

1 SENATE BILL NO. 47

2 INTRODUCED BY W. MCKAMEY

3 BY REQUEST OF THE SENATE SELECT COMMITTEE ON JUDICIAL OVERSIGHT AND REFORM

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT AN ACT GENERALLY REVISING BALLOT ISSUE LAWS;
6 PROVIDING THAT LEGISLATIVE COMMITTEE REVIEW IS REQUIRED WHEN A COURT DETERMINES
7 THAT A PROPOSED STATEWIDE INITIATIVE IS LEGALLY SUFFICIENT; AMENDING SECTIONS 13-27-
8 213, 13-27-216, 13-27-217, 13-27-218, 13-27-219, 13-27-228, AND 13-27-233, MCA; AND PROVIDING AN
9 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 13-27-213, MCA, is amended to read:

14 **"13-27-213. Yes and no statement.** (1) A yes and no statement specifies that a positive vote
15 indicates support for the issue and a negative vote indicates opposition to the issue.

16 (2) The yes and no statement must be placed beside the diagram provided for marking of the
17 ballot in a manner similar to the following:

18 ☐ YES on (insert the type of ballot issue and its number)

19 ☐ NO on (insert the type of ballot issue and its number)

20 (3) The type of ballot issue and its number required by subsection (2) must be designated by the
21 secretary of state as provided in 13-27-237 after the secretary of state receives notice from the attorney general
22 or a court that the petition has been found legally sufficient as provided in this part.

23 (4) The yes and no statement may not include additional material beyond the requirements of
24 subsection (2)."

25
26 **Section 2.** Section 13-27-216, MCA, is amended to read:

27 **"13-27-216. Statutory initiative process and procedure.** (1) (a) A proponent of a statutory initiative
28 shall submit the text of the proposed statutory initiative to the secretary of state together with draft ballot

1 statements and the filing fee required by 13-27-215. The secretary of state shall, without undue delay, forward a
2 copy of the text of the proposed statutory initiative and ballot statements to the legislative services division for
3 review in accordance with 13-27-225.

4 (b) A proposed statutory initiative may not be accepted by the secretary of state until 10 days after
5 the adjournment sine die of the regular legislative session preceding the general election during which the
6 proposal is intended to be voted on. The prohibitions on acceptance of a proposed statutory initiative provided
7 in this subsection (1)(b) do not apply to a submission received on or after the date that falls 130 days after the
8 date that the legislature convened in regular session pursuant to 5-2-103, even if the legislature has not
9 adjourned sine die. If the secretary of state rejects a proposed statutory initiative pursuant to this subsection
10 (1)(b), the secretary of state shall promptly notify the person who submitted the proposal of the reason for the
11 rejection.

12 (2) Within 14 days after receiving the proposed statutory initiative from the secretary of state, the
13 legislative services division shall respond in writing to the proponent in accordance with 13-27-225.

14 (3) After the proponent responds to the legislative services division as provided in 13-27-225, the
15 proponent shall submit the final text of the proposed statutory initiative and ballot statements to the secretary of
16 state. However, if a response to the legislative services division is not required by the proponent pursuant to 13-
17 27-225, the proponent shall instead submit the final text of the proposed statutory initiative and ballot
18 statements to the secretary of state after the proponent receives the legislative services division's response.

19 (4) On receipt of the final text of the proposed statutory initiative and the ballot statements, the
20 secretary of state shall reject the proposed statutory initiative if the text or a ballot statement contains material
21 not submitted to the legislative services division that is a substantive change not recommended by the
22 legislative services division. Otherwise, the secretary of state shall, without undue delay, refer a copy of the
23 proposed statutory initiative and ballot statements concurrently to the budget director and to the attorney
24 general for the attorney general's review in accordance with 13-27-226.

25 (5) The budget director shall determine whether a fiscal note is necessary. If the budget director
26 determines a fiscal note is necessary, the budget director shall prepare a fiscal note, notify the attorney general
27 of the necessity of the fiscal note, and provide a copy of the fiscal note pursuant to 13-27-227 within 10 days.
28 Receipt of the notice from the budget director begins the time frame in subsection (7).

1 (6) In addition to the requirements of 13-27-226, the attorney general shall:

2 (a) include in the attorney general's legal sufficiency review whether the proposed statutory
3 initiative constitutes an appropriation as set forth in 13-27-239; and

4 (b) review the proposed statutory initiative as to whether the proposal could cause a regulatory
5 taking under Montana law or otherwise will likely cause significant material harm to one or more business
6 interests in the state if approved by the voters. If the attorney general determines the proposed statutory
7 initiative will likely cause significant material harm to one or more business interests in the state, the attorney
8 general shall notify the secretary of state, which must include the finding set forth in 13-27-238(2) on the final
9 form of the petition.

10 (7) Within 30 days of receipt of the proposed statutory initiative from the secretary of state, the
11 attorney general shall complete the requirements set forth in 13-27-226 and subsection (6) of this section.

12 (8) The secretary of state shall review the legal sufficiency opinion received pursuant to 13-27-226.

13 (a) If the attorney general finds that the proposed statutory initiative is not legally sufficient, the
14 secretary of state shall, without undue delay, send written notice to the person who submitted the proposal that
15 the proposed statutory initiative has been rejected. The notice must include a copy of the attorney general's
16 legal sufficiency opinion.

17 (b) If the attorney general or a court finds that the proposed statutory initiative is legally sufficient,
18 the secretary of state shall, without undue delay, provide the executive director of the legislative services
19 division a copy of the final text of the proposed statutory initiative and ballot statements in accordance with 13-
20 27-228. After the executive director of the legislative services division provides the secretary of state the
21 outcome of the vote as required by 13-27-228, the secretary of state shall immediately send a sample petition
22 form as provided in 13-27-233 to the person submitting the proposed statutory initiative."
23

24 **Section 3.** Section 13-27-217, MCA, is amended to read:

25 **"13-27-217. Statutory referendum process and procedure.** (1) (a) A proponent of a statutory
26 referendum shall submit the text of the proposed statutory referendum to the secretary of state together with
27 draft ballot statements and the filing fee required by 13-27-215. The secretary of state shall forward a copy of
28 the text of the proposed statutory referendum and ballot statements to the legislative services division for

1 review in accordance with 13-27-225.

2 (b) A proposed statutory referendum may not be accepted by the secretary of state until 10 days
3 after the adjournment sine die of the regular legislative session preceding the general election during which the
4 proposal is intended to be voted on. The prohibitions on acceptance of a proposed statutory referendum
5 provided in this subsection (1)(b) do not apply to a submission received on or after the date that falls 130 days
6 after the date that the legislature convened in regular session pursuant to 5-2-103, even if the legislature has
7 not adjourned sine die. If the secretary of state rejects a proposed statutory referendum pursuant to this
8 subsection (1)(b), the secretary of state shall promptly notify the person who submitted the proposal of the
9 reason for the rejection.

10 (2) Within 7 days after receiving the proposed statutory referendum from the secretary of state, the
11 legislative services division shall respond in writing to the proponent in accordance with 13-27-225.

12 (3) After the proponent responds to the legislative services division as provided in 13-27-225, the
13 proponent shall submit the final text of the proposed statutory referendum and ballot statements to the
14 secretary of state. However, if a response to the legislative services division is not required by the proponent
15 pursuant to 13-27-225, the proponent shall instead submit the final text of the proposed statutory referendum
16 and ballot statements to the secretary of state after the proponent receives the legislative services division's
17 response.

18 (4) On receipt of the final text of the proposed statutory referendum and the ballot statements, the
19 secretary of state shall reject the proposed statutory referendum if the text or a ballot statement contains
20 material not submitted to the legislative services division that is a substantive change not recommended by the
21 legislative services division. Otherwise, the secretary of state shall refer a copy of the proposed statutory
22 referendum and ballot statements concurrently to the budget director and the attorney general.

23 (5) (a) The budget director shall determine whether a fiscal note is necessary, prepare the fiscal
24 note, notify the attorney general of the necessity of its determination, and provide a copy of the fiscal note, if
25 required, pursuant to 13-27-227 within the timeframe required in subsection (5)(b). Receipt of the notice from
26 the budget director begins the time frame in subsection (6) for the attorney general's review in accordance with
27 13-27-226.

28 (b) If the legislative act that is the subject of the proposed statutory referendum had a fiscal note

1 prepared pursuant to 5-4-202 during the legislative session in which the bill was proposed, the budget director
2 shall return the fiscal note to the attorney general within 3 days. If the legislative act that is the subject of the
3 proposed statutory referendum did not have a fiscal note prepared pursuant to 5-4-202 during the legislative
4 session in which the bill was proposed, the budget director shall return the fiscal note to the attorney general
5 within 6 days.

6 (6) If the budget director is allowed 3 days to return the fiscal note pursuant to subsection (5), the
7 attorney general shall complete the requirements set forth in 13-27-226 within 14 days of the receipt of the
8 proposed statutory referendum from the secretary of state. However, if the budget director is allowed 6 days to
9 return the fiscal note pursuant to subsection (5), the attorney general shall complete the requirements set forth
10 in 13-27-226 within 17 days of the receipt of the proposed statutory referendum from the secretary of state.

11 (7) The secretary of state shall review the legal sufficiency opinion received pursuant to 13-27-226.
12 ~~If the attorney general:~~

13 (a) If the attorney general finds that the proposed statutory referendum is not legally sufficient, the
14 secretary of state shall, without undue delay, send written notice to the person who submitted the proposal that
15 the proposed statutory referendum has been rejected. The notice must include a copy of the attorney general's
16 legal sufficiency opinion.

