

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and the amendment of ARM 44.3.110 and 44.3.2511 pertaining to voting accessibility for electors with disabilities and the Montana Absent Uniformed Services and Overseas Voter Act)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT
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TO: All Concerned Persons

1. On August 7, 2015, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed adoption and 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 public hearing 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. on July 30, 2015, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 431-7718; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I 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. 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) If the received ballot is acceptable, the election administrator shall, without opening the 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. The transmittal cover sheet with affirmation must be retained in a sealed envelope or container separately from the ballots.

(e) 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) 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) 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) 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.

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

(j) 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: Ch. 247, Sec. 1, L. 2015

IMP: Ch. 247, Sec. 1, L. 2015

REASON: The 2015 Montana Legislature passed House Bill 400, which allows registered electors with disabilities to receive a pdf version of a ballot and vote it in the same manner as a uniformed-service voter or an overseas voter. This rule is reasonably necessary to put in place procedures to ensure the security of the ballots and the secrecy of the votes for electors with disabilities who choose to receive and vote a pdf version of a ballot. Because the person receiving the ballot is not one of the individuals who transcribes the ballot, the secrecy of the voted ballot is maintained.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

44.3.110 ALTERNATIVE MEANS FOR CASTING BALLOT (1) and (1)(a) remain the same.

(b) absentee balloting, as provided by 13-13-222, MCA, and Ch. 247, Sec. 1, L. 2015; and

(1)(c) through (2) remain the same.

AUTH: 13-3-205, MCA, and Ch. 247, Sec. 1, L. 2015

IMP: 13-13-213, MCA, and Ch. 247, Sec. 1, L. 2015

REASON: The 2015 Montana Legislature passed House Bill 400, which allows registered electors with disabilities to receive a pdf version of a ballot and vote it in the same manner as a uniformed-service voter or an overseas voter. This rule amendment is reasonably necessary to put in place procedures to ensure the security of the ballots and the secrecy of the votes for electors with disabilities who choose to receive and vote a pdf version of a ballot. Because the person receiving the ballot is not one of the individuals who transcribes the ballot, the secrecy of the voted ballot is maintained. The authority and implementation statutes have been updated.

44.3.2511 ELECTRONIC TRANSMISSION OF VOTING MATERIALS

(1) County election administrators shall allow covered voters to receive and transmit 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 ~~in this subchapter~~ shall be followed, wherever applicable, in regard to the receipt and transmission of election materials electronically:

(a) remains the same.

~~(b) Upon~~ When an election administrator receives a valid request for electronic transmission of a ballot, ~~an election administrator who has received a valid application from a covered voter, the election administrator~~ shall, subject to (1), ~~send by electronic mail e-mail~~ instructions to the elector on how to access the Secretary of State's electronic absentee transmission system ~~established by the secretary of state~~, if the system is available for the election, or send a ballot electronically ~~a ballot~~, along with instructions to the elector, and a transmittal cover sheet that includes an elector affirmation, ~~and a notice that the elector's ballot will not be secret in that it will be received by the election administrator and the elector's votes will be transcribed to the original ballot, if applicable, by a panel of no less than two election officials. The original affirmation and original ballot, as applicable, shall be retained together in a secure absentee envelope or container for that purpose.~~

(c) remains the same.

(d) If the received ballot is acceptable, the election administrator shall log in the receipt of the ballot and place it in the secure absentee envelope or container with the original ballot, if applicable, ~~and with the original affidavit~~ until the ballots are ready to be transcribed. The transmittal cover sheet with affirmation must be retained in a sealed envelope or container separately from the ballot.

(e) and (f) remain the same.

(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 ~~two~~ 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, ~~and~~ the electronically transmitted ballot, and in the official transcription log.

(j) (i) The election officials who transcribed the electronically transmitted ballot shall sign in the log ~~next to the name of the elector~~ for each ballot they transcribe.

(k) (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.

(2) remains the same.

AUTH: 13-21-104, MCA

IMP: 13-21-104, MCA

REASON: This rule is reasonably necessary to put in place procedures to ensure the security of the ballots and the secrecy of the votes for uniformed-service voters or overseas voters who are registered to vote in Montana. Because the person receiving the ballot is not one of the individuals who transcribes the ballot, the secrecy of the voted ballot is maintained.

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 Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jquintana@mt.gov, and must be received no later than 5:00 p.m., August 14, 2015.

6. Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, 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 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. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-4263, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/notices>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web

site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter on June 1, 2015.

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 6th day of July, 2015.