

1 SENATE BILL NO. 92

2 INTRODUCED BY G. VANCE

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT AN ELECTION ADMINISTRATOR MUST BE
5 AN ELECTED OFFICIAL; PROVIDING FOR A TRANSITION IN COUNTIES WITH APPOINTED ELECTION
6 ADMINISTRATORS; REVISING DEFINITIONS; AND AMENDING SECTIONS 13-1-101 AND 13-1-301, MCA."

7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9

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

11 **"13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the
12 following definitions apply:

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

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

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

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

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

24 (6) (a) "Ballot issue" or "issue" means a proposal submitted to the people at an election for their
25 approval or rejection, including but not limited to an initiative, referendum, proposed constitutional amendment,
26 recall question, school levy question, bond issue question, or ballot question.

27 (b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by
28 the proper official that the legal procedure necessary for its qualification and placement on the ballot has been

1 completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the
2 secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

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

5 (8) "Candidate" means:

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

8 (b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained
9 contributions, made expenditures, or given consent to an individual, organization, political party, or committee
10 to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure
11 nomination or election to any office at any time, whether or not the office for which the individual will seek
12 nomination or election is known when the:

13 (i) solicitation is made;

14 (ii) contribution is received and retained; or

15 (iii) expenditure is made; or

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

17 (9) (a) "Contribution" means:

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

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

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

23 (iv) the payment by a person other than a candidate or political committee of compensation for the
24 personal services of another person that are rendered to a candidate or political committee.

25 (b) The term does not mean services provided without compensation by individuals volunteering a
26 portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by
27 individuals in their private residences for a candidate or other individual.

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

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

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

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

9 (13) (a) "Election administrator" means, except as provided in subsection (13)(b), the ~~county clerk and~~
 10 ~~recorder or the individual designated by a county governing body to be elected official~~ responsible for all
 11 election administration duties pursuant to 13-1-301, except that with regard to school elections not administered
 12 by the county, the term means the school district clerk.

13 (b) As used in chapter 2 regarding voter registration, the term means the ~~county clerk and recorder or~~
 14 ~~the individual designated by a county governing body to be elected official~~ responsible for all election
 15 administration duties pursuant to 13-1-301, even if the school election is administered by the school district
 16 clerk.

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

- 19 (i) a paid advertisement broadcast over radio, television, cable, or satellite;
- 20 (ii) paid placement of content on the internet or other electronic communication network;
- 21 (iii) a paid advertisement published in a newspaper or periodical or on a billboard;
- 22 (iv) a mailing; or
- 23 (v) printed materials.

24 (b) The term does not mean:

- 25 (i) an activity or communication for the purpose of encouraging individuals to register to vote or to
 26 vote, if that activity or communication does not mention or depict a clearly identified candidate or ballot issue;
- 27 (ii) a communication that does not support or oppose a candidate or ballot issue;
- 28 (iii) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any

1 broadcasting station, newspaper, magazine, internet website, or other periodical publication of general
2 circulation;

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

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

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

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

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

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

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

17 (b) The term does not mean:

18 (i) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any
19 broadcasting station, newspaper, magazine, internet website, or other periodical publication of general
20 circulation unless the facilities are owned or controlled by a candidate or political committee;

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

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

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

27 (v) a communication that the commissioner determines by rule is not an electioneering
28 communication.

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

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

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

5 (ii) used or intended for use in making independent expenditures or in producing electioneering
6 communications.

7 (b) The term does not mean:

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

10 (ii) payments by a candidate for personal travel expenses, food, clothing, lodging, or personal
11 necessities for the candidate and the candidate's family;

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

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

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

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

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

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

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

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

27 (b) For the purpose of this subsection (23), the primary purpose is determined by the commissioner
28 by rule and includes criteria such as the allocation of budget, staff, or members' activity or the statement of

1 purpose or goal of the person or individuals that form the committee.

2 (24) "Independent committee" means a political committee organized for the primary purpose of
3 receiving contributions and making expenditures that is not controlled either directly or indirectly by a candidate
4 and that does not coordinate with a candidate in conjunction with the making of expenditures except pursuant
5 to the limits set forth in 13-37-216(1).

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

9 (26) "Individual" means a human being.

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

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

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

17 (30) "Place of deposit" means a location designated by the election administrator pursuant to 13-19-
18 307 for a mail ballot election conducted under Title 13, chapter 19.

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

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

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

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

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

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

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

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

6 (33) "Political party organization" means a political organization that:

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

8 or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (a) allow election officials, upon examination of the outside of the envelope, to determine that the
8 ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

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

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

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

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

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

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

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

25 (51) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in
26 13-15-206.

27 (52) "Voted ballot" means a ballot that is:

28 (a) deposited in the ballot box at a polling place;

1 (b) received at the election administrator's office; or

2 (c) returned to a place of deposit.

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

4 (a) is accessible to electors with disabilities;

5 (b) communicates voting instructions and ballot information to a voter;

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

7 and

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

10 (54) "Voting system" or "system" means any machine, device, technology, or equipment used to
11 automatically record, tabulate, or process the vote of an elector cast on a paper ballot."
12

13 **Section 2.** Section 13-1-301, MCA, is amended to read:

14 **"13-1-301. Election administrator.** (1) (a) The elected county clerk and recorder of each county is
15 the election administrator unless the governing body of the county designates another elected official ~~or~~
16 ~~appoints an~~ as the election administrator.

17 (b) If the county clerk and recorder is an appointed position in the county, the county clerk and
18 recorder may not be the election administrator and the county's governing body shall designate an elected
19 official as the election administrator.

20 (2) The election administrator is responsible for the administration of all procedures relating to
21 registration of electors and conduct of elections, shall keep all county records relating to elector registration and
22 elections, and is the primary point of contact for the county with respect to the statewide voter registration list
23 and implementation of other provisions of applicable federal law governing elections.

24 ~~(3) The election administrator may appoint a deputy election administrator for each political~~
25 ~~subdivision required to hold elections."~~
26

27 **NEW SECTION. Section 3. Transition from appointed to elected election administrator.** In a
28 county where the election administrator is not an elected official, the duties of election administrator must be

1 transferred to an elected official by January 1, 2022.

2 - END -