelopes and affirmations while polls open -- deposit**
30 **of absentee and unvoted ballots -- examination of ballots in election in which candidate has died.** (1) While

1 the polls are open, the election judges may, except as provided in this section, compare the signature of
2 the elector on the absentee ballot request and affirmation. If they find that the signatures correspond, that
3 the affirmation is sufficient, and that the absentee elector is qualified, they may open the absentee ballot
4 envelope.

5 (2) If the absentee ballot does not meet the requirements specified in subsection (1), it must be
6 rejected. The election judges, without opening the absentee ballot envelope, shall mark across it the reason
7 for rejection and a majority of the judges shall sign their initials. Unopened rejected absentee ballot
8 envelopes must be handled in the same manner as provided for rejected ballots in 13-13-243.

9 (3) After opening the absentee envelope and without unfolding the ballots or permitting them to
10 be examined, the election judges shall ascertain whether the stubs are attached or enclosed and whether
11 the numbers correspond to the numbers in the certificate of the election administrator. If so, they shall
12 detach the stubs and deposit the stubs and ballots in the proper ballot boxes. In a primary election, the
13 unvoted ballots must be deposited in the unvoted ballot box without being removed from their enclosure
14 envelope.

15 (4) If upon opening the absentee ballot envelope it is found that the number does not correspond
16 to the number on the certificate of the election administrator, the ballot must be rejected. The reason for
17 rejection must be marked on the back of the ballot or ballots, and the statement must be initialed by a
18 majority of the election judges.

19 (5) Election judges in an election in which a candidate has died after absentee ballots have been
20 printed but before election day may not examine absentee ballot envelopes while the polls are open."

21

22 **Section 9.** Section 13-25-101, MCA, is amended to read:

23 **"13-25-101. Nomination of electors -- ballot.** (1) Each political party qualified under 13-10-601
24 shall nominate presidential electors for this state and file certificates of nomination for these candidates
25 with the secretary of state in a form prescribed by the secretary of state no later than 75 days before the
26 general election, in the manner and number provided by law. However, in the event of the death of a
27 candidate for president or vice president, a new candidate for president or vice president, or both, may be
28 nominated for the affected political party and certificates of election may be filed with the secretary of state
29 less than 75 days before a general election.

30 (2) The secretary of state shall certify to the election administrator the names of the candidates

1 for president and vice president of the several political parties, which must be ~~printed~~ placed on the ballot
2 by one of the methods provided in 13-12-204. If the name of a new candidate for president or vice
3 president, or both, is certified to the secretary of state in less than 75 days pursuant to subsection (1), the
4 secretary of state shall immediately certify the new name or names to the election administrators and the
5 new name or names must be placed on the ballot by one of the methods provided in 13-12-204.

6 (3) The names of candidates for electors of president and vice president may not be printed upon
7 the ballot."

8

9 **NEW SECTION. Section 10. Codification instruction.** (1) [Section 5] is intended to be codified as
10 an integral part of Title 13, chapter 13, part 1, and the provisions of Title 13, chapter 13, part 1, apply to
11 [section 5].

12 (2) [Section 6] is intended to be codified as an integral part of Title 13, chapter 15, and the
13 provisions of Title 13, chapter 15, apply to [section 6].

14

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0182, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill relating to general elections in which a candidate dies shortly before the election.

FISCAL IMPACT:

Passage of HB0182 will have no fiscal impact on the state.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

There will be no impact.

Dave Lewis 1-13-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Gay Ann Masolo 1-13-97
GAY ANN MASOLO, PRIMARY SPONSOR DATE

Fiscal Note for HB0182, as introduced

HB182

HOUSE BILL NO. 182

INTRODUCED BY MASOLO, AHNER, PECK, BEAUDRY, SLITER, MARSHALL, WYATT, REHBEIN

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO GENERAL ELECTIONS IN WHICH A CANDIDATE DIES SHORTLY BEFORE THE ELECTION; PROVIDING FOR ELECTION OF THE GOVERNOR OR LIEUTENANT GOVERNOR WHEN THERE IS A VACANCY IN THE CANDIDACY; PROVIDING METHODS FOR CORRECTION OF BALLOTS; ~~PROVIDING FOR VOTING IN PERSON BY ELECTORS WHO HAVE REQUESTED ABSENTEE BALLOTS;~~ PROVIDING A METHOD OF CORRECTING AND VOTING ABSENTEE BALLOTS; PROVIDING FOR REQUEST OF AN ABSENTEE BALLOT; ~~REQUIRING THE OPENING OF ABSENTEE BALLOTS AFTER CLOSING OF THE POLLS IN CERTAIN INSTANCES;~~ AND AMENDING SECTIONS 13-10-327, 13-10-328, 13-12-204, 13-13-204, 13-13-212, ~~13-13-241,~~ AND 13-25-101, MCA ."

