

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.3.106, 44.3.110, 44.3.115,) PROPOSED AMENDMENT
44.3.116, and 44.3.2702 pertaining to)
procedures facilitating disabled voter)
access)

TO: All Concerned Persons

1. On May 6, 2022, at 1:30 p.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., April 29, 2022, to advise us of the nature of the accommodation that you need. Please contact Sue Ames, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-2807; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or e-mail sames@mt.gov.

3. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

44.3.106 EXEMPTION PROCEDURE (1) If an existing polling place has been surveyed and designated as "inaccessible," the election administrator shall make a reasonable effort to seek and survey for accessibility other potential sites with comparable utility as a polling place.

(2) If potential polling place facilities have been surveyed and no accessible facility is available and the facilities which are available cannot safely and reasonably be made temporarily accessible, the election administrator shall request in writing to the secretary of state that the existing polling place be exempt from the criteria set forth in these rules.

(3) A separate request for exemption shall be submitted for each polling place not in compliance. The request shall identify the polling place, how it is not in compliance, the efforts being made to bring it into compliance, and the efforts to locate an alternate site.

(4) Within 30 days following the receipt of a request for exemption, the secretary of state may grant a certification of exemption to the election administrator for that polling place. Such exemption, if granted, shall be valid for a period of three years from the date of issuance.

(5) The secretary of state may grant an exemption pursuant to this subchapter if all potential polling places have been surveyed and the election administrator has certified that:

(a) an accessible polling place is not available and the county or school district cannot safely or reasonably make a polling place temporarily accessible in the area involved; or

(b) the location is designated inaccessible because it is a rural polling place and designation of an accessible facility as a polling place will require excessive travel or impose other hardships for the majority of qualified electors in the polling place.

(6) If the secretary of state has reason to believe such an exemption would not be in the best interest of the majority of the individuals with disabilities ~~or elderly electors~~, he the secretary of state shall deny the exemption and:

(a) report to the election administrator and the county governing body ~~his~~ the secretary's reasons for the denial.

(7) A polling place designated 45 days prior to an election as inaccessible because it is rural shall be exempt from the on-site survey procedure provided in ARM 44.3.108.

(8) If one or more individuals with disabilities ~~or elderly electors~~ contact the election administrator or the secretary of state concerning a specific exemption, the secretary of state shall work in cooperation with the election administrator and the individuals with disabilities ~~or elderly person(s)~~ in locating an available facility that is accessible or providing an acceptable alternative method of voting according to the provisions in ARM 44.3.110.

AUTH: 13-3-205, MCA

IMP: 13-3-207, 13-3-212, MCA

REASONABLE NECESSITY: On March 16, 2021, the Governor of Montana signed into law Senate Bill (SB) 15. SB 15 revises election laws related to accessibility for disabled electors. The proposed amendments are necessary to comport with the statutory amendments made in Section 7 and Section 10 of SB 15 (2021).

44.3.110 ALTERNATIVE MEANS FOR CASTING BALLOT (1) The election administrator shall provide an alternative method of voting for those electors who are unable, because of disability ~~or age~~, to access their regular polling place. Those methods are limited to the following:

(a) the practice, commonly referred to as "curbside voting₁", as provided by 13-13-118, MCA;

(b) absentee balloting, as provided by 13-13-222 and 13-13-246, MCA; and

(c) prearranged assignment to an accessible polling place within the county.

An elector, prevented from voting at ~~his~~ the elector's own polling place on election day because it has been exempt from meeting the accessibility criteria set forth in these rules, shall:

(i) notify the election administrator, in writing at least two business ~~seven~~ days preceding the election, of ~~his~~ the elector's desire to vote on election day at an accessible polling place;

(ii) be assigned to the nearest accessible polling place for the purpose of voting in that election;

(iii) sign ~~his~~ the elector's name on a special addendum to the official precinct

register, as required by 13-2-601, MCA; and

(iv) receive the same ballot to which ~~he~~ the elector is otherwise entitled.

(2) For the purposes of this rule, the ballot shall be processed and counted in the same manner as an absentee ballot.

