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OPI 4 - SCHOOL ELECTION CLEANUP

*** Bill No. ***

Introduced By *****

A Bill for an Act entitled: "An Act revising laws related to school elections; clarifying that county election administrators rather than school officials handle election challenges; revising timelines related to when trustees call elections, candidate filing, and ballot certification; clarifying how certificates of election are provided when an office is filled by acclamation; revising residency requirements for school election judges; and amending sections 13-1-101, 20-3-305, 20-3-313, 20-20-109, 20-20-201, and 20-20-401, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-1-101, MCA, is amended to read:

"**13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

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(1) "Active elector" means an elector whose name has not been placed on the inactive list due to failure to respond to confirmation notices pursuant to 13-2-220 or 13-19-313.

(2) "Active list" means a list of active electors maintained pursuant to 13-2-220.

(3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) "Application for voter registration" means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, is submitted to the election administrator, and contains voter registration information subject to verification as provided by law.

(5) "Ballot" means a paper ballot counted manually or a paper ballot counted by a machine, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots.

(6) (a) "Ballot issue" or "issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to an initiative, referendum, proposed constitutional amendment, recall

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question, school levy question, bond issue question, or ballot question.

(b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement on the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

(7) "Ballot issue committee" means a political committee specifically organized to support or oppose a ballot issue.

(8) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure

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nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; or

(c) an officeholder who is the subject of a recall election.

(9) (a) "Contribution" means:

(i) the receipt by a candidate or a political committee of an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to support or oppose a candidate or a ballot issue;

(ii) an expenditure, including an in-kind expenditure, that is made in coordination with a candidate or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution;

(iii) the receipt by a political committee of funds transferred from another political committee; or

(iv) the payment by a person other than a candidate or political committee of compensation for the personal

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services of another person that are rendered to a candidate or political committee.

(b) The term does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee;

(ii) meals and lodging provided by individuals in their private residences for a candidate or other individual;

(iii) the use of a person's real property for a fundraising reception or other political event; or

(iv) the cost of a communication not for distribution to the general public by a religious organization exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious beliefs or practices.

(c) This definition does not apply to Title 13, chapter 37, part 6.

(10) "Coordinated", including any variations of the term, means made in cooperation with, in consultation with, at the request of, or with the express prior consent of a candidate or political committee or an agent of a candidate or political committee.

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(11) "De minimis act" means an action, contribution, or expenditure that is so small that it does not trigger registration, reporting, disclaimer, or disclosure obligations under Title 13, chapter 35 or 37, or warrant enforcement as a campaign practices violation under Title 13, chapter 37.

(12) "Disability" means a temporary or permanent mental or physical impairment such as:

(a) impaired vision;

(b) impaired hearing;

(c) impaired mobility. Individuals having impaired mobility include those who require use of a wheelchair and those who are ambulatory but are physically impaired because of age, disability, or disease.

(d) impaired mental or physical functioning that makes it difficult for the person to participate in the process of voting.

(13) "Election" means a general, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(14) (a) "Election administrator" means, except as provided in subsection (14) (b), the county clerk and

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recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections not administered by the county, the term means the school district clerk.

(b) As used in chapter 2 regarding voter registration and chapter 3 regarding challenges, the term means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties even if the school election is administered by the school district clerk.

(15) (a) "Election communication" means the following forms of communication to support or oppose a candidate or ballot issue:

(i) a paid advertisement broadcast over radio, television, cable, or satellite;

(ii) paid placement of content on the internet or other electronic communication network;

(iii) a paid advertisement published in a newspaper or periodical or on a billboard;

(iv) a mailing; or

(v) printed materials.

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(b) The term does not mean:

(i) an activity or communication for the purpose of encouraging individuals to register to vote or to vote, if that activity or communication does not mention or depict a clearly identified candidate or ballot issue;

(ii) a communication that does not support or oppose a candidate or ballot issue;

(iii) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation;

(iv) a communication by any membership organization or corporation to its members, stockholders, or employees;

(v) a communication not for distribution to the general public by a religious organization exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious beliefs or practices; or

(vi) a communication that the commissioner determines by rule is not an election communication.

