

Wm. E. Boharski

House BILL NO. 440

Brainard Burr

INTRODUCED BY

DENNY

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A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING ELECTORS TO VOTE FOR "NONE OF THE ABOVE CANDIDATES" IN FEDERAL, STATE, COUNTY, SCHOOL DISTRICT, AND MUNICIPAL PARTISAN AND

NONPARTISAN PRIMARY AND GENERAL ELECTIONS; PROVIDING EXCEPTIONS; AMENDING SECTIONS 13-10-209, 13-12-203, 13-12-205, 13-12-208, 13-12-209, 13-13-117, 13-14-115, 13-14-116, 13-15-101, 13-15-202, 13-15-404, 13-15-501, 13-15-506, 20-3-304, 20-3-306, 20-15-220, 20-20-415, 20-20-416, AND 76-15-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Propule

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

NEW SECTION. Section 1. Short title. [Sections 1 through 3] may be cited as "The "None of the Above Candidates" Election Act".

NEW SECTION. Section 2. "None of the above candidates" ballot choice for primary and general elections -- purpose and intent. The purpose of the "none of the above candidates" choice in elections is to provide voters the opportunity to vote for none of the candidates running for municipal, school district, county, state, or federal public office and to require that votes for "none of the above candidates" be reported in the official canvass. The legislature understands that because the United States and Montana constitutions specify certain requirements for candidacy for public offices, the "none of the above candidates" category cannot lawfully be elected to office. It is the intent of the legislature that the purpose of the category "none of the above candidates" is to provide the opportunity for a protest vote by the electors against all of the individuals running for election or to indicate that the electors voting for that category are without sufficient information to vote for any of the named candidates. The legislature intends that the actual election, or nomination in the case of a primary election, of a candidate be in accordance with Article IV, section 5, of the Montana constitution, which provides that the person receiving the largest number of votes is the person elected.

NEW SECTION. Section 3. General provisions. (1) The provisions of [sections 1 through 3] apply

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1 to the election of candidates for municipal, school district, county, state, and federal offices in any primary
2 or general election.

3 (2) Ballots for municipal, school district, county, state, and federal elections must include a "none
4 of the above candidates" choice for each office listed on the ballot. However, this requirement does not
5 apply to a ballot cast in an election for an unopposed incumbent judge, for which the form of the ballot is
6 provided in 13-14-212, or in an election for the president of the United States, for which the form of the
7 ballot is provided in 13-10-403.

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

10 (4) The actual election, or nomination in the case of a primary election, of a candidate is in
11 accordance with Article IV, section 5, of the Montana constitution, which provides that the person receiving
12 the largest number of votes is the person elected.

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

15 **"13-10-209. Arrangement of ballots.** (1) (a) Ballots for a primary election ~~shall~~ must be arranged
16 and printed in the same manner and number as provided in chapter 12 for general election ballots and must
17 include a "none of the above candidates" ballot choice, as provided in [sections 1 through 3], except there
18 ~~shall~~ must be separate ballots for each political party entitled to participate. The name of the political party
19 ~~shall~~ must be printed at the top of the separate ballot for that party and need not be printed opposite each
20 candidate's name.

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

23 (i) each section is clearly identified as separate; and

24 (ii) ~~such~~ the nonpartisan offices and ballot issues appear on each party's ballot.

25 (2) It is not necessary to print a primary ballot for a political party ~~which~~ that does not have
26 candidates for more than half of the offices on the ballot in even-year elections if no more than one
27 candidate files for nomination by that party for any of the offices on the ballot. The secretary of state shall
28 certify that ~~no~~ a primary election is not necessary for that party if ~~such~~ that is the case and shall certify or
29 instruct the election administrator to certify the names of the candidates for that party for the general
30 election ballot only.

1 (3) The separate ballots for each party ~~shall~~ must be the same size and color. The stubs of each
 2 set of party ballots ~~shall~~ must bear the same number. If printed as a separate ballot, the nonpartisan ballot
 3 ~~shall~~ must be a different size or color than the party ballots, but the stubs ~~shall~~ must be numbered in the
 4 same order as the party ballots.

5 (4) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan
 6 ballot or a separate ballot. A separate ballot may be a different size and color than the other ballots in the
 7 election, but the stubs ~~shall~~ must be numbered in the same order.

8 (5) Each elector shall receive a set of party ballots and a nonpartisan and a ballot issue ballot if
 9 ~~such~~ those ballots are printed."

10
 11 **Section 5.** Section 13-12-203, MCA, is amended to read:

12 **"13-12-203. Printing of candidate's name and party designation on ballot.** (1) Except as provided
 13 in 13-10-209 and 13-10-303, in partisan elections, candidates' names ~~shall~~ must be printed under the title
 14 of the office sought, with the name of the party, in not more than three words, or "Independent" printed
 15 opposite the name.

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

20 (3) The election administrator shall ensure that:

21 (a) every ballot in primary and general elections, including special elections, that lists the name or
 22 names of the candidate or candidates for a municipal, county, state, or federal public office, except ballots
 23 for incumbent judges who are unopposed, includes a ballot choice of "none of the above candidates",
 24 which must appear on the ballot directly below the names of the candidates for a particular office; and

25 (b) every sample ballot or other instruction to voters prepared or approved by the election
 26 administrator or the secretary of state clearly explains that the voter may mark a choice for the category
 27 "none of the above candidates" only if the voter has not voted for any candidate for the office."

28
 29 **Section 6.** Section 13-12-205, MCA, is amended to read:

30 **"13-12-205. Arrangement of names -- rotation on ballot.** (1) The candidates' names ~~shall~~ must

1 be arranged alphabetically on the ballot according to surnames under the title of the respective offices.

2 (2) (a) Except as provided in subsection (3), if two or more individuals are candidates for
3 nomination or election to the same office, the election administrator shall divide the ballot forms into sets
4 equal in number to the greatest number of candidates for any office. The candidates for nomination to an
5 office by each political party ~~shall~~ must be considered separately in determining the number of sets
6 necessary for a primary election.

