

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.3.2403 pertaining to) PROPOSED AMENDMENT
determining a valid write-in vote in)
manually counting and recounting)
paper ballots)

TO: All Concerned Persons

1. On November 29, 2023, at 1:00 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 rule.

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., November 22, 2023, to advise us of the nature of the accommodation needed. Please contact Andy Ritter, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-7911; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or email Andrew.Ritter@mt.gov.

3. The rule proposed to be amended is as follows, new matter underlined, deleted matter interlined:

44.3.2403 DETERMINING A VALID WRITE-IN VOTE IN MANUALLY COUNTING AND RECOUNTING PAPER BALLOTS (1) Before being counted, each questionable write-in vote on a paper ballot set aside under 13-15-206, MCA, must be reviewed by the designated board. The board shall evaluate each questionable vote according to the rules below:

(a) If a majority of the designated board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.

(b) If a majority of the designated board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

(2) ~~Except as provided in (3),~~ Only votes for declared write-in candidates shall be counted. Except as provided in ARM 44.3.2405, a write-in vote may be counted only if the write-in vote identifies an individual by any of the designations filed pursuant to 13-10-211, MCA, and the oval, box, or other designated voting area on the ballot is marked. The following rules shall apply to determining a valid write-in vote in a count or recount of paper ballots, and must be read in conjunction with ARM 44.3.2402:

(a) a name is written in, but the designated write-in voting area is not marked, and no other candidate is selected. The election officials shall cause this to be designated as an undervote;

(b) no candidate name or office is written in, but the designated write-in voting area is marked and no other candidate is selected. The election officials shall cause this to be designated as an undervote;

(c) a printed candidate is selected by marking of the designated voting area, and no name is written in, but the designated write-in voting area is marked. The election officials shall cause a vote to be counted for the printed candidate;

(d) a printed candidate is selected by marking of the designated voting area, any individual's name is written in, and the designated write-in voting area is marked. If the name written in is different from the name of the printed candidate selected, the election officials shall cause this to be designated as an overvote. If the name written in is the same as the name of the printed candidate selected, the election officials shall cause a vote to be counted for the printed candidate selected;

(e) the designated voting area for a printed candidate is marked and the same name is written in, but the designated write-in voting area is not marked. The election officials shall cause a vote to be counted as a vote for the marked designated voting area;

(f) comments are written in which do not indicate a clear vote and no candidate is marked. The election officials shall cause this to be designated as an undervote;

(g) the designated voting area for a printed candidate is marked, a comment is written in, and the corresponding designated write-in voting area is or is not marked. The election officials shall cause this to be counted as a vote for the printed candidate unless the comment creates uncertainty about who the choice is or directs the election official not to count the vote for the printed candidate selected. In the latter case, the election officials shall cause this to be designated as an undervote;

(h) at least one printed candidate appears as a candidate for the office and the designated voting area is not marked for any printed candidates, but a name is written in that is not the name of a declared write-in candidate and the corresponding designated write-in voting area is or is not marked. The election officials shall cause this to be designated as an undervote.

~~(3) Consistent with 13-10-211, MCA, votes for undeclared write-in candidates may be counted if:~~

~~(a) an election is held;~~

~~(b) a person's name is written in on the ballot;~~

~~(c) the person is qualified for and seeks election to the office for which the person's name was written in; and~~

~~(d) no other candidate has filed a declaration or petition for nomination or a declaration of intent.~~

AUTH: 13-15-206, MCA; [HB 536 (2023)]

IMP: 13-10-211, 13-15-206, MCA

REASONABLE NECESSITY: During the 68th Legislative Session, the Governor of Montana signed into law House Bill (HB) 536. HB 536 removed an

exception to write-in candidate filing requirements. The proposed amendment removes the same exception from the rule to align with the statute.

4. With regard to the requirements of 2-4-302(1)(c), MCA, it has been determined that this proposed rule amendment will not have a fiscal impact.

5. 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., December 1, 2023.

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

7. 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.

8. With regard to the bill sponsor contact requirements of 2-4-302, MCA, the primary bill sponsor, Representative Julie Dooling, was contacted by phone on October 10, 2023, and by email on October 13, 2023.

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

/s/ AUSTIN MARKUS JAMES
Austin Markus James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 24th day of October, 2023.