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(16) "Election judge" means a person who is appointed pursuant to Title 13, chapter 4, part 1, to perform duties as specified by law.

(17) (a) "Electioneering communication" means a paid communication that is publicly distributed by radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the district voting on the candidate or ballot issue, and that:

(i) refers to one or more clearly identified candidates in that election;

(ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that election; or

(iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.

(b) The term does not mean:

(i) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet

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website, or other periodical publication of general circulation unless the facilities are owned or controlled by a candidate or political committee;

(ii) a communication by any membership organization or corporation to its members, stockholders, or employees;

(iii) a commercial communication that depicts a candidate's name, image, likeness, or voice only in the candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy;

(iv) a communication that constitutes a candidate debate or forum or that solely promotes a candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum;

(v) a communication not for distribution to the general public by a religious organization exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious beliefs or practices; or

(vi) a communication that the commissioner determines by rule is not an electioneering communication.

(18) "Elector" means an individual qualified to vote under state law.

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(19) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value:

(i) made by a candidate or political committee to support or oppose a candidate or a ballot issue;

(ii) made by a candidate while the candidate is engaging in campaign activity to pay child-care expenses as provided in 13-37-220; or

(iii) used or intended for use in making independent expenditures or in producing electioneering communications.

(b) The term does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (9);

(ii) except as provided in subsection (19) (a) (ii), payments by a candidate for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

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(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees;

(v) the use of a person's real property for a fundraising reception or other political event; or

(vi) the cost of a communication not for distribution to the general public by a religious organization exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious beliefs or practices.

(c) This definition does not apply to Title 13, chapter 37, part 6.

(20) "Federal election" means an election in even-numbered years in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

(21) "General election" means an election that is held for offices that first appear on a primary election ballot, unless the primary is cancelled as authorized by law, and that is held on a date specified in 13-1-104.

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(22) "Inactive elector" means an individual who failed to respond to confirmation notices and whose name was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

(23) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

(24) (a) "Incidental committee" means a political committee that is not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues but that may incidentally become a political committee by receiving a contribution or making an expenditure.

(b) For the purpose of this subsection (24), the primary purpose is determined by the commissioner by rule and includes criteria such as the allocation of budget, staff, or members' activity or the statement of purpose or goal of the person or individuals that form the committee.

(25) "Independent committee" means a political committee organized for the primary purpose of receiving contributions and making expenditures that is not controlled either directly or indirectly by a candidate and that does not coordinate with a candidate in conjunction

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with the making of expenditures except pursuant to the limits set forth in 13-37-216(1).

(26) "Independent expenditure" means an expenditure for an election communication to support or oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue committee.

(27) "Individual" means a human being.

(28) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

(29) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing ballots to all active electors.

(30) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, including a political committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (8).

(31) "Place of deposit" means a location designated by the election administrator pursuant to 13-19-307 for a mail ballot election conducted under Title 13, chapter 19.

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(32) (a) "Political committee" means a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure:

(i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination;

(ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(iii) to prepare or disseminate an election communication, an electioneering communication, or an independent expenditure.

(b) Political committees include ballot issue committees, incidental committees, independent committees, and political party committees.

(c) A candidate and the candidate's treasurer do not constitute a political committee.

(d) A political committee is not formed when a combination of two or more individuals or a person other than an individual makes an election communication, an electioneering communication, or an independent expenditure of \$250 or less.

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(e) A joint fundraising committee is not a political committee.

(33) "Political party committee" means a political committee formed by a political party organization and includes all county and city central committees.

(34) "Political party organization" means a political organization that:

(a) was represented on the official ballot in either of the two most recent statewide general elections; or

(b) has met the petition requirements provided in Title 13, chapter 10, part 5.

(35) "Political subdivision" means a county, consolidated municipal-county government, municipality, special purpose district, or any other unit of government, except school districts, having authority to hold an election.

(36) "Polling place election" means an election primarily conducted at polling places rather than by mail under the provisions of Title 13, chapter 19.

(37) "Primary" or "primary election" means an election held on a date specified in 13-1-107 to nominate candidates for offices filled at a general election.