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

Section 1. Section 13-10-327, MCA, is amended to read:

"13-10-327. Vacancy after primary and prior to general election. (1) ~~Except as provided in 13-10-328 for a vacancy in the candidacy of either governor or lieutenant governor caused by the death of a candidate,~~ if a party candidate dies or withdraws after the primary and before the general election, the affected political party shall appoint someone to replace the candidate in one of the following ways:

(a) For offices to be filled by the state at large, the state central committee shall make the appointment as provided by the rules of the party.

(b) For offices to be filled in districts including more than one county, a committee appointed by the county central committees of all counties in the district shall make the appointment. Procedures for the appointment of the committee and making the appointment ~~shall~~ must be provided in party rules.

(c) For offices to be filled in counties, municipalities, or districts wholly within a county, the appointment ~~shall~~ must be made under rules adopted by the county central committee.

(2) ~~Appointments~~ Except as provided in this section, appointments to fill vacancies must be made no later than 75 days before the election. A candidate may not officially withdraw 85 days or less before a general election. However, if a candidate for partisan office dies less than 85 days before the general election, the affected political party shall appoint a candidate within 5 days after being notified of the

1 vacancy. ~~The~~ One of the procedures provided in 13-12-204 ~~shall~~ must be used to place the name of the
2 appointee on the ballot if necessary.

3 (3) The appointing committee shall send a certificate to the officer with whom a declaration for
4 nomination for the office would be filed, with the information required on a declaration for nomination and
5 the name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed
6 and acknowledged acceptance of the appointment and the filing fee for the office.

7 (4) The officer receiving the certificate of appointment, accompanied by a statement of acceptance
8 and the filing fee, shall certify the name of the appointee for the ballot."
9

10 **Section 2.** Section 13-10-328, MCA, is amended to read:

11 "**13-10-328. Vacancy in governor or lieutenant governor candidacy.** ~~The~~ (1) Except as provided
12 in this section, death or withdrawal of a candidate for governor or lieutenant governor does not affect the
13 candidacy of the other joint candidate.

14 (2) If a candidate for the office of governor dies less than 85 days before a general election, the
15 candidate for lieutenant governor must be advanced on the ballot to the candidacy for governor and the
16 candidate for governor shall select an individual to be a candidate for lieutenant governor. If a candidate
17 for the office of lieutenant governor dies less than 85 days before a general election, the candidate for
18 governor shall select an individual to be a candidate for lieutenant governor. The name of a candidate for
19 governor or a candidate for lieutenant governor, or both, designated or selected pursuant to this section,
20 must be certified to the election administrators by the secretary of state, and one of the procedures
21 provided in 13-12-204 must be used to place the name of the new candidate on the ballot."
22

23 **Section 3.** Section 13-12-204, MCA, is amended to read:

24 "**13-12-204. ~~Labels to be printed and distributed where vacancy has been filled~~ Method of**
25 **correction of ballot.** ~~(1)~~ If an appointment has been made to replace a candidate, as provided in 13-10-326
26 ~~or, 13-10-327, or 13-10-328, or if a candidate for lieutenant governor has been advanced to the candidacy~~
27 ~~for governor, as provided in 13-10-328,~~ after the ballots have been printed but before the election, the
28 election administrator MAY:

29 (1) shall order labels printed containing the name of the new ~~nominee~~ candidate and any other
30 information required to go on the ballot.

1 ~~(2) The~~ if labels are printed, the election administrator shall affix the labels in the proper place on
 2 each ballot or deliver the labels to the chief election judges to be affixed in the proper place on each ballot
 3 before it is given to the elector.

4 ~~(2) must~~ have the entire ballot reprinted; or

5 ~~(3) must~~ have a separate ballot prepared only for the office for which the new candidate is a
 6 candidate."

7
 8 **Section 4.** Section 13-13-204, MCA, is amended to read:

9 **"13-13-204. Authority to vote in person -- printing error or ballot destroyed -- failure to receive**
 10 **ballot -- effect of absentee elector's death.** (1) If an elector has voted by absentee ballot but the absentee
 11 ballot contains printing errors or omissions, ~~or contains,~~ EXCEPT THAT the name of a candidate who has
 12 died since the printing of the ballot AND THAT APPEARS ON THE BALLOT DOES NOT CONSTITUTE AN
 13 ERROR OR OMISSION, the elector may vote in person in any manner at ~~his~~ the elector's polling place.

14 (2) If an elector does not receive ~~his~~ an absentee ballot or if the absentee ballot was destroyed,
 15 ~~he~~ the elector may appear at ~~his~~ the appropriate polling place on election day and vote in person after
 16 signing an affidavit, in the form prescribed by the secretary of state, swearing that ~~his~~ the elector's ballot
 17 has not been received or was destroyed. Before the ballot is given to the elector, the election judge shall
 18 write upon the back of the ballot the number of the ballot. The ballot may be cast out if it appears to the
 19 court to have been wrongfully or illegally voted.

20 (3) If an elector votes by absentee ballot and dies between the time of balloting and election day,
 21 ~~his~~ the deceased elector's ballot does not count."