17 (b) If the attorney general or a court finds that the proposed statutory referendum is legally
18 sufficient, the secretary of state shall immediately send a sample petition form as provided in 13-27-233 to the
19 person submitting the proposed statutory referendum."
20

21 **Section 4.** Section 13-27-218, MCA, is amended to read:

22 **"13-27-218. Constitutional initiative process and procedure.** (1) A proponent of a constitutional
23 initiative shall submit the text of the proposed constitutional initiative to the secretary of state together with draft
24 ballot statements and the filing fee required by 13-27-215. The secretary of state shall, without undue delay,
25 forward a copy of the text of the proposed constitutional initiative and ballot statements to the legislative
26 services division for review in accordance with 13-27-225.

27 (2) Within 14 days after receiving the proposed constitutional initiative from the secretary of state,
28 the legislative services division shall respond in writing to the proponent in accordance with 13-27-225.

(3) After the proponent responds to the legislative services division as provided in 13-27-225, the proponent shall submit the final text of the proposed constitutional initiative and ballot statements to the secretary of state. However, if a response to the legislative services division is not required by the proponent pursuant to 13-27-225, the proponent shall instead submit the final text of the proposed constitutional initiative and ballot statements to the secretary of state after the proponent receives the legislative services division's response.

(4) On receipt of the final text of the proposed constitutional initiative and the ballot statements, the secretary of state shall reject the proposed constitutional initiative if the text or a ballot statement contains material not submitted to the legislative services division that is a substantive change not recommended by the legislative services division. Otherwise, the secretary of state shall, without undue delay, refer a copy of the proposed constitutional initiative and ballot statements concurrently to the budget director and to the attorney general.

(5) The budget director shall determine whether a fiscal note is necessary, prepare the fiscal note, notify the attorney general of the necessity of the fiscal note, and provide a copy of the fiscal note pursuant to 13-27-227 within 10 days. Receipt of the notice from the budget director begins the timeframe in subsection (7) for the attorney general's review in accordance with 13-27-226.

(6) In addition to the requirements in 13-27-226, the attorney general shall review the proposed constitutional initiative as to whether the proposal could cause a regulatory taking under Montana law or otherwise will likely cause significant material harm to one or more business interests in the state if approved by the voters. If the attorney general determines the proposed constitutional initiative will likely cause significant material harm to one or more business interests in the state, the attorney general shall notify the secretary of state, which must include the finding set forth in 13-27-241 on the final form of the petition.

(7) Within 30 days of receipt of the fiscal note determination from the budget director, the attorney general shall complete the requirements set forth in 13-27-226 and subsection (6) of this section.

(8) The secretary of state shall review the legal sufficiency opinion received pursuant to 13-27-226. ~~If the attorney general:~~

(a) If the attorney general finds that the proposed constitutional initiative is not legally sufficient, the secretary of state shall, without undue delay, send written notice to the person who submitted the proposal that

1 the proposed constitutional initiative has been rejected. The notice must include a copy of the attorney general's
2 legal sufficiency opinion.

3 (b) If the attorney general or a court finds that the proposed constitutional initiative is legally
4 sufficient, the secretary of state shall, without undue delay, provide the executive director of the legislative
5 services division a copy of the final text of the proposed constitutional initiative and ballot statements in
6 accordance with 13-27-228. After the executive director of the legislative services division provides the
7 secretary of state the outcome of the vote as required by 13-27-228, the secretary of state shall immediately
8 send a sample petition form as provided in 13-27-233 to the person submitting the proposed constitutional
9 initiative."

10
11 **Section 5.** Section 13-27-219, MCA, is amended to read:

12 **"13-27-219. Constitutional convention initiative process and procedure.** (1) A proponent of a
13 constitutional convention initiative shall submit the text of the proposed constitutional convention initiative to the
14 secretary of state together with draft ballot statements and the filing fee required by 13-27-215. The secretary of
15 state shall, without undue delay, forward a copy of the text of the proposed constitutional convention initiative
16 and ballot statements to the legislative services division for review in accordance with 13-27-225.

17 (2) Within 14 days after receiving the proposed constitutional convention initiative from the
18 secretary of state, the legislative services division shall respond in writing to the proponent in accordance with
19 13-27-225.

20 (3) After the proponent responds to the legislative services division as provided in 13-27-225, the
21 proponent shall submit the final text of the proposed constitutional convention initiative and ballot statements to
22 the secretary of state. However, if a response to the legislative services division is not required by the
23 proponent pursuant to 13-27-225, the proponent shall instead submit the final text of the proposed
24 constitutional convention initiative and ballot statements to the secretary of state after the proponent receives
25 the legislative services division's response.