7 (b) The election administrator shall begin with a form arranged alphabetically and rotate the names
8 so that each candidate's name will be at the top of the list for each office on substantially an equal number
9 of ballots. If it is not numerically possible to place each candidate's name at the top of the list, the names
10 ~~shall~~ must be rotated in groups so that each candidate's name is as near the top of the list as possible on
11 substantially an equal number of ballots.

12 (c) If the county contains more than one legislative district, the election administrator may rotate
13 each candidate's name so that it will be at or near the top of the list for each office on substantially an
14 equal number of ballots in each house district.

15 (d) For purposes of rotation, the offices of president and vice president and of governor and
16 lieutenant governor ~~shall~~ must be considered as a group.

17 (e) No more than one of the sets may be used in printing the ballot for use in any one precinct, and
18 all ballots furnished for use in any precinct must be identical.

19 (3) In a precinct where voting devices are used, the election administrator need not rotate
20 candidates' names as provided in subsection (2) on paper ballots required under 13-17-305; ~~however~~
21 However, if more than 5% of the electors voting in the precinct in the last preceding general election voted
22 using paper ballots, the election administrator shall rotate candidates' names on the paper ballots. If the
23 candidates' names are not rotated, the election administrator shall determine by lot the arrangement of the
24 names on the paper ballot.

25 (4) Language allowing an elector to cast a ballot for "none of the above candidates" in accordance
26 with [sections 1 through 3] must appear at the bottom of each group of names of candidates for each
27 office, and that designation is not required to be rotated."

28
29 **Section 7.** Section 13-12-208, MCA, is amended to read:

30 **"13-12-208. Provision for write-in votes.** Below the list of names of candidates and the "none of

1 the above candidates" ballot choice for each office, there must be as many blank spaces for write-in voting
 2 as there are officers to be elected."

3

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

5 **"13-12-209. Paper ballots -- stub size -- content.** (1) Paper ballots ~~shall~~ must be printed on the
 6 same sheet with a stub, separated by perforation.

7 (2) The stub ~~shall~~ must extend the entire width of the ballot and have instructions printed on it.

8 (3) Upon the face of the stub ~~shall~~ must be printed the following:

9 This ballot should be marked with an "x" in the square before the name of each individual or
 10 candidate for whom the elector intends to vote or in the square before "none of the above candidates" if
 11 the elector does not vote for any of the candidates listed for an office. The elector may write in or affix a
 12 preprinted label in the blank spaces or over any other name, the name of an individual for whom ~~he~~ the
 13 elector wishes to vote and vote by marking an "x" in the square before the name. If a ballot contains a
 14 constitutional amendment or other issue to be submitted to a vote of the people, it is voted on by marking
 15 an "x" in the square before the amendment or issue.

16 (4) On the stub ~~shall~~ must be printed or stamped the consecutive number of the ballot, beginning
 17 with number 1 and increasing in regular numerical order to the total number of ballots required for the
 18 precinct."

19

20 **Section 9.** Section 13-13-117, MCA, is amended to read:

21 **"13-13-117. Method of voting.** (1) On receipt of ~~his~~ a ballot, the elector ~~must~~ shall immediately
 22 retire to one of the booths and prepare ~~his~~ the ballot.

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

26 (3) If the ballot contains a ballot issue, ~~he~~ the elector shall mark an "x" in the applicable square
 27 indicating ~~his~~ a vote either for or against the issue.

28 (4) The elector may write the name of an individual for whom ~~he~~ the elector wishes to vote in the
 29 blank space or affix a preprinted label in the blank space and may vote for that individual by marking an
 30 "x" before the name. When the ballot is marked in this manner, it must be counted the same as though the

1 name were printed upon the ballot and marked by the elector, except as provided in 13-15-202.

2 (5) An elector voting a ballot that will be counted by an optical scan ballot tabulating device shall
3 mark ~~his~~ the ballot in the manner prescribed on ~~his~~ the ballot. However, ~~his~~ the ballot ~~must~~ may not be
4 invalidated if ~~he~~ the elector marks the voting positions with an "x".

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

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

10 (8) ~~No~~ An individual ~~except~~ other than an election judge may not put a ballot, any paper resembling
11 a ballot, or anything other than a ballot in a ballot box.

12 (9) Any elector who spoils ~~his~~ a ballot may, on returning the spoiled ballot, receive another in place
13 of it."

14

15 **Section 10.** Section 13-14-115, MCA, is amended to read:

16 **"13-14-115. Preparation and distribution of nonpartisan primary ballots -- determination on**
17 **conducting a primary.** (1) The election administrators shall arrange, prepare, and distribute primary ballots
18 for nonpartisan offices, designated "nonpartisan primary ballots". The ballots must be arranged as other
19 primary ballots, must include a "none of the above candidates" ballot choice for each office, as provided
20 in [sections 1 through 3], and must be without political designation.

21 (2) The number of nonpartisan primary ballots and sample ballots furnished must be the same as
22 other primary ballots.

23 (3) (a) The election administrator of a political subdivision may determine that a primary need not
24 be held if:

25 (i) the number of candidates for an office exceeds three times the number to be elected to that
26 office in no more than one-half of the offices on the ballot; and

27 (ii) the number of candidates in excess of three times the number to be elected is not more than
28 one for any office on the ballot.

29 (b) If the election administrator determines that a primary election need not be held pursuant to
30 subsection (3)(a), the administrator shall give notice to the governing body that ~~he~~ a primary election will

1 not be held.

2 (4) The governing body may require that a primary election be held if it passes a resolution not
3 more than 10 days after the close of filing by candidates for election, stating that a primary election must
4 be held."

5
6 **Section 11.** Section 13-14-116, MCA, is amended to read:

7 **"13-14-116. Counting and canvassing of nonpartisan ballots.** (1) After closing the polls, the
8 election officers shall separately count, canvass, record, and certify nonpartisan ballots, showing the
9 number of votes cast for each person and for the category "none of the above candidates", except as
10 provided in 13-15-202.