22
 23 ~~**NEW SECTION. Section 5. Manner of voting by elector in general election when candidate has**~~
 24 ~~**died.** An elector voting in a general election in which a candidate other than a candidate for governor or~~
 25 ~~lieutenant governor has died after the primary election but before the general election may, if the elector~~
 26 ~~receives an absentee ballot that has not been corrected by one of the methods provided in 13-12-204,~~
 27 ~~cross out the name of the deceased candidate and write in the name of a new candidate who has been~~
 28 ~~designated or selected as a candidate in accordance with this title.~~

29
 30 **NEW SECTION. Section 5. Counting of absentee ballot for deceased joint candidate in general**

1 **election.** (1) An absentee ballot voted in a general election, as provided in subsection (2) or (3), for a
 2 candidate for governor or lieutenant governor who dies after printing of the ballot but before the election
 3 must be counted as provided in subsection (2) or (3).

4 (2) A vote for a deceased candidate for governor must be counted as a vote for the lieutenant
 5 governor candidate as governor and as a vote for the candidate chosen pursuant to 13-10-328 for
 6 lieutenant governor.

7 (3) A vote for a deceased candidate for lieutenant governor must be counted as a vote for the
 8 candidate chosen pursuant to 13-10-328 for lieutenant governor.

9

10 **Section 6.** Section 13-13-212, MCA, is amended to read:

11 "**13-13-212. Application for absentee ballot.** (1) Application for absentee ballots ~~shall~~ must be
 12 made by a written request signed by the applicant and addressed to or transmitted by facsimile to the
 13 election administrator of the applicant's county of residence.

14 (2) Application for an absentee ballot may be made by any elector in the United States service by
 15 the federal ~~post card~~ postcard application or by any written request signed by the applicant and addressed
 16 to or transmitted by facsimile to the election administrator of the applicant's county of residence.

17 (3) If an elector requests an absentee ballot because of a sudden illness or health emergency, the
 18 application for an absentee ballot may be made by written request signed by the elector at the time that
 19 the ballot is delivered in person by the special absentee election board provided for in 13-13-225. ~~Such~~ The
 20 elector may request by telephone, facsimile transmission, or other means to have a ballot and application
 21 personally delivered ~~to him~~ by the special absentee election board at his the elector's place of confinement,
 22 hospitalization, or residence within the county. ~~Such a~~ A request may be made no later than noon on
 23 election day.

24 (4) An elector who has made a request for an absentee ballot by one of the methods provided in
 25 this section may, in the event of the death of a candidate after the primary election but before the general
 26 election, make a request for a replacement ballot. The request for a replacement ballot may be made orally
 27 to the election administrator."

28

29 ~~**Section 8.** Section 13-13-241, MCA, is amended to read:~~

30 ~~"13-13-241. Examination of absentee ballot envelopes and affirmations while polls open—deposit~~

~~1 of absentee and unvoted ballots — examination of ballots in election in which candidate has died. (1) While
2 the polls are open, the election judges may, except as provided in this section, compare the signature of
3 the elector on the absentee ballot request and affirmation. If they find that the signatures correspond, that
4 the affirmation is sufficient, and that the absentee elector is qualified, they may open the absentee ballot
5 envelope.~~

~~6 (2) If the absentee ballot does not meet the requirements specified in subsection (1), it must be
7 rejected. The election judges, without opening the absentee ballot envelope, shall mark across it the reason
8 for rejection and a majority of the judges shall sign their initials. Unopened rejected absentee ballot
9 envelopes must be handled in the same manner as provided for rejected ballots in 13-13-243.~~

~~10 (3) After opening the absentee envelope and without unfolding the ballots or permitting them to
11 be examined, the election judges shall ascertain whether the stubs are attached or enclosed and whether
12 the numbers correspond to the numbers in the certificate of the election administrator. If so, they shall
13 detach the stubs and deposit the stubs and ballots in the proper ballot boxes. In a primary election, the
14 unvoted ballots must be deposited in the unvoted ballot box without being removed from their enclosure
15 envelope.~~

~~16 (4) If upon opening the absentee ballot envelope it is found that the number does not correspond
17 to the number on the certificate of the election administrator, the ballot must be rejected. The reason for
18 rejection must be marked on the back of the ballot or ballots, and the statement must be initialed by a
19 majority of the election judges.~~

~~20 (5) Election judges in an election in which a candidate has died after absentee ballots have been
21 printed but before election day may not examine absentee ballot envelopes while the polls are open."~~

22
23 **Section 7.** Section 13-25-101, MCA, is amended to read:

24 **"13-25-101. Nomination of electors -- ballot.** (1) Each political party qualified under 13-10-601
25 shall nominate presidential electors for this state and file certificates of nomination for these candidates
26 with the secretary of state in a form prescribed by the secretary of state no later than 75 days before the
27 general election, in the manner and number provided by law. However, in the event of the death of a
28 candidate for president or vice president, a new candidate for president or vice president, or both, may be
29 nominated for the affected political party and certificates of election may be filed with the secretary of state
30 less than 75 days before a general election.