26 (4) On receipt of the final text of the proposed constitutional convention initiative and the ballot
27 statements, the secretary of state shall reject the proposed constitutional convention initiative if the text or a
28 ballot statement contains material not submitted to the legislative services division that is a substantive change

1 not recommended by the legislative services division. Otherwise, the secretary of state shall, without undue
2 delay, refer a copy of the proposed constitutional convention initiative and ballot statements concurrently to the
3 budget director and to the attorney general.

4 (5) The budget director shall determine whether a fiscal note is necessary, prepare the fiscal note,
5 notify the attorney general of the necessity of the fiscal note, and provide a copy of the fiscal note pursuant to
6 13-27-227 within 10 days. Receipt of the notice from the budget director begins the time frame in subsection (6)
7 and the attorney general's review in accordance with 13-27-226.

8 (6) Within 30 days of receipt of the fiscal note determination from the budget director, the attorney
9 general shall complete the requirements set forth in 13-27-226.

10 (7) The secretary of state shall review the legal sufficiency opinion received pursuant to 13-27-226.
11 ~~If the attorney general:~~

12 (a) If the attorney general finds that the proposed constitutional convention initiative is not legally
13 sufficient, the secretary of state shall, without undue delay, send written notice to the person who submitted the
14 proposal that the proposed constitutional convention initiative has been rejected. The notice must include a
15 copy of the attorney general's legal sufficiency opinion.

16 (b) If the attorney general or a court finds that the proposed constitutional convention initiative is
17 legally sufficient, the secretary of state shall, without undue delay, provide the executive director of the
18 legislative services division a copy of the final text of the proposed constitutional convention initiative and ballot
19 statements in accordance with 13-27-228. After the executive director of the legislative services division
20 provides the secretary of state the outcome of the vote as required by 13-27-228, the secretary of state shall
21 immediately send a sample petition form as provided in 13-27-233 to the person submitting the proposed
22 constitutional convention initiative."
23

24 **Section 6.** Section 13-27-228, MCA, is amended to read:

25 **"13-27-228. Review by legislative committee.** (1) ~~If the attorney general finds that a proposed~~
26 statewide initiative is determined to be legally sufficient as provided in this part, the secretary of state shall
27 provide the executive director of the legislative services division with a copy of the final text of the proposed
28 statewide initiative and ballot statements. The executive director shall forward the information to the appropriate

interim committee for review in accordance with 5-5-215. If questions arise regarding which interim committee has jurisdiction over the matter, the executive director shall direct the review to the legislative council in accordance with 5-11-105.

(2) (a) The appropriate interim committee or the legislative council shall meet and hold a public hearing after receiving the information and vote to either support or not support the placement of the proposed statewide initiative text on the ballot.

(b) The interim committee or the legislative council may request a fiscal note if one was previously not determined necessary and may request a revised fiscal note from the budget director if new information is provided which would impact the fiscal note determination or accuracy of the initial fiscal note.

(c) For the purposes of this section, proxies must be allowed for legislators unable to participate if a quorum of the interim committee or legislative council meets.

(d) Nothing in this section prevents the interim committee or legislative council from meeting remotely or via conference call or other electronic means.

(3) (a) The executive director shall provide written correspondence to the secretary of state stating the name of the council or interim committee that voted on the proposal pursuant to subsection (2)(a), the date of the vote, and the outcome of the vote conducted in accordance with this section.

(b) The outcome of the vote must be submitted to the secretary of state no later than 14 days after receipt of the final text of the proposed statewide initiative and ballot statements.

(4) The outcome of the vote by an interim committee or the legislative council may not be reflected in the statewide initiative's statement of purpose and implication, the statewide initiative's petition title, or the ballot title if the statewide initiative is placed on the ballot."

Section 7. Section 13-27-233, MCA, is amended to read:

"13-27-233. Provision of finalized petition for signature. (1) When the requirements of 13-27-216, 13-27-217, 13-27-218, or 13-27-219 are complete and the proposed statewide ballot issue has been found legally sufficient pursuant to a court decision or 13-27-226, the secretary of state shall immediately send to the person submitting the proposed statewide ballot issue a sample petition form, including the text of the proposed statewide ballot issue, the statement of purpose and implication, and the yes and no statement, as prepared by

1 the petitioner, reviewed by the legislative services division, and approved by the attorney general or a court and
2 in the form provided by this part.

3 (2) A signature gatherer may circulate the petition only in the form of the sample prepared by the
4 secretary of state.

5 (3) The secretary of state shall immediately provide a copy of the sample petition form to any
6 interested parties who have made a request to be informed of an approved petition."

7

8 NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

9

10 NEW SECTION. **Section 9. Applicability.** [This act] applies to statewide ballot issues submitted to
11 the secretary of state on or after [the effective date of this act].

12 - END -