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

13
14 **Section 12.** Section 13-15-101, MCA, is amended to read:

15 **"13-15-101. Votes to be publicly counted upon closing of polls.** (1) When the polls are closed,
16 the election judges shall immediately count the votes. The count ~~shall~~ must be public and continue without
17 adjournment until completed and the result is publicly declared.

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

21 (3) The election judges shall immediately post one of the return forms at the place of counting and
22 return a copy to the election administrator. Both forms ~~shall~~ must be signed by all the election judges
23 completing the count."

24
25 **Section 13.** Section 13-15-202, MCA, is amended to read:

26 **"13-15-202. Counting votes cast -- pollbook.** (1) (a) When the procedures required by 13-15-201
27 are completed, the election judges shall count and determine the votes cast for each individual or for the
28 category "none of the above candidates", except as provided in subsection (1)(b).

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

- 1 (i) for the office of precinct committeeman or committeewoman in a primary election;
- 2 (ii) for an office for which no candidate has filed a declaration or petition for nomination or a
3 declaration of intent; or
- 4 (iii) on a federal write-in absentee ballot as provided in 13-13-273.
- 5 (2) In counting, the ballots ~~shall~~ must be opened singly by one of the election judges and the
6 contents read aloud to the other judges.
- 7 (3) A ballot or part of a ballot is void and may not be counted if the elector's choice cannot be
8 determined. If part of a ballot is sufficiently plain to determine the elector's intention, the election judges
9 shall count that part. Except as provided in 13-10-211(4), a write-in vote may be counted only if the
10 write-in vote identifies an individual by any of the designations filed pursuant to 13-10-211(1)(a).
- 11 (4) As the ballots are read, two judges ~~must~~ shall write on a tally sheet the name of every
12 individual and the office voted for and keep tallies of the number of votes for each individual and for the
13 category "none of the above candidates", except as provided in subsection (1)(b).
- 14 (5) The tally sheets ~~shall~~ must be compared and their correctness ascertained, and the judges shall
15 immediately write in the pollbook:
- 16 (a) the names of all individuals who received votes, including as a name the category "none of the
17 above candidates";
- 18 (b) the offices for which they received votes;
- 19 (c) total votes received by each individual and by the category "none of the above candidates" as
20 shown by the tally sheets.
- 21 (6) In making the count in precincts where voting machines are used, the votes cast by absentee
22 ballot ~~shall~~ must be added to the votes cast on the voting machines.
- 23 (7) A ballot or vote rejected by the election judges may not be included in the count."
24

25 **Section 14.** Section 13-15-404, MCA, is amended to read:

26 **"13-15-404. Information to be entered on record.** (1) The secretary of the board shall prepare and
27 file in the official records of ~~his~~ the office a report of the canvass ~~which~~ that lists:

- 28 (a) the total number of electors voting in each precinct, district, or portion of a district in the county
29 and the total in the county;
- 30 (b) the name of each individual, including as a name the category "none of the above candidates",

1 receiving votes and the office for which the votes were received;

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

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

5 (e) the total votes in the county for each individual, for the category "none of the above
6 candidates", and for and against each ballot issue; and

7 (f) for municipal elections, the total number of electors voting in each municipality and the votes
8 by municipality for each individual, for the category "none of the above candidates", and for and against
9 each ballot issue.

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

12

13 **Section 15.** Section 13-15-501, MCA, is amended to read:

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

21 (2) The secretary of the board shall send the certification to the secretary of state by certified mail
22 in an envelope marked "election returns"."

23

24 **Section 16.** Section 13-15-506, MCA, is amended to read:

25 "**13-15-506. Report of the canvass.** (1) The secretary of the board shall prepare and file in the
26 official records of ~~his~~ the office a report of the canvass ~~which~~ that lists:

27 (a) the total number of electors voting in each county and in each legislative house district and the
28 total in the state;

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

- 1 (c) the number and title of each ballot issue; and
- 2 (d) the votes by county and legislative house district and the total votes for each individual, for the
- 3 category "none of the above candidates", and for and against each ballot issue.

4 (2) Write-in votes for an individual ~~shall~~ must be entered in the report in the same place as votes

5 of other individuals for the same office but ~~shall~~ must be identified as write-in votes."

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7

Section 17. Section 20-3-304, MCA, is amended to read:

8 **"20-3-304. Annual election.** In each district, an election of trustees ~~shall~~ must be conducted

9 annually on the regular school election day, the first Tuesday of April. Election of trustees ~~shall~~ must

10 comply with the election provisions of Title 13 and this title. In accordance with [sections 1 through 3],

11 each ballot cast in an election of a trustee must contain language allowing an elector to vote for "none of

12 the above candidates" if the elector does not vote for an individual for trustee."

13

Section 18. Section 20-3-306, MCA, is amended to read:

14 **"20-3-306. Conduct of election.** (1) The trustees of each district shall call a trustee election on

15 the regular school election day of each school fiscal year under the provisions of 20-20-201, except as

16 provided in 20-3-344. The trustees shall call and conduct the trustee election in the manner prescribed in

17 this title for school elections and Title 13. Any elector qualified to vote under the provisions of 20-20-301

18 may vote at a trustee election.

19 (2) The trustee election ballots ~~shall~~ must be substantially in the following form:

20 OFFICIAL BALLOT SCHOOL TRUSTEE ELECTION

21 INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the name of the

22 candidate for whom you wish to vote. You may vote for the category "none of the above candidates"

23 listed below a term of office only if you do not cast a ballot for a named candidate for that term of office.

24 Vote for (indicate number to be elected) for a 3-year term:

25 (List the names of the candidates for a 3-year term with a vacant square in front of each

26 name.)

27 None of the above candidates.

28 Vote for (indicate number to be elected) for a 2-year term:

29 (List the names of the candidates for a 2-year term with a vacant square in front of each

30

1 name.)

2 None of the above candidates.

3 Vote for (indicate number to be elected) for a 1-year term:

4 (List the names of the candidates for a 1-year term with a vacant square in front of each
5 name.)