1 (2) The secretary of state shall certify to the election administrator the names of the candidates
2 for president and vice president of the several political parties, which must be printed placed on the ballot
3 by one of the methods provided in 13-12-204. If the name of a new candidate for president or vice
4 president, or both, is certified to the secretary of state in less than 75 days pursuant to subsection (1), the
5 secretary of state shall immediately certify the new name or names to the election administrators and the
6 new name or names must be placed on the ballot by one of the methods provided in 13-12-204.

7 (3) The names of candidates for electors of president and vice president may not be printed upon
8 the ballot."

9

10 ~~NEW SECTION. Section 10 Codification instruction. (1) [Section 5] is intended to be codified as~~
11 ~~an integral part of Title 13, chapter 13, part 1, and the provisions of Title 13, chapter 13, part 1, apply to~~
12 ~~[section 5].~~

13 ~~(2) [Section 6] is intended to be codified as an integral part of Title 13, chapter 15, and the~~
14 ~~provisions of Title 13, chapter 15, apply to [section 6].~~

15

-END-

1 HOUSE BILL NO. 182

2 INTRODUCED BY MASOLO, AHNER, PECK, BEAUDRY, SLITER, MARSHALL, WYATT, REHBEIN

3
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11 13-12-204, 13-13-204, 13-13-212, ~~13-13-241~~, AND 13-25-101, MCA ."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

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2 INTRODUCED BY MASOLO, AHNER, PECK, BEAUDRY, SLITER, MARSHALL, WYATT, REHBEIN

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19 affected political party shall appoint someone to replace the candidate in one of the following ways:

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21 appointment as provided by the rules of the party.

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23 the county central committees of all counties in the district shall make the appointment. Procedures for the
24 appointment of the committee and making the appointment ~~shall~~ must be provided in party rules.

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26 appointment ~~shall~~ must be made under rules adopted by the county central committee.

27 (2) ~~Appointments~~ Except as provided in this section, appointments to fill vacancies must be made
28 no later than 75 days before the election. A candidate may not officially withdraw 85 days or less before
29 a general election. However, if a candidate for partisan office dies less than 85 days before the general
30 election, the affected political party shall appoint a candidate within 5 days after being notified of the

1 vacancy. ~~The~~ One of the procedures provided in 13-12-204 shall must be used to place the name of the
2 appointee on the ballot if necessary.

3 (3) The appointing committee shall send a certificate to the officer with whom a declaration for
4 nomination for the office would be filed, with the information required on a declaration for nomination and
5 the name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed
6 and acknowledged acceptance of the appointment and the filing fee for the office.

7 (4) The officer receiving the certificate of appointment, accompanied by a statement of acceptance
8 and the filing fee, shall certify the name of the appointee for the ballot."
9

10 **Section 2.** Section 13-10-328, MCA, is amended to read:

11 "**13-10-328. Vacancy in governor or lieutenant governor candidacy.** ~~The~~ (1) Except as provided
12 in this section, death or withdrawal of a candidate for governor or lieutenant governor does not affect the
13 candidacy of the other joint candidate.

14 (2) If a candidate for the office of governor dies less than 85 days before a general election, the
15 candidate for lieutenant governor must be advanced on the ballot to the candidacy for governor and the
16 candidate for governor shall select an individual to be a candidate for lieutenant governor. If a candidate
17 for the office of lieutenant governor dies less than 85 days before a general election, the candidate for
18 governor shall select an individual to be a candidate for lieutenant governor. The name of a candidate for
19 governor or a candidate for lieutenant governor, or both, designated or selected pursuant to this section,
20 must be certified to the election administrators by the secretary of state, and one of the procedures
21 provided in 13-12-204 must be used to place the name of the new candidate on the ballot."
22

23 **Section 3.** Section 13-12-204, MCA, is amended to read:

24 "**13-12-204. ~~Labels to be printed and distributed where vacancy has been filled~~ Method of**
25 **correction of ballot.** ~~(4)~~ If an appointment has been made to replace a candidate, as provided in 13-10-326
26 ~~or,~~ 13-10-327, or 13-10-328, or if a candidate for lieutenant governor has been advanced to the candidacy
27 for governor, as provided in 13-10-328, after the ballots have been printed but before the election, the
28 election administrator MAY:

29 (1) shall order labels printed containing the name of the new ~~nominee~~ candidate and any other
30 information required to go on the ballot.

1 ~~(2) The~~ If labels are printed, the election administrator shall affix the labels in the proper place on
 2 each ballot or deliver the labels to the chief election judges to be affixed in the proper place on each ballot
 3 before it is given to the elector.

4 ~~(2) must~~ have the entire ballot reprinted; or

5 ~~(3) must~~ have a separate ballot prepared only for the office for which the new candidate is a
 6 candidate."