AUTH: 13-3-205, 13-13-246, MCA

IMP: 13-3-213, 13-13-246, MCA

REASONABLE NECESSITY: On March 16, 2021, the Governor of Montana signed into law Senate Bill (SB) 15. SB 15 revises election laws related to accessibility for disabled electors. The proposed amendments are necessary to comport with the statutory amendments made in Section 7 and Section 11 of SB 15 (2021).

44.3.115 CRITERIA AND PROCESS FOR A PERSON TO BECOME A DESIGNATED AGENT FOR AN ELECTOR WITH A DISABILITY (1) Consistent with 13-1-116, MCA, an elector with a disability who is unable to provide a signature may apply to the election administrator to have another person designated as an agent for purposes of providing a signature or identifying mark required pursuant to Title 13, MCA, and for delivering the disabled elector's absentee ballot application to the county election administrator, as provided in 13-13-213, MCA.

(2) An application for designation of an agent by an elector under this ~~section~~ rule:

(a) must be made on a form prescribed by the secretary of state which shall state the authorization of the elector, the purpose of the agency, and shall require that the authorization be witnessed by two disinterested witnesses and signed by the designated agent;

(b) may be obtained from local election officials, from the office of the secretary of state, and from any other entity that provides the form; and

(c) must be completed in its entirety.

(3) An agent chosen under this rule must not be the elector's employer, an agent of the elector's individual's employer, or an officer or agent of the elector's voter's union.

(4) An election official must ask if the person being designated an agent is the elector's voter's employer or employer's agent or officer or agent of the elector's voter's union. If the proposed agent is one of those individuals, the elector voter must choose another person to be the elector's agent.

(5) An agent must be chosen by the elector individual with a disability.

AUTH: 13-1-116, MCA

IMP: 13-1-116, MCA

REASONABLE NECESSITY: On March 16, 2021, the Governor of Montana signed into law Senate Bill (SB) 15. SB 15 revises election laws related to accessibility for disabled electors. The proposed amendments are necessary to comport with the statutory amendments made in Section 2 of SB 15 (2021). In addition, clerical changes are proposed to provide consistency in terminology.

44.3.116 ELECTRONIC TRANSMISSION OF VOTING MATERIALS

(1) County election administrators shall allow electors with disabilities, as defined in 13-3-202, MCA, to receive election materials electronically as long as the security of transmission and identity of each elector is confirmed and facilities are available to maintain the accuracy, integrity, and secrecy of the ballot process. The following procedures shall be followed, wherever applicable, in regard to the transition of election materials from the election administrator to electors electronically:

(a) A county election administrator must use a system that is secure from unauthorized access.

(b) When an election administrator receives a valid application for electronic transmission of a ballot from an elector with disabilities, the election administrator shall, subject to (1), e-mail the elector the ballot, instructions to the elector, and a transmittal cover sheet that includes an elector affirmation. A ballot secrecy envelope or page and a ballot signature envelope shall be provided either electronically or through the mail to each elector with a valid application for electronic ballot. The original ballot shall be retained in a secure absentee envelope or container for that purpose.

(c) The election administrator shall keep an official log of all ballots transmitted electronically.

(d) After the voted ballot and affirmation are received at the office of the election administrator, the transmittal cover sheet with affirmation must be retained in a sealed envelope or container separately from the ballot.

~~(d) (e)~~ If the received ballot is acceptable pursuant to the requirements of 13-13-246, MCA, the election administrator shall;

(i) if the ballot was returned in a secrecy envelope, without opening the secrecy envelope containing the voted ballot, log in the receipt of the ballot and place it in the secure absentee envelope or container with the original ballot; ~~or The transmittal cover sheet with affirmation must be retained in a sealed envelope or container separately from the ballots.~~

(ii) if the ballot was returned using a secrecy page, to ensure the ballot is not revealed to anyone, place the printed electronically submitted ballot and secrecy page into an appropriate envelope and then place it in the secure absentee envelope or container with the original ballot.

~~(e) (f)~~ (f) On the day before election day or on election day, the election administrator shall have the returned ballots transcribed using the procedure prescribed below.

(f) (g) The voted ballot must be transcribed in a manner that ensures that no one transcribing the ballot has access to the name of the elector who voted the ballot.

(g) (h) No less than three election officials shall participate in the transcription process to transfer the elector's votes from a received ballot, as applicable, to the standard ballot used in the precinct.

(h) (i) An electronically transmitted ballot identifying number shall be written on the original transcribed ballot, the envelope containing the voted ballot and the electronically transmitted ballot, and in the official transcription log.

~~(j)~~ (i) The election officials who transcribed the electronically transmitted ballot shall sign the log for each ballot they transcribe.

~~(j)~~ (k) No one participating in the electronic ballot transmission or transcription process may reveal any information about the elector's identity or the votes on the elector's ballot.

AUTH: 13-13-246, MCA

IMP: 13-13-246, MCA

REASONABLE NECESSITY: On March 16, 2021, the Governor of Montana signed into law Senate Bill (SB) 15. SB 15 revises election laws related to accessibility for disabled electors. The proposed amendments are necessary to comport with the statutory amendments made in Section 15 of SB 15 (2021).

44.3.2702 PLAN SPECIFICATIONS (1) The plan for the conduct of an election or elections held on the same election day must include:

(a) a statement indicating the type of jurisdiction involved including sufficient information to demonstrate that it is in fact one of the jurisdictions for which the mail ballot option is available;

(b) a description of the type of election to be conducted;

(c) the estimated number of eligible electors in the jurisdiction at the time the plan is written;

(d) if the jurisdiction is a multicounty district, a listing of the other election administrators involved and a statement designating which one will function as the chief election administrator for that specific election;

(e) if the election is for school district purposes designate who will conduct the election--school district clerk (election administrator) or county election administrator;

(f) if proportional voting is required, a reference to the applicable statute and a complete description of the method to be used to satisfy the statutory requirements for proportional voting;

(g) if voting is permitted by electors who are eligible but otherwise not registered, a description of the eligibility requirements;

(h) the total number of "places of deposit," other than the election office contemplated, if any, together with the address of each and a description of its nature;

(i) a written timetable for the conduct of the election prepared in accordance with the specifications set forth in ARM 44.3.2703 ~~below~~;

(j) procedures to ensure that the voter interface devices required in 13-3-208, MCA are available at locations appropriate to provide accessibility for disabled electors;

~~(j)~~ (k) an indication of how postage will be handled for:

(i) returned as undeliverable (e.g., "return postage guaranteed"); and

(ii) returns (e.g., elector to apply own postage or postage pre-paid, how);

~~(k)~~ (l) if the election is for school district purposes, a brief narrative of the procedures to be followed from the time the ballots are received from the electors until they are tabulated, including arrangements made for transfer of ballots from/to

the school district clerk and the county election administrator for verification of signatures;

(+) (m) a description of the procedures to be used to ensure ballot security at all stages of the process.

(m) (n) sample written instructions shall be consistent with 13-19-205, MCA.

AUTH: 13-19-105, MCA

IMP: 13-19-205, MCA

REASONABLE NECESSITY: On March 16, 2021, the Governor of Montana signed into law Senate Bill (SB) 15. SB 15 revises election laws related to accessibility for disabled electors. The proposed amendments are necessary to comport with the statutory amendments made in Section 9 and Section 16 of SB 15 (2021).

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., May 13, 2022.

5. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

6. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may submit their request online at <https://sosmt.gov/arm/secretary-of-state-administrative-rules/> or submit a written request which includes the name and contact information of the person who wishes to receive notices. Written requests may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to sosarm@mt.gov.

7. With regard to the requirements of 2-4-302(2)(d), MCA, the primary bill sponsor, Senator Ellis, was contacted by email (confirmed receipt) on December 27, 2021, and on March 9, 2022.

8. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ AUSTIN JAMES
Austin James
Rule Reviewer

/s/ ANGELA NUNN
Angela Nunn
Chief Deputy Secretary of State

Dated this 5th day of April 2022.