6 None of the above candidates."

7

8 **Section 19.** Section 20-15-220, MCA, is amended to read:

9 "20-15-220. **Trustee election ballot.** (1) The trustee election ballot must be substantially in the
10 following form:

11 **Official Ballot Community College Trustee Election Instructions to Voters**

12 Make an "X" or similar mark in the vacant square before the name of the candidate for whom you
13 wish to vote. You may vote for the category "none of the above candidates" listed below a term of office
14 only if you do not cast a ballot for a named candidate for that term of office.

15 Vote for (indicate number to be elected) for a 3-year term.

16 List the names of the candidates for the 3-year term with a vacant square in
17 front of each name.

18 None of the above candidates.

19 Vote for (indicate number to be elected) for a 2-year term.

20 List the names of the candidates for the 2-year term with a vacant square in
21 front of each name.

22 None of the above candidates.

23 Vote for (indicate number to be elected) for a 1-year term.

24 List the names of the candidates for the 1-year term with a vacant square in
25 front of each name.

26 None of the above candidates.

27 (2) In preparing the ballots, only those portions of the prescribed ballot that are applicable to the
28 election to be conducted need be used. The ballot must also be prepared with blank lines and vacant
29 squares in front of the lines in a sufficient number to allow write-in voting for each trustee position that is
30 subject to election."

1 **Section 20.** Section 20-20-415, MCA, is amended to read:

2 **"20-20-415. Trustees to canvass votes.** At the first regular or special meeting of the trustees
3 conducted after the receipt of the certified tally sheets of any school election from all the polls of the
4 district, the trustees shall canvass the vote. In an election of trustees, votes cast for the category "none
5 of the above candidates" must be tallied in the same manner as votes for named trustees."

6
7 **Section 21.** Section 20-20-416, MCA, is amended to read:

8 **"20-20-416. Certificate of election.** After the canvass of the total votes cast, the trustees shall
9 issue a certificate of election. In the case of a trustee election, the certificate ~~shall~~ must be issued to the
10 elected trustee and the county superintendent designating the term of the trustee position to which ~~he~~ the
11 trustee has been elected. In the case of an election on a proposition, the trustees shall issue a certificate
12 specifying the outcome of the election. The certificate ~~shall~~ must be issued to the official or public body
13 ~~which~~ that ordered the election within 15 days after the election. When the election has been ordered by
14 resolution of the trustees, the canvassed results, including the number of votes cast for the category "none
15 of the above candidates", ~~shall~~ must be published immediately in a newspaper that will give notice to the
16 largest number of people of the district."

17

18 **Section 22.** Section 76-15-303, MCA, is amended to read:

19 **"76-15-303. General election -- election by acclamation -- appointment.** (1) All qualified electors
20 within the district are eligible to vote in the election.

21 (2) Except as provided in subsection (5), the candidate or, if more than one supervisor position is
22 to be filled by the general election, the candidates who receive the largest number, respectively, of the
23 votes cast in the election are the elected supervisors for the district.

24 (3) In the general election, the names of the individuals nominated must be printed, as provided
25 under 13-12-205, upon ballots, with a square before each name and a direction to insert an "X" mark in
26 the square before any three names to indicate the elector's preference. However, the language "none of
27 the above candidates" is not required to appear on the ballots.

28 (4) The election administrator in each county shall prepare suitable nonpartisan ballots or place the
29 names of candidates on the regular general election ballot in the same manner as other nonpartisan
30 candidates for the election of supervisors. The ballots must be delivered to the election judges in those

1 precincts that contain registered electors prior to each general election and each primary election, if
2 necessary. The election judges and other election officials in the precincts shall submit the ballots to
3 qualified electors, conduct the election, and tabulate the results of the election in the manner provided in
4 Title 13.

5 (5) (a) Except as provided in subsection (5)(b), if the number of candidates nominated is equal to
6 or less than the number of positions to be elected, the election administrator shall give notice that an
7 election will not be held.

8 (b) The governing body may require that an election be held if, not more than 10 days after the
9 close of filing by candidates, the governing body passes a resolution to hold an election and notifies the
10 election administrator.

11 (c) If an election is not held, the governing body shall declare elected by acclamation the candidate
12 who filed a nominating petition for the position. If a candidate has not filed a nominating petition for the
13 position, the governing body shall make an appointment to fill the position."
14

15 **NEW SECTION. Section 23. Codification instruction.** [Sections 1 through 3] are intended to be
16 codified as an integral part of Title 13, and the provisions of Title 13 apply to [sections 1 through 3].
17

18 **NEW SECTION. Section 24. Effective date.** [This act] is effective on passage and approval.
19

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0440, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

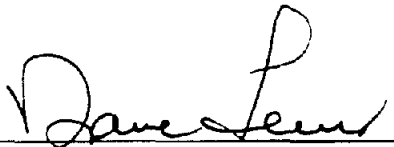
An act allowing electors to vote for "none of the above candidates" in federal, state, county, school district, and municipal partisan and nonpartisan primary and general elections.

ASSUMPTIONS:

1 The bill will have no material fiscal impact on the Secretary of State's Office, other state agencies, or local governments.

FISCAL IMPACT:

None.

 2-10-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

MATT DENNY, PRIMARY SPONSOR DATE

Fiscal Note for HB0440, as introduced

HB 440

1 HOUSE BILL NO. 440

2 INTRODUCED BY DENNY, REHBEIN, PROUSE, WELLS, BOHLINGER, STORY, SOFT, HAGENER,
3 HEAVY RUNNER, CAREY, SCHMIDT, KEENAN, HAYNE, OHS, MASOLO, SLITER, DEVANEY, STOVALL,
4 DOWELL, MILLS, BOHARSKI, BRAINARD, LAWSON, BAER, KOTTEL, SIMPSON, TROPILA,
5 BOOKOUT-REINICKE, SANDS, MARSHALL, KNOX, SIMPKINS, CURTISS, ELLIS, ESTRADA, MAHLUM,
6 BURNETT, KEATING, DEVLIN, EMERSON, KITZENBERG

7
8 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING ELECTORS TO VOTE FOR "NONE OF THE ABOVE
9 CANDIDATES" IN FEDERAL, STATE, COUNTY, SCHOOL DISTRICT, AND MUNICIPAL PARTISAN AND
10 NONPARTISAN PRIMARY AND GENERAL ELECTIONS; PROVIDING EXCEPTIONS; AMENDING SECTIONS
11 13-10-209, 13-12-203, 13-12-205, 13-12-208, 13-12-209, 13-13-117, 13-14-115, 13-14-116,
12 13-15-101, 13-15-202, 13-15-404, 13-15-501, 13-15-506, 20-3-304, 20-3-306, 20-15-220, 20-20-415,
13 20-20-416, AND 76-15-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

16
17 NEW SECTION. **Section 1. Short title.** [Sections 1 through 3] may be cited as "The "None of the
18 Above Candidates" Election Act".