7
 8 **Section 4.** Section 13-13-204, MCA, is amended to read:

9 **"13-13-204. Authority to vote in person -- printing error or ballot destroyed -- failure to receive**
 10 **ballot -- effect of absentee elector's death.** (1) If an elector has voted by absentee ballot but the absentee
 11 ballot contains printing errors or omissions, ~~or contains,~~ EXCEPT THAT the name of a candidate who has
 12 died since the printing of the ballot AND THAT APPEARS ON THE BALLOT DOES NOT CONSTITUTE AN
 13 ERROR OR OMISSION, the elector may vote in person in any manner at ~~his~~ the elector's polling place.

14 (2) If an elector does not receive ~~his~~ an absentee ballot or if the absentee ballot was destroyed,
 15 ~~he~~ the elector may appear at ~~his~~ the appropriate polling place on election day and vote in person after
 16 signing an affidavit, in the form prescribed by the secretary of state, swearing that ~~his~~ the elector's ballot
 17 has not been received or was destroyed. Before the ballot is given to the elector, the election judge shall
 18 write upon the back of the ballot the number of the ballot. The ballot may be cast out if it appears to the
 19 court to have been wrongfully or illegally voted.

20 (3) If an elector votes by absentee ballot and dies between the time of balloting and election day,
 21 ~~his~~ the deceased elector's ballot does not count."

22
 23 ~~**NEW SECTION. Section 5. Manner of voting by elector in general election when candidate has**~~
 24 ~~**died. An elector voting in a general election in which a candidate other than a candidate for governor or**~~
 25 ~~**lieutenant governor has died after the primary election but before the general election may, if the elector**~~
 26 ~~**receives an absentee ballot that has not been corrected by one of the methods provided in 13-12-204,**~~
 27 ~~**cross out the name of the deceased candidate and write in the name of a new candidate who has been**~~
 28 ~~**designated or selected as a candidate in accordance with this title.**~~

29
 30 **NEW SECTION. Section 5. Counting of absentee ballot for deceased joint candidate in general**

1 **election.** (1) An absentee ballot voted in a general election, as provided in subsection (2) or (3), for a
 2 candidate for governor or lieutenant governor who dies after printing of the ballot but before the election
 3 must be counted as provided in subsection (2) or (3).

4 (2) A vote for a deceased candidate for governor must be counted as a vote for the lieutenant
 5 governor candidate as governor and as a vote for the candidate chosen pursuant to 13-10-328 for
 6 lieutenant governor.

7 (3) A vote for a deceased candidate for lieutenant governor must be counted as a vote for the
 8 candidate chosen pursuant to 13-10-328 for lieutenant governor.

9
 10 **Section 6.** Section 13-13-212, MCA, is amended to read:

11 **"13-13-212. Application for absentee ballot.** (1) Application for absentee ballots ~~shall~~ must be
 12 made by a written request signed by the applicant and addressed to or transmitted by facsimile to the
 13 election administrator of the applicant's county of residence.

14 (2) Application for an absentee ballot may be made by any elector in the United States service by
 15 the federal ~~post-card~~ postcard application or by any written request signed by the applicant and addressed
 16 to or transmitted by facsimile to the election administrator of the applicant's county of residence.

17 (3) If an elector requests an absentee ballot because of a sudden illness or health emergency, the
 18 application for an absentee ballot may be made by written request signed by the elector at the time that
 19 the ballot is delivered in person by the special absentee election board provided for in 13-13-225. ~~Such~~ The
 20 elector may request by telephone, facsimile transmission, or other means to have a ballot and application
 21 personally delivered ~~to him~~ by the special absentee election board at ~~his~~ the elector's place of confinement,
 22 hospitalization, or residence within the county. ~~Such a~~ A request may be made no later than noon on
 23 election day.

24 (4) An elector who has made a request for an absentee ballot by one of the methods provided in
 25 this section may, in the event of the death of a candidate after the primary election but before the general
 26 election, make a request for a replacement ballot. The request for a replacement ballot may be made orally
 27 to the election administrator."

28
 29 ~~**Section 8.** Section 13-13-241, MCA, is amended to read:~~

30 ~~"13-13-241. Examination of absentee ballot envelopes and affirmations while polls open—deposit~~

~~of absentee and unvoted ballots — examination of ballots in election in which candidate has died.~~ (1) While the polls are open, the election judges may, ~~except as provided in this section,~~ compare the signature of the elector on the absentee ballot request and affirmation. If they find that the signatures correspond, that the affirmation is sufficient, and that the absentee elector is qualified, they may open the absentee ballot envelope.