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(38) "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not been verified as provided by law.

(39) "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose identity or eligibility has not yet been verified as provided by law.

(40) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(41) "Random-sample audit" means an audit involving a manual count of ballots from designated races and ballot issues in precincts selected through a random process as provided in 13-17-503.

(42) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(43) "Regular school election" means the school trustee election provided for in 20-20-105(1).

(44) "Religious organization" means a house of worship with the major purpose of supporting religious activities, including but not limited to a church, mosque, shrine,

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synagogue, or temple. The organic documents of the organization must list a formal code of doctrine and discipline, and the organization must spend the majority of its money on religious activities such as regular religious services, educational preparation for its ministers, development and support of its ministers, membership development, outreach and support, and the production and distribution of religious literature developed by the organization.

(45) "School election" has the meaning provided in 20-1-101.

(46) "School election filing officer" means the filing officer with whom the declarations for nomination for school district office were filed or with whom the school ballot issue was filed.

(47) "School recount board" means the board authorized pursuant to 20-20-420 to perform recount duties in school elections.

(48) "Signature envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:

(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is

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being submitted by someone who is in fact a qualified elector and who has not already voted; and

(b) allow it to be used in the United States mail.

(49) "Special election" means an election held on a day other than the day specified for a primary election, general election, or regular school election.

(50) "Special purpose district" means an area with special boundaries created as authorized by law for a specialized and limited purpose.

(51) "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

(52) "Support or oppose", including any variations of the term, means:

(a) using express words, including but not limited to "vote", "oppose", "support", "elect", "defeat", or "reject", that call for the nomination, election, or defeat of one or more clearly identified candidates, the election or defeat of one or more political parties, or the passage or defeat of one or more ballot issues submitted to voters in an election; or

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(b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or ballot issues in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election, or defeat of the candidate in an election, the election or defeat of the political party, or the passage or defeat of the ballot issue or other question submitted to the voters in an election.

(53) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

(54) "Voted ballot" means a ballot that is:

- (a) deposited in the ballot box at a polling place;
- (b) received at the election administrator's office; or
- (c) returned to a place of deposit.

(55) "Voter interface device" means a voting system that:

- (a) is accessible to electors with disabilities;
- (b) communicates voting instructions and ballot information to a voter;

(c) allows the voter to select and vote for candidates and issues and to verify and change selections; and

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(d) produces a paper ballot that displays electors' choices so the elector can confirm the ballot's accuracy and that may be manually counted.

(56) "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ballot."

{Internal References to 13-1-101:

2-2-121	3-15-402	7-33-2106	13-27-111
13-37-101	13-37-201	13-37-219	13-37-226
13-37-228	13-37-250	20-20-421	70-1-522}

Section 2. Section 20-3-301, MCA, is amended to read:

"20-3-301. Election and term of office. (1) Every trustee position prescribed by this title is subject to election. Except as provided in 20-3-313, a school trustee election must be held annually on the regular school election day established in 20-20-105(1).

(2) The term of office for each position must be 3 years unless it is otherwise specifically prescribed by this title.

(3) The board of trustees must be composed of the number of trustee positions prescribed for a district by 20-3-341 and 20-3-351. When exercising the power and performing the

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duties of trustees, the members shall act collectively and only at a regular or a properly called special meeting.

(4) The number of trustee positions in a district must vary in accordance with 20-3-341 and 20-3-351 according to the type of district."

{Internal References to 20-3-301: None}

Section 3. Section 20-3-305 , MCA, is amended to read:

"20-3-305. Candidate qualification, filing deadline, and withdrawal. (1) Except as provided in 20-3-338, any person who is qualified to vote in a district under the provisions of 20-20-301 is eligible for the office of trustee.

(2) (a) Except as provided in subsection (2) (b), a declaration of intent to be a candidate must be submitted to the clerk of the district, or the county election administrator if the election is being conducted by the county, at least ~~40~~ 65 days before the regular school election day at which the person is to be a candidate. If there are different terms to be filled, the term for the position for which the candidate is filing must also be indicated.