19
20 NEW SECTION. **Section 2. "None of the above candidates" ballot choice for primary and general**
21 **elections -- purpose and intent.** The purpose of the "none of the above candidates" choice in elections is
22 to provide voters the opportunity to vote for none of the candidates running for municipal, school district,
23 county, state, or federal public office and to require that votes for "none of the above candidates" be
24 reported in the official canvass. The legislature understands that because the United States and Montana
25 constitutions specify certain requirements for candidacy for public offices, the "none of the above
26 candidates" category cannot lawfully be elected to office. It is the intent of the legislature that the purpose
27 of the category "none of the above candidates" is to provide the opportunity for a protest vote by the
28 electors against all of the individuals running for election or to indicate that the electors voting for that
29 category are without sufficient information to vote for any of the named candidates. The legislature intends
30 that the actual election, or nomination in the case of a primary election, of a candidate be in accordance

1 with Article IV, section 5, of the Montana constitution, which provides that the person receiving the largest
2 number of votes is the person elected.

3

4 **NEW SECTION. Section 3. General provisions.** (1) The provisions of [sections 1 through 3] apply
5 to the election of candidates for municipal, school district, county, state, and federal offices in any primary
6 or general election.

7 (2) Ballots for municipal, school district, county, state, and federal elections must include a "none
8 of the above candidates" choice for each office listed on the ballot. However, this requirement does not
9 apply to a ballot cast in an election for an unopposed incumbent judge, for which the form of the ballot is
10 provided in 13-14-212, or in ~~an~~ **A PRIMARY** election for the president of the United States, for which the
11 form of the ballot is provided in 13-10-403.

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

14 (4) The actual election, or nomination in the case of a primary election, of a candidate is in
15 accordance with Article IV, section 5, of the Montana constitution, which provides that the person receiving
16 the largest number of votes is the person elected.

17

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

19 **"13-10-209. Arrangement of ballots.** (1) (a) Ballots for a primary election ~~shall~~ must be arranged
20 and printed in the same manner and number as provided in chapter 12 for general election ballots and must
21 include a "none of the above candidates" ballot choice, as provided in [sections 1 through 3], except there
22 ~~shall~~ must be separate ballots for each political party entitled to participate. The name of the political party
23 ~~shall~~ must be printed at the top of the separate ballot for that party and need not be printed opposite each
24 candidate's name.

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

27 (i) each section is clearly identified as separate; and

28 (ii) ~~such~~ the nonpartisan offices and ballot issues appear on each party's ballot.

29 (2) It is not necessary to print a primary ballot for a political party ~~which~~ that does not have
30 candidates for more than half of the offices on the ballot in even-year elections if no more than one

1 candidate files for nomination by that party for any of the offices on the ballot. The secretary of state shall
 2 certify that ~~no~~ a primary election is not necessary for that party if ~~such~~ that is the case and shall certify or
 3 instruct the election administrator to certify the names of the candidates for that party for the general
 4 election ballot only.

5 (3) The separate ballots for each party ~~shall~~ must be the same size and color. The stubs of each
 6 set of party ballots ~~shall~~ must bear the same number. If printed as a separate ballot, the nonpartisan ballot
 7 ~~shall~~ must be a different size or color than the party ballots, but the stubs ~~shall~~ must be numbered in the
 8 same order as the party ballots.

9 (4) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan
 10 ballot or a separate ballot. A separate ballot may be a different size and color than the other ballots in the
 11 election, but the stubs ~~shall~~ must be numbered in the same order.

12 (5) Each elector shall receive a set of party ballots and a nonpartisan and a ballot issue ballot if
 13 ~~such~~ those ballots are printed."

14

15 **Section 5.** Section 13-12-203, MCA, is amended to read:

16 "**13-12-203. Printing of candidate's name and party designation on ballot.** (1) Except as provided
 17 in 13-10-209 and 13-10-303, in partisan elections, candidates' names ~~shall~~ must be printed under the title
 18 of the office sought, with the name of the party, in not more than three words, or "Independent" printed
 19 opposite the name.

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

24 (3) The election administrator shall ensure that:

25 (a) every ballot in primary and general elections, including special elections, that lists the name or
 26 names of the candidate or candidates for a municipal, county, state, or federal public office, except ballots
 27 for incumbent judges who are unopposed IN THE GENERAL ELECTION, includes a ballot choice of "none
 28 of the above candidates", which must appear on the ballot directly below the names of the candidates for
 29 a particular office; and

30 (b) every sample ballot or other instruction to voters prepared or approved by the election

1 administrator or the secretary of state clearly explains that:

2 (I) the voter may mark a choice for the category "none of the above candidates" only if the voter
3 has not voted for any candidate for the office; AND

4 (II) VOTES FOR "NONE OF THE ABOVE CANDIDATES" WILL BE COUNTED AND REPORTED, BUT
5 WILL NOT BE USED WHEN DETERMINING THE WINNER OF THE ELECTION."

6

7 **Section 6.** Section 13-12-205, MCA, is amended to read:

8 **"13-12-205. Arrangement of names -- rotation on ballot.** (1) The candidates' names ~~shall~~ must
9 be arranged alphabetically on the ballot according to surnames under the title of the respective offices.

10 (2) (a) Except as provided in subsection (3), if two or more individuals are candidates for
11 nomination or election to the same office, the election administrator shall divide the ballot forms into sets
12 equal in number to the greatest number of candidates for any office. The candidates for nomination to an
13 office by each political party ~~shall~~ must be considered separately in determining the number of sets
14 necessary for a primary election.

15 (b) The election administrator shall begin with a form arranged alphabetically and rotate the names
16 so that each candidate's name will be at the top of the list for each office on substantially an equal number
17 of ballots. If it is not numerically possible to place each candidate's name at the top of the list, the names
18 ~~shall~~ must be rotated in groups so that each candidate's name is as near the top of the list as possible on
19 substantially an equal number of ballots.

20 (c) If the county contains more than one legislative district, the election administrator may rotate
21 each candidate's name so that it will be at or near the top of the list for each office on substantially an
22 equal number of ballots in each house district.

23 (d) For purposes of rotation, the offices of president and vice president and of governor and
24 lieutenant governor ~~shall~~ must be considered as a group.

25 (e) No more than one of the sets may be used in printing the ballot for use in any one precinct, and
26 all ballots furnished for use in any precinct must be identical.

27 (3) In a precinct where voting devices are used, the election administrator need not rotate
28 candidates' names as provided in subsection (2) on paper ballots required under 13-17-305⁷; ~~however~~
29 However, if more than 5% of the electors voting in the precinct in the last preceding general election voted
30 using paper ballots, the election administrator shall rotate candidates' names on the paper ballots. If the

1 candidates' names are not rotated, the election administrator shall determine by lot the arrangement of the
2 names on the paper ballot.

3 (4) Language allowing an elector to cast a ballot for "none of the above candidates" in accordance
4 with [sections 1 through 3] must appear at the bottom of each group of names of candidates for each
5 office, and that designation is not required to be rotated."

6

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

8 **"13-12-208. Provision for write-in votes.** Below the list of names of candidates and the "none of
9 the above candidates" ballot choice for each office, there must be as many blank spaces for write-in voting
10 as there are officers to be elected."

11

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

13 **"13-12-209. Paper ballots -- stub size -- content.** (1) Paper ballots ~~shall~~ must be printed on the
14 same sheet with a stub, separated by perforation.

15 (2) The stub ~~shall~~ must extend the entire width of the ballot and have instructions printed on it.

16 (3) Upon the face of the stub ~~shall~~ must be printed the following:

17 This ballot should be marked with an "x" in the square before the name of each individual or
18 candidate for whom the elector intends to vote or in the square before "none of the above candidates" if
19 the elector does not vote for any of the candidates listed for an office. VOTES FOR "NONE OF THE ABOVE
20 CANDIDATES" WILL BE COUNTED AND REPORTED, BUT WILL NOT BE USED WHEN DETERMINING THE
21 WINNER OF THE ELECTION. The elector may write in or affix a preprinted label in the blank spaces or over
22 any other name, the name of an individual for whom ~~he~~ the elector wishes to vote and vote by marking an
23 "x" in the square before the name. If a ballot contains a constitutional amendment or other issue to be
24 submitted to a vote of the people, it is voted on by marking an "x" in the square before the amendment
25 or issue.

26 (4) On the stub ~~shall~~ must be printed or stamped the consecutive number of the ballot, beginning
27 with number 1 and increasing in regular numerical order to the total number of ballots required for the
28 precinct."

29

30 **Section 9.** Section 13-13-117, MCA, is amended to read:

1 **"13-13-117. Method of voting.** (1) On receipt of ~~his~~ a ballot, the elector ~~must~~ shall immediately
2 retire to one of the booths and prepare ~~his~~ the ballot.

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

6 (3) If the ballot contains a ballot issue, ~~he~~ the elector shall mark an "x" in the applicable square
7 indicating ~~his~~ a vote either for or against the issue.

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

12 (5) An elector voting a ballot that will be counted by an optical scan ballot tabulating device shall
13 mark ~~his~~ the ballot in the manner prescribed on ~~his~~ the ballot. However, ~~his~~ the ballot ~~must~~ may not be
14 invalidated if ~~he~~ the elector marks the voting positions with an "x".

15 (6) After preparing ~~his~~ the ballot, the elector ~~must~~ shall fold it so that the face of the ballot will be
16 concealed and the official stamp may be seen and hand it to the election judges.

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

20 (8) ~~No~~ An individual ~~except other than~~ an election judge may not put a ballot, any paper resembling
21 a ballot, or anything other than a ballot in a ballot box.

22 (9) Any elector who spoils ~~his~~ a ballot may, on returning the spoiled ballot, receive another in place
23 of it."

24

25 **Section 10.** Section 13-14-115, MCA, is amended to read:

26 **"13-14-115. Preparation and distribution of nonpartisan primary ballots -- determination on**
27 **conducting a primary.** (1) The election administrators shall arrange, prepare, and distribute primary ballots
28 for nonpartisan offices, designated "nonpartisan primary ballots". The ballots must be arranged as other
29 primary ballots, must include a "none of the above candidates" ballot choice for each office, as provided
30 in [sections 1 through 3], and must be without political designation.

1 (2) The number of nonpartisan primary ballots and sample ballots furnished must be the same as
2 other primary ballots.

3 (3) (a) The election administrator of a political subdivision may determine that a primary need not
4 be held if:

5 (i) the number of candidates for an office exceeds three times the number to be elected to that
6 office in no more than one-half of the offices on the ballot; and

7 (ii) the number of candidates in excess of three times the number to be elected is not more than
8 one for any office on the ballot.

9 (b) If the election administrator determines that a primary election need not be held pursuant to
10 subsection (3)(a), the administrator shall give notice to the governing body that ~~no~~ a primary election will
11 not be held.

12 (4) The governing body may require that a primary election be held if it passes a resolution not
13 more than 10 days after the close of filing by candidates for election, stating that a primary election must
14 be held."