~~(2) If the absentee ballot does not meet the requirements specified in subsection (1), it must be rejected. The election judges, without opening the absentee ballot envelope, shall mark across it the reason for rejection and a majority of the judges shall sign their initials. Unopened rejected absentee ballot envelopes must be handled in the same manner as provided for rejected ballots in 13-13-243.~~

~~(3) After opening the absentee envelope and without unfolding the ballots or permitting them to be examined, the election judges shall ascertain whether the stubs are attached or enclosed and whether the numbers correspond to the numbers in the certificate of the election administrator. If so, they shall detach the stubs and deposit the stubs and ballots in the proper ballot boxes. In a primary election, the unvoted ballots must be deposited in the unvoted ballot box without being removed from their enclosure envelope.~~

~~(4) If upon opening the absentee ballot envelope it is found that the number does not correspond to the number on the certificate of the election administrator, the ballot must be rejected. The reason for rejection must be marked on the back of the ballot or ballots, and the statement must be initialed by a majority of the election judges.~~

~~(5) Election judges in an election in which a candidate has died after absentee ballots have been printed but before election day may not examine absentee ballot envelopes while the polls are open."~~

Section 7. Section 13-25-101, MCA, is amended to read:

"13-25-101. Nomination of electors -- ballot. (1) Each political party qualified under 13-10-601 shall nominate presidential electors for this state and file certificates of nomination for these candidates with the secretary of state in a form prescribed by the secretary of state no later than 75 days before the general election, in the manner and number provided by law. However, in the event of the death of a candidate for president or vice president, a new candidate for president or vice president, or both, may be nominated for the affected political party and certificates of election may be filed with the secretary of state less than 75 days before a general election.

1 (2) The secretary of state shall certify to the election administrator the names of the candidates
2 for president and vice president of the several political parties, which must be ~~printed~~ placed on the ballot
3 by one of the methods provided in 13-12-204. If the name of a new candidate for president or vice
4 president, or both, is certified to the secretary of state in less than 75 days pursuant to subsection (1), the
5 secretary of state shall immediately certify the new name or names to the election administrators and the
6 new name or names must be placed on the ballot by one of the methods provided in 13-12-204.

7 (3) The names of candidates for electors of president and vice president may not be printed upon
8 the ballot."

9

10 ~~NEW SECTION. Section 10 Codification instruction. (1) [Section 5] is intended to be codified as~~
11 ~~an integral part of Title 13, chapter 13, part 1, and the provisions of Title 13, chapter 13, part 1, apply to~~
12 ~~[section 5].~~

13 ~~(2) [Section 6] is intended to be codified as an integral part of Title 13, chapter 15, and the~~
14 ~~provisions of Title 13, chapter 15, apply to [section 6].~~

15

-END-

1 HOUSE BILL NO. 182

2 INTRODUCED BY MASOLO, AHNER, PECK, BEAUDRY, SLITER, MARSHALL, WYATT, REHBEIN

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO GENERAL ELECTIONS IN WHICH A CANDIDATE
 5 DIES SHORTLY BEFORE THE ELECTION; PROVIDING FOR ELECTION OF THE GOVERNOR OR LIEUTENANT
 6 GOVERNOR WHEN THERE IS A VACANCY IN THE CANDIDACY; PROVIDING METHODS FOR CORRECTION
 7 OF BALLOTS; ~~PROVIDING FOR VOTING IN PERSON BY ELECTORS WHO HAVE REQUESTED ABSENTEE~~
 8 ~~BALLOTS~~; PROVIDING A METHOD OF CORRECTING AND VOTING ABSENTEE BALLOTS; PROVIDING FOR
 9 REQUEST OF AN ABSENTEE BALLOT; ~~REQUIRING THE OPENING OF ABSENTEE BALLOTS AFTER~~
 10 ~~CLOSING OF THE POLLS IN CERTAIN INSTANCES~~; AND AMENDING SECTIONS 13-10-327, 13-10-328,
 11 13-12-204, 13-13-204, 13-13-212, ~~13-13-241~~, AND 13-25-101, MCA ."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:14
15 Section 1. Section 13-10-327, MCA, is amended to read:

16 "13-10-327. Vacancy after primary and prior to general election. (1) ~~Except as provided in~~
 17 13-10-328 for a vacancy in the candidacy of either governor or lieutenant governor caused by the death
 18 of a candidate, if a party candidate dies or withdraws after the primary and before the general election, the
 19 affected political party shall appoint someone to replace the candidate in one of the following ways:

20 (a) For offices to be filled by the state at large, the state central committee shall make the
 21 appointment as provided by the rules of the party.

22 (b) For offices to be filled in districts including more than one county, a committee appointed by
 23 the county central committees of all counties in the district shall make the appointment. Procedures for the
 24 appointment of the committee and making the appointment ~~shall~~ must be provided in party rules.

25 (c) For offices to be filled in counties, municipalities, or districts wholly within a county, the
 26 appointment ~~shall~~ must be made under rules adopted by the county central committee.

27 (2) ~~Appointments~~ Except as provided in this section, appointments to fill vacancies must be made
 28 no later than 75 days before the election. A candidate may not officially withdraw 85 days or less before
 29 a general election. However, if a candidate for partisan office dies less than 85 days before the general
 30 election, the affected political party shall appoint a candidate within 5 days after being notified of the

1 vacancy. ~~The~~ One of the procedures provided in 13-12-204 ~~shall~~ must be used to place the name of the
2 appointee on the ballot if necessary.

3 (3) The appointing committee shall send a certificate to the officer with whom a declaration for
4 nomination for the office would be filed, with the information required on a declaration for nomination and
5 the name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed
6 and acknowledged acceptance of the appointment and the filing fee for the office.