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(b) A person seeking to become a write-in candidate for a trustee position shall file a declaration of intent no later than 5 p.m. ~~on the day before the ballot certification deadline in 20-20-401~~ 55 days before the election.

(3) (a) A candidate intending to withdraw from the election shall send a statement of withdrawal to the clerk of the district. The statement must contain all information necessary to identify the candidate and the office for which the candidate filed. The statement of withdrawal must be acknowledged by the clerk of the district.

(b) A candidate may not withdraw after 5 p.m. ~~the day before the ballot certification deadline in 20-20-401~~ 55 days before the election."

{Internal References to 20-3-305:
13-10-211 20-3-313 20-3-356 20-15-219
20-15-221}

Section 4. Section 20-3-313 , MCA, is amended to read:

"20-3-313. Election by acclamation -- notice. (1) If the number of candidates filing for vacant positions or filing a declaration of intent to be a write-in candidate under

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20-3-305(2) (b) is equal to or less than the number of positions to be elected, the trustees may cancel the election.

(2) If the election is canceled, the trustees shall give notice as provided in 20-20-204 that a trustee election will not be held. Notice must be given no later than 30 days before the election. A copy of the notice must be provided to the election administrator and the superintendent of public instruction.

(3) If a trustee election is not held, the trustees shall declare elected by acclamation the candidate who filed for the position or who filed a declaration of intent to be a write-in candidate and shall issue a certificate of election to the candidate **at the school district canvas.**

(4) An election for a trustee in a single-member district as provided in 20-3-338 or in a trustee nominating district as provided in 20-3-353 is considered a separate trustee election for the purposes of declaring election by acclamation as provided in this section."

{*Internal References to 20-3-313:*
20-3-301 20-3-306 20-3-307}

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Section 5. Section 20-20-109, MCA, is amended to read:

"20-20-109. Election judges -- qualifications -- training. (1) Election judges must be qualified registered electors of the school district ~~in which they serve~~ or a county in which the school district is located.

(2) An election judge may not be:

(a) the candidate;

(b) an ascendant, descendant, brother, or sister of a candidate; or

(c) the spouse of the candidate or of any of the individuals listed in subsection (2) (b).

(3) School election judges must meet the training and certification requirements of 13-4-203."

*{Internal References to 20-20-109:
20-20-107}*

Section 6. Section 20-20-201 , MCA, is amended to read:

"20-20-201. Calling of school election. (1) At least ~~70~~ 100 days before any school election, the trustees of a district or other entity or official authorized by law to call a school election shall call the school election by

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resolution, stating the date and purpose of each election and whether, pursuant to 13-19-202, any election is requested to be by mail.

(2) To enable the county election administrator to manage voter registration and prepare the lists of registered electors:

(a) the resolution calling for a school election must be transmitted to the county election administrator and the superintendent of public instruction no later than 3 days after the resolution is passed; and

(b) if the election is to be conducted by mail, the school clerk must also transmit to the county election administrator a copy of the written plan required under 13-19-205 as soon as the plan has been approved by the secretary of state."

{*Internal References to 20-20-201:*

20-3-306 20-6-312 20-6-422 20-6-423
20-6-505 20-6-603 20-6-621 20-9-421
20-9-422 20-9-502 20-9-705 20-10-126}

Section 7. Section 20-20-401 , MCA, is amended to read:

"20-20-401. Trustees' election duties -- ballot certification. (1) The trustees are the general supervisors

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of school elections unless the trustees request and the county election administrator agrees to conduct a school election under 20-20-417.

(2) Not less than ~~30~~ 45 days before an election, the clerk of the district shall certify the ballot by preparing a certified list of the names of all candidates entitled to be on the ballot subject to 13-37-126 and certifying the official wording for each ballot issue. The candidates' names must appear on the ballot in accordance with 13-12-203. The clerk shall arrange for printing the ballots. Ballots for absentee voting must be printed and available at least 20 days before the election. Names of candidates on school election ballots need not be rotated.

(3) Before the opening of the polls, the trustees shall cause each polling place to be supplied with the ballots and supplies necessary to conduct the election."

{*Internal References to 20-20-401:*
13-37-126 20-3-305 20-20-417}

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