15

16 **Section 11.** Section 13-14-116, MCA, is amended to read:

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

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

23

24 **Section 12.** Section 13-15-101, MCA, is amended to read:

25 **"13-15-101. Votes to be publicly counted upon closing of polls.** (1) When the polls are closed,
26 the election judges shall immediately count the votes. The count ~~shall~~ must be public and continue without
27 adjournment until completed and the result is publicly declared.

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

1 (3) The election judges shall immediately post one of the return forms at the place of counting and
2 return a copy to the election administrator. Both forms ~~shall~~ must be signed by all the election judges
3 completing the count."

4
5 **Section 13.** Section 13-15-202, MCA, is amended to read:

6 **"13-15-202. Counting votes cast -- pollbook.** (1) (a) When the procedures required by 13-15-201
7 are completed, the election judges shall count and determine the votes cast for each individual or for the
8 category "none of the above candidates", except as provided in subsection (1)(b).

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

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

12 (ii) for an office for which no candidate has filed a declaration or petition for nomination or a
13 declaration of intent; or

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

15 (2) In counting, the ballots ~~shall~~ must be opened singly by one of the election judges and the
16 contents read aloud to the other judges.

17 (3) A ballot or part of a ballot is void and may not be counted if the elector's choice cannot be
18 determined. If part of a ballot is sufficiently plain to determine the elector's intention, the election judges
19 shall count that part. Except as provided in 13-10-211(4), a write-in vote may be counted only if the
20 write-in vote identifies an individual by any of the designations filed pursuant to 13-10-211(1)(a).

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

24 (5) The tally sheets ~~shall~~ must be compared and their correctness ascertained, and the judges shall
25 immediately write in the pollbook:

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

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

29 (c) total votes received by each individual and by the category "none of the above candidates" as
30 shown by the tally sheets.

1 (6) In making the count in precincts where voting machines are used, the votes cast by absentee
2 ballot ~~shall~~ must be added to the votes cast on the voting machines.

3 (7) A ballot or vote rejected by the election judges may not be included in the count."
4

5 **Section 14.** Section 13-15-404, MCA, is amended to read:

6 "**13-15-404. Information to be entered on record.** (1) The secretary of the board shall prepare and
7 file in the official records of ~~his~~ the office a report of the canvass ~~which~~ that lists:

8 (a) the total number of electors voting in each precinct, district, or portion of a district in the county
9 and the total in the county;

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

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

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

15 (e) the total votes in the county for each individual, for the category "none of the above
16 candidates", and for and against each ballot issue; and

17 (f) for municipal elections, the total number of electors voting in each municipality and the votes
18 by municipality for each individual, for the category "none of the above candidates", and for and against
19 each ballot issue.

20 (2) Write-in votes for an individual ~~shall~~ must be entered in the report in the same place as the
21 votes for other individuals for the same office but ~~shall~~ must be identified as write-in votes."
22

23 **Section 15.** Section 13-15-501, MCA, is amended to read:

24 "**13-15-501. Certification of canvass to state canvassers.** (1) The board of county canvassers shall
25 certify the vote for each individual, including the category "none of the above candidates", as provided in
26 [sections 1 through 3], for whom votes were cast for the offices of president and vice president of the
27 United States, congressional offices, state or district offices voted for in more than one county, members
28 of the legislature, judges of the district court, and for and against ballot issues voted on in more than one
29 county to the board of state canvassers. The certification ~~shall~~ must contain all the information required
30 in 13-15-404 for ~~such~~ the candidates and issues.

1 (2) The secretary of the board shall send the certification to the secretary of state by certified mail
2 in an envelope marked "election returns".

3
4 **Section 16.** Section 13-15-506, MCA, is amended to read:

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

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

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

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

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

14 (2) Write-in votes for an individual ~~shall~~ must be entered in the report in the same place as votes
15 of other individuals for the same office but ~~shall~~ must be identified as write-in votes."

16
17 **Section 17.** Section 20-3-304, MCA, is amended to read:

18 "**20-3-304. Annual election.** In each district, an election of trustees ~~shall~~ must be conducted
19 annually on the regular school election day, the first Tuesday of April. Election of trustees ~~shall~~ must
20 comply with the election provisions of Title 13 and this title. In accordance with [sections 1 through 3],
21 each ballot cast in an election of a trustee must contain language allowing an elector to vote for "none of
22 the above candidates" if the elector does not vote for an individual for trustee."

23
24 **Section 18.** Section 20-3-306, MCA, is amended to read:

25 "**20-3-306. Conduct of election.** (1) The trustees of each district shall call a trustee election on
26 the regular school election day of each school fiscal year under the provisions of 20-20-201, except as
27 provided in 20-3-344. The trustees shall call and conduct the trustee election in the manner prescribed in
28 this title for school elections and Title 13. Any elector qualified to vote under the provisions of 20-20-301
29 may vote at a trustee election.

30 (2) The trustee election ballots ~~shall~~ must be substantially in the following form:

OFFICIAL BALLOT SCHOOL TRUSTEE ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the name of the candidate for whom you wish to vote. You may vote for the category "none of the above candidates" listed below a term of office only if you do not cast a ballot for a named candidate for that term of office. VOTES FOR "NONE OF THE ABOVE CANDIDATES" WILL BE COUNTED AND REPORTED, BUT WILL NOT BE USED WHEN DETERMINING THE WINNER OF THE ELECTION.

Vote for (indicate number to be elected) for a 3-year term:

(List the names of the candidates for a 3-year term with a vacant square in front of each name.)

None of the above candidates.

Vote for (indicate number to be elected) for a 2-year term:

(List the names of the candidates for a 2-year term with a vacant square in front of each name.)

None of the above candidates.

Vote for (indicate number to be elected) for a 1-year term:

(List the names of the candidates for a 1-year term with a vacant square in front of each name.)

None of the above candidates."