7 (4) The officer receiving the certificate of appointment, accompanied by a statement of acceptance
8 and the filing fee, shall certify the name of the appointee for the ballot."
9

10 **Section 2.** Section 13-10-328, MCA, is amended to read:

11 "**13-10-328. Vacancy in governor or lieutenant governor candidacy.** ~~The~~ (1) Except as provided
12 in this section, death or withdrawal of a candidate for governor or lieutenant governor does not affect the
13 candidacy of the other joint candidate.

14 (2) If a candidate for the office of governor dies less than 85 days before a general election, the
15 candidate for lieutenant governor must be advanced on the ballot to the candidacy for governor and the
16 candidate for governor shall select an individual to be a candidate for lieutenant governor. If a candidate
17 for the office of lieutenant governor dies less than 85 days before a general election, the candidate for
18 governor shall select an individual to be a candidate for lieutenant governor. The name of a candidate for
19 governor or a candidate for lieutenant governor, or both, designated or selected pursuant to this section,
20 must be certified to the election administrators by the secretary of state, and one of the procedures
21 provided in 13-12-204 must be used to place the name of the new candidate on the ballot."
22

23 **Section 3.** Section 13-12-204, MCA, is amended to read:

24 "**13-12-204. ~~Labels to be printed and distributed where vacancy has been filled~~ Method of**
25 **correction of ballot.** ~~(+) If an appointment has been made to replace a candidate,~~ as provided in 13-10-326
26 or, 13-10-327, or 13-10-328, or if a candidate for lieutenant governor has been advanced to the candidacy
27 for governor, as provided in 13-10-328, after the ballots have been printed but before the election, the
28 election administrator MAY:

29 (1) shall order labels printed containing the name of the new ~~nominee~~ candidate and any other
30 information required to go on the ballot.

1 ~~(2) The~~ If labels are printed, the election administrator shall affix the labels in the proper place on
 2 each ballot or deliver the labels to the chief election judges to be affixed in the proper place on each ballot
 3 before it is given to the elector.

4 ~~(2) must~~ have the entire ballot reprinted; or

5 ~~(3) must~~ have a separate ballot prepared only for the office for which the new candidate is a
 6 candidate."

7
 8 **Section 4.** Section 13-13-204, MCA, is amended to read:

9 **"13-13-204. Authority to vote in person -- printing error or ballot destroyed -- failure to receive**
 10 **ballot -- effect of absentee elector's death.** (1) If an elector has voted by absentee ballot but the absentee
 11 ballot contains printing errors or omissions, ~~or contains~~, EXCEPT THAT the name of a candidate who has
 12 died since the printing of the ballot AND THAT APPEARS ON THE BALLOT DOES NOT CONSTITUTE AN
 13 ERROR OR OMISSION, the elector may vote in person in any manner at ~~his~~ the elector's polling place.

14 (2) If an elector does not receive ~~his~~ an absentee ballot or if the absentee ballot was destroyed,
 15 ~~he~~ the elector may appear at ~~his~~ the appropriate polling place on election day and vote in person after
 16 signing an affidavit, in the form prescribed by the secretary of state, swearing that ~~his~~ the elector's ballot
 17 has not been received or was destroyed. Before the ballot is given to the elector, the election judge shall
 18 write upon the back of the ballot the number of the ballot. The ballot may be cast out if it appears to the
 19 court to have been wrongfully or illegally voted.

20 (3) If an elector votes by absentee ballot and dies between the time of balloting and election day,
 21 ~~his~~ the deceased elector's ballot does not count."

22
 23 ~~**NEW SECTION. Section 5. Manner of voting by elector in general election when candidate has**~~
 24 ~~**died.** An elector voting in a general election in which a candidate other than a candidate for governor or~~
 25 ~~lieutenant governor has died after the primary election but before the general election may, if the elector~~
 26 ~~receives an absentee ballot that has not been corrected by one of the methods provided in 13-12-204,~~
 27 ~~cross out the name of the deceased candidate and write in the name of a new candidate who has been~~
 28 ~~designated or selected as a candidate in accordance with this title.~~

29
 30 **NEW SECTION. Section 5. Counting of absentee ballot for deceased joint candidate in general**

1 **election.** (1) An absentee ballot voted in a general election, as provided in subsection (2) or (3), for a
 2 candidate for governor or lieutenant governor who dies after printing of the ballot but before the election
 3 must be counted as provided in subsection (2) or (3).

4 (2) A vote for a deceased candidate for governor must be counted as a vote for the lieutenant
 5 governor candidate as governor and as a vote for the candidate chosen pursuant to 13-10-328 for
 6 lieutenant governor.

7 (3) A vote for a deceased candidate for lieutenant governor must be counted as a vote for the
 8 candidate chosen pursuant to 13-10-328 for lieutenant governor.

