



MONTANA SECRETARY OF STATE

LINDA McCULLOCH

Yellowstone County Commissioners
RECEIVED

AUG 22 2016

August 17, 2016

Yellowstone County Commissioners
PO Box 35000
Billings MT 59107

Dear County Commissioners:

In accordance with § 5-2-402, Montana Code Annotated, please consider this your official notification that a vacancy will exist in Senate District 25 due to the resignation of Robyn Driscoll effective August 19th, 2016.

Please review Title 5, Chapter 2, Part 4, Montana Code Annotated, for the proper procedure to follow in filling legislative vacancies. I have enclosed a copy of this part for your convenience.

In summary, the eligible members of the Democratic Central Committee of Yellowstone County shall provide the Board of County Commissioners with a list of three nominees to fill the vacancy within 45 days of receipt of notification of the vacancy. The county commissioners must make and confirm an appointment and notify the Secretary of State within 15 days after receiving the list of prospective appointees. If the appointing board members are unable to select a nominee from the first list provided, they shall request a second list of three different nominees from the central committee.

Finally, I am enclosing a form that may be used while making and confirming the appointment to the Secretary of State. The appointment must be made according to the timeline listed in § 5-2-402 (3), MCA.

If you have any questions on this procedure, please feel free to contact me directly at 406-444-4195, or you may also contact the Elections Division at 406-444-4732.

Sincerely,


Linda McCulloch
Secretary of State

cc: President of the Senate
Yellowstone County Election Administrator
Legislative Services

To the Honorable Secretary of State:

You are hereby notified that the Board of County Commissioners of Yellowstone County, in accordance with the provisions of § 5-2-402, MCA, duly met to fill by appointment the vacancy created in the office of Senate District 25 due to the resignation of Senator Driscoll.

The Board of County Commissioners, sitting as the appointing Board on the _____ day of _____, 20____, hereby appoint the following Democratic nominee:

Name _____

Mailing Address _____

Physical Address _____

City _____ Zip _____ Phone _____

Yellowstone County Commissioners:

Chair

Member

Member

Member

Member

ATTEST: _____
Yellowstone County Election Administrator

Nominee:

of Votes Cast:

Title 5. LEGISLATIVE BRANCH

CHAPTER 2. LEGISLATURE COMPOSITION AND ORGANIZATION

Part 4. Vacancies

5-2-401. Definitions. (1) As used in 5-2-406, "term" means the 4-year period to which a senator is normally elected in the absence of a vacancy.

(2) For the purposes of this part, "vacancy" or "vacancies" has the same meaning as prescribed in 2-16-501.

5-2-402. Appointment by board of county commissioners -- county central committee role -- timeframes. (1) Except as provided in subsection (5) or as otherwise provided by law, whenever a vacancy occurs in the legislature, the vacancy must be filled by appointment by the board of county commissioners or, in the event of a multicounty district, the boards of county commissioners of the counties comprising the district sitting as one appointing board.

(2) (a) Whenever a vacancy is within a single county, the board of county commissioners shall make the appointment as described in 5-2-403, 5-2-404, or 5-2-406.

(b) Whenever a vacancy is within a multicounty district, the boards of county commissioners shall sit as one appointing board. The selection of an individual to fill the vacancy must be as follows:

(i) The presiding officer of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the legislature and shall preside at the meeting.

(ii) Each commissioner's vote is determined by the following formula: 100 multiplied by (A divided by B) multiplied by (1 divided by C), where:

(A) A is the total votes cast in the respective county for the person vacating the legislative seat or, if the vacating person was not elected, the votes cast for the last person to be elected for the current term;

(B) B is the total votes cast for that person in the legislative district; and

(C) C is the number of authorized commissioners on the board of the commissioner whose vote is being determined.

(iii) The person selected to fill the vacancy is the one who receives the highest number above 50 that results from the calculation in subsection (2)(b)(ii). If none of the candidates receives a number higher than 50 from that calculation, the selection board shall cast its votes again in the same manner for the persons receiving the two highest numbers. If neither vote results in a candidate receiving a number higher than 50 from the calculation provided in subsection (2)(b)(ii), then 5-2-404 applies.

(c) If a vacancy occurs in a holdover senate seat after holdover senators have been assigned to new districts under each reapportionment, the formula in subsection (2)(b)(ii) must be applied using the votes cast for the senatorial candidates at the last election in which votes were cast for a senate candidate. Only the number of votes cast by electors residing in the new senate district for senate candidates of the party to which the person vacating the seat belonged may be counted. The secretary of state shall provide an estimate of the number of votes cast for each party by county or portion of a county. The selection process is the same as provided in subsection (2)(b)(iii).

(3) The appointment process to fill a vacant legislative seat under this section is as follows:

(a) Within 7 days of being notified of a vacancy as described in 2-16-501, the secretary of state shall notify the board of county commissioners and the state party that is responsible for notifying the county central committee of the county where the vacating legislator is a resident, if the legislative seat is within one county, or the boards of county commissioners and the corresponding county central committees if the legislative seat is in a multicounty district. If the legislator is an independent or belongs to a party for which there is no county central committee, the notification of county commissioners suffices.

(b) The county central committee or committees, upon receipt of notification of a vacancy, have 45 days to propose a list of prospective appointees, pursuant to 5-2-403(1). The county central committee or the county central committees, acting together, shall forward the list of names to the appointing board within the 45-day period.

(c) The appointing board shall make and confirm an appointment and notify the secretary of state within 15 days:

(i) after receiving the list of prospective appointees from the county central committee or committees;

(ii) after 45 days have expired after the notification of vacancy if the county central committee or committees have not provided a list of prospective appointees; or

(iii) after notification of a vacancy if the legislator vacating the seat is an independent.

(4) If the legislature is in session, the notification process in subsection (3)(a) must be followed within 5 days. The process described in subsection (3)(b) must take place in 5 days. The process described in subsection (3)(c) must take place in 5 days.

(5) Notwithstanding subsection (6), if a vacancy occurs prior to a primary election, 13-10-326 applies. If a vacancy occurs after a primary and prior to a general election, 13-10-327 applies.

(6) If the legislature is called into special session within 85 days of a general election, a person must be appointed to fill a legislative vacancy pursuant to subsections (1) through (4).

5-2-403. Appointee to be of same political party. (1) Whenever an appointee's predecessor served as a member of a political party, the appointee named under 5-2-402 must be a member of the same political party and must be selected from a list of three individuals provided:

(a) by the county central committee in a district within a single county; or

(b) by the county central committees, acting together, in a multicounty district, as described in 5-2-402.

(2) Whenever the appointing board is unable to elect an appointee from the submitted list, the appointing board shall request a second list of three names from the county central committee or committees. The second list may not contain any of the names submitted on the first list. The appointing board shall then select an appointee from the individuals named on both lists.

(3) The provisions of this section do not apply if the predecessor served as an independent.

5-2-404. Procedure upon failure of one candidate to receive majority vote. In the event that a decision cannot be made by the appointing board because of failure of any candidate to receive a majority of the votes, the final decision may be made by lot from the first and second lists of candidates as provided by 5-2-403 or from a list of three individuals if the predecessor served as an independent, in accordance with rules of selection adopted by the appointing board.

5-2-405. Term of appointee. (1) Whenever a vacancy occurs in the house of representatives, the appointee shall serve until the end of the term to which the predecessor was elected.

(2) Whenever a vacancy occurs in the senate, the appointee shall serve until a successor can be elected as provