

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through IV pertaining to Minor) PROPOSED ADOPTION
Parties)

TO: All Concerned Persons

1. On June 3, 2022, at 9:00 a.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 adoption 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., May 22, 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 adopted provide as follows:

NEW RULE I DEFINITIONS As used in this subchapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Elector" means an individual qualified and registered to vote under state law.

(2) "Legislative district" means a representative district as provided in Article V, section 14(1) of the Montana Constitution.

(3) "Verify" with respect to the signature of an elector means that the elector's signature on the petition, when taken as a whole, bears sufficient similarity to the signature on their voter registration and that the signatures are substantially the same. If one signature uses an elector's first, middle, and last names, the use of an initial instead of either the first or middle name, but not both, in the other shall not, by itself, result in a non-verified signature.

AUTH: 13-10-613, MCA

IMP: 13-10-601, 13-10-607, 13-10-608, MCA

NEW RULE II FORM AND SUBMISSION OF PETITIONS TO NOMINATE A POLITICAL PARTY'S CANDIDATES BY PRIMARY ELECTION

(1) Any elector, regardless of party affiliation, may present a petition to qualify a political party that does not already qualify to hold a primary election under 13-10-601(1), MCA, to nominate its candidates by primary election. Presented petitions must:

(a) be completed in the form prescribed by the Secretary of State;

(b) be signed by a number of electors equal to the lesser of five percent or more of the total votes cast statewide for the successful candidate for governor at the last general election or 5,000 electors;

(c) be signed by at least 150 electors in at least one-third of legislative house districts; and

(d) have attached to each sheet of the petition a completed verification affidavit for the petition's signatures in the form prescribed by the Secretary of State; and be submitted with original signatures and their verification, as provided in (3), to the official responsible for registration of electors in the county in which the signatures were obtained no sooner than one year and no later than 123 days before the date for the next primary election.

(2) Petitions may be submitted to the county official responsible for registration in whole or in individual sheets or portions of petitions. The petitioning elector shall notify the county official responsible for registration when the final sheet or portion of the petition has been submitted. After this notification, no elector may withdraw their signature from the petition.

(3) The form prescribed by the Secretary of State for petitions under this subchapter shall include at the top of each page a title that identifies the petition as follows: "Petition to Qualify the [Insert Name] Party as a Political Party Eligible to Nominate its Candidates by Primary Election in Montana." The petition shall include a separate, numbered line extending across the entire page for each elector's signature and identifying information all of which must be entered in ink. The first underlined space on each numbered line shall be labeled as and used for the signature of the elector. The second underlined space on each line shall be labeled as and used for the date of the elector's signature. The third underlined space on each line shall be labeled as and used for the elector's present legal address or phone number. The fourth space on each line shall be labeled as and used to identify the elector's county of residence. The fifth space on each line shall be labeled as and used for the printed last name and first and middle initials of the signer. The end of each page of the petition form shall have the affidavit of circulation required under 13-10-607, MCA, to be completed by the signature gatherer(s).

AUTH: 13-10-613, MCA

IMP: 13-10-601, 13-10-606, 13-10-607, 13-10-609, MCA

NEW RULE III VERIFICATION OF ELECTOR SIGNATURES BY COUNTY ELECTION OFFICIALS AND TALLY REPORTING (1) Upon receipt of each petition sheet submitted on the petition form prescribed by the Secretary of State and containing a completed affidavit of circulation required under [New Rule II(1)(c)], the county official responsible for registration of electors, or their designee, shall:

(a) determine whether each signatory on the petition sheet is a registered voter in the county, and if so which legislative district that elector is registered;

(b) verify the signature of each elector signing the petition by comparing each elector's petition signature with the signature of that elector as it appears in the records of the county election office; and

(c) determine the total number of verified electors in the county who have signed the petition and how many of the electors reside in each legislative district contained in whole or in part within the county.

AUTH: 13-10-613, MCA

IMP: 13-10-608, 13-10-609, MCA

NEW RULE IV WITHDRAWAL OF ELECTOR SIGNATURES FROM PETITIONS (1) Any time prior to the notification of a final submission of a petition to a county's election official under [New Rule II(2)], an elector may request to withdraw their signature from a petition submitted under this subchapter.

(2) The county election administrator may withdraw an elector's signature after the identity of the requesting elector has been verified using the same manner the identities of applicants for regular voter registration are verified.

AUTH: 13-10-613, MCA

IMP: 13-10-606, MCA

REASONABLE NECESSITY: On April 30, 2021, the Governor of Montana signed into law Senate Bill (SB) 350. SB 350 revised laws related to minor parties and added eight new sections to Title 13, chapter 10, part 6, MCA, codified as 13-10-606 through 13-10-613, MCA. The Office of the Secretary of State is proposing New Rules I through IV to implement the changes in statute. These sections provided new procedures for petitions for political parties that do not already qualify to nominate their candidates by primary elections to so qualify. The new rules proposed in this notice are necessary to provide clear, uniform direction to those collecting voter signatures and submitting the petition sheets to the various county election administrators. They are also necessary to provide statewide, uniform procedures for county election administrators to follow when accepting such petition sheets, verifying elector signatures on such petitions, determining treatment of elector requests to withdraw their petition signature, signature tallying, record retention, and the timing and content of the reporting required by county election administrators to the Secretary of State. Without these rules, procedures to handle these matters would inevitably vary county to county. Finally, the new rules are necessary to comply with Federal Court findings and orders declaring certain parts of Montana statutes and SB 350 relating to minor party petitions unconstitutional. See, *Montana Green Party v. Jacobsen*, 17 F.4th 919 (9th Cir. 2021) (holding unequal petition requirements in different State House districts is in violation of the right to equal protection under the Fourteenth Amendment of the U.S. Constitution).

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., June 10, 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 shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. A written request 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 the office at sosarm@mt.gov.

7. With regard to the requirements of 2-4-302(2)(d), MCA, the primary bill sponsor, Senator Hertz, was contacted by email on December 27, 2021, and on April 15, 2022.

8. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the adoption 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 3rd day of May, 2022.