9

10 **Section 6.** Section 13-13-212, MCA, is amended to read:

11 "**13-13-212. Application for absentee ballot.** (1) Application for absentee ballots ~~shall~~ must be
 12 made by a written request signed by the applicant and addressed to or transmitted by facsimile to the
 13 election administrator of the applicant's county of residence.

14 (2) Application for an absentee ballot may be made by any elector in the United States service by
 15 the federal ~~post-card~~ postcard application or by any written request signed by the applicant and addressed
 16 to or transmitted by facsimile to the election administrator of the applicant's county of residence.

17 (3) If an elector requests an absentee ballot because of a sudden illness or health emergency, the
 18 application for an absentee ballot may be made by written request signed by the elector at the time that
 19 the ballot is delivered in person by the special absentee election board provided for in 13-13-225. ~~Such~~ The
 20 elector may request by telephone, facsimile transmission, or other means to have a ballot and application
 21 personally delivered ~~to him~~ by the special absentee election board at ~~his~~ the elector's place of confinement,
 22 hospitalization, or residence within the county. ~~Such a~~ A request may be made no later than noon on
 23 election day.

24 (4) An elector who has made a request for an absentee ballot by one of the methods provided in
 25 this section may, in the event of the death of a candidate after the primary election but before the general
 26 election, make a request for a replacement ballot. The request for a replacement ballot may be made orally
 27 to the election administrator."

28

29 ~~**Section 8.** Section 13-13-241, MCA, is amended to read:~~

30 ~~"13-13-241. Examination of absentee ballot envelopes and affirmations while polls open—deposit~~

1 ~~of absentee and unvoted ballots — examination of ballots in election in which candidate has died.~~ (1) While
 2 the polls are open, the election judges may, ~~except as provided in this section,~~ compare the signature of
 3 the elector on the absentee ballot request and affirmation. If they find that the signatures correspond, that
 4 the affirmation is sufficient, and that the absentee elector is qualified, they may open the absentee ballot
 5 envelope.

6 (2) ~~If the absentee ballot does not meet the requirements specified in subsection (1), it must be~~
 7 ~~rejected. The election judges, without opening the absentee ballot envelope, shall mark across it the reason~~
 8 ~~for rejection and a majority of the judges shall sign their initials. Unopened rejected absentee ballot~~
 9 ~~envelopes must be handled in the same manner as provided for rejected ballots in 13-13-243.~~

10 (3) ~~After opening the absentee envelope and without unfolding the ballots or permitting them to~~
 11 ~~be examined, the election judges shall ascertain whether the stubs are attached or enclosed and whether~~
 12 ~~the numbers correspond to the numbers in the certificate of the election administrator. If so, they shall~~
 13 ~~detach the stubs and deposit the stubs and ballots in the proper ballot boxes. In a primary election, the~~
 14 ~~unvoted ballots must be deposited in the unvoted ballot box without being removed from their enclosure~~
 15 ~~envelope.~~

16 (4) ~~If upon opening the absentee ballot envelope it is found that the number does not correspond~~
 17 ~~to the number on the certificate of the election administrator, the ballot must be rejected. The reason for~~
 18 ~~rejection must be marked on the back of the ballot or ballots, and the statement must be initialed by a~~
 19 ~~majority of the election judges.~~

20 ~~(5) Election judges in an election in which a candidate has died after absentee ballots have been~~
 21 ~~printed but before election day may not examine absentee ballot envelopes while the polls are open."~~

22
 23 **Section 7.** Section 13-25-101, MCA, is amended to read:

24 **"13-25-101. Nomination of electors -- ballot.** (1) Each political party qualified under 13-10-601
 25 shall nominate presidential electors for this state and file certificates of nomination for these candidates
 26 with the secretary of state in a form prescribed by the secretary of state no later than 75 days before the
 27 general election, in the manner and number provided by law. However, in the event of the death of a
 28 candidate for president or vice president, a new candidate for president or vice president, or both, may be
 29 nominated for the affected political party and certificates of election may be filed with the secretary of state
 30 less than 75 days before a general election.

1 (2) The secretary of state shall certify to the election administrator the names of the candidates
2 for president and vice president of the several political parties, which must be ~~printed~~ placed on the ballot
3 by one of the methods provided in 13-12-204. If the name of a new candidate for president or vice
4 president, or both, is certified to the secretary of state in less than 75 days pursuant to subsection (1), the
5 secretary of state shall immediately certify the new name or names to the election administrators and the
6 new name or names must be placed on the ballot by one of the methods provided in 13-12-204.

7 (3) The names of candidates for electors of president and vice president may not be printed upon
8 the ballot."

9

10 ~~NEW SECTION. Section 10 Codification instruction. (1) [Section 5] is intended to be codified as~~
11 ~~an integral part of Title 13, chapter 13, part 1, and the provisions of Title 13, chapter 13, part 1, apply to~~
12 ~~[section 5].~~

13 ~~(2) [Section 6] is intended to be codified as an integral part of Title 13, chapter 15, and the~~
14 ~~provisions of Title 13, chapter 15, apply to [section 6].~~

15

-END-