Section 19. Section 20-15-220, MCA, is amended to read:

"20-15-220. Trustee election ballot. (1) The trustee election ballot must be substantially in the following form:

Official Ballot Community College Trustee Election Instructions to Voters

Make an "X" or similar mark in the vacant square before the name of the candidate for whom you wish to vote. You may vote for the category "none of the above candidates" listed below a term of office only if you do not cast a ballot for a named candidate for that term of office. VOTES FOR "NONE OF THE ABOVE CANDIDATES" WILL BE COUNTED AND REPORTED, BUT WILL NOT BE USED WHEN DETERMINING THE WINNER OF THE ELECTION.

Vote for (indicate number to be elected) for a 3-year term.

..... List the names of the candidates for the 3-year term with a vacant square in

1 front of each name.

2 None of the above candidates.

3 Vote for (indicate number to be elected) for a 2-year term.

4 List the names of the candidates for the 2-year term with a vacant square in
5 front of each name.

6 None of the above candidates.

7 Vote for (indicate number to be elected) for a 1-year term.

8 List the names of the candidates for the 1-year term with a vacant square in
9 front of each name.

10 None of the above candidates.

11 (2) In preparing the ballots, only those portions of the prescribed ballot that are applicable to the
12 election to be conducted need be used. The ballot must also be prepared with blank lines and vacant
13 squares in front of the lines in a sufficient number to allow write-in voting for each trustee position that is
14 subject to election."
15

16 **Section 20.** Section 20-20-415, MCA, is amended to read:

17 **"20-20-415. Trustees to canvass votes.** At the first regular or special meeting of the trustees
18 conducted after the receipt of the certified tally sheets of any school election from all the polls of the
19 district, the trustees shall canvass the vote. In an election of trustees, votes cast for the category "none
20 of the above candidates" must be tallied in the same manner as votes for named trustees."
21

22 **Section 21.** Section 20-20-416, MCA, is amended to read:

23 **"20-20-416. Certificate of election.** After the canvass of the total votes cast, the trustees shall
24 issue a certificate of election. In the case of a trustee election, the certificate ~~shall~~ must be issued to the
25 elected trustee and the county superintendent designating the term of the trustee position to which ~~he~~ the
26 trustee has been elected. In the case of an election on a proposition, the trustees shall issue a certificate
27 specifying the outcome of the election. The certificate ~~shall~~ must be issued to the official or public body
28 ~~which that~~ ordered the election within 15 days after the election. When the election has been ordered by
29 resolution of the trustees, the canvassed results, including the number of votes cast for the category "none
30 of the above candidates", shall must be published immediately in a newspaper that will give notice to the

1 largest number of people of the district."
2

3 **Section 22.** Section 76-15-303, MCA, is amended to read:

4 **"76-15-303. General election -- election by acclamation -- appointment.** (1) All qualified electors
5 within the district are eligible to vote in the election.

6 (2) Except as provided in subsection (5), the candidate or, if more than one supervisor position is
7 to be filled by the general election, the candidates who receive the largest number, respectively, of the
8 votes cast in the election are the elected supervisors for the district.

9 (3) In the general election, the names of the individuals nominated must be printed, as provided
10 under 13-12-205, upon ballots, with a square before each name and a direction to insert an "X" mark in
11 the square before any three names to indicate the elector's preference. However, the language "none of
12 the above candidates" is not required to appear on the ballots.

13 (4) The election administrator in each county shall prepare suitable nonpartisan ballots or place the
14 names of candidates on the regular general election ballot in the same manner as other nonpartisan
15 candidates for the election of supervisors. The ballots must be delivered to the election judges in those
16 precincts that contain registered electors prior to each general election and each primary election, if
17 necessary. The election judges and other election officials in the precincts shall submit the ballots to
18 qualified electors, conduct the election, and tabulate the results of the election in the manner provided in
19 Title 13.

20 (5) (a) Except as provided in subsection (5)(b), if the number of candidates nominated is equal to
21 or less than the number of positions to be elected, the election administrator shall give notice that an
22 election will not be held.

23 (b) The governing body may require that an election be held if, not more than 10 days after the
24 close of filing by candidates, the governing body passes a resolution to hold an election and notifies the
25 election administrator.

26 (c) If an election is not held, the governing body shall declare elected by acclamation the candidate
27 who filed a nominating petition for the position. If a candidate has not filed a nominating petition for the
28 position, the governing body shall make an appointment to fill the position."
29

30 **NEW SECTION. Section 23. Codification instruction.** [Sections 1 through 3] are intended to be

1 codified as an integral part of Title 13, and the provisions of Title 13 apply to [sections 1 through 3].

2

3 NEW SECTION. **Section 24. Effective date.** [This act] is effective on passage and approval.

4

-END-

1 HOUSE BILL NO. 440

2 INTRODUCED BY DENNY, REHBEIN, PROUSE, WELLS, BOHLINGER, STORY, SOFT, HAGENER,
3 HEAVY RUNNER, CAREY, SCHMIDT, KEENAN, HAYNE, OHS, MASOLO, SLITER, DEVANEY, STOVALL,
4 DOWELL, MILLS, BOHARSKI, BRAINARD, LAWSON, BAER, KOTTEL, SIMPSON, TROPILA,
5 BOOKOUT-REINICKE, SANDS, MARSHALL, KNOX, SIMPKINS, CURTISS, ELLIS, ESTRADA, MAHLUM,
6 BURNETT, KEATING, DEVLIN, EMERSON, KITZENBERG

7
8 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING ELECTORS TO VOTE FOR "NONE OF THE ABOVE
9 CANDIDATES" IN FEDERAL, STATE, COUNTY, SCHOOL DISTRICT, AND MUNICIPAL PARTISAN AND
10 NONPARTISAN PRIMARY AND GENERAL ELECTIONS; PROVIDING EXCEPTIONS; AMENDING SECTIONS
11 13-10-209, 13-12-203, 13-12-205, 13-12-208, 13-12-209, 13-13-117, 13-14-115, 13-14-116,
12 13-15-101, 13-15-202, 13-15-404, 13-15-501, 13-15-506, 20-3-304, 20-3-306, 20-15-220, 20-20-415,
13 20-20-416, AND 76-15-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

14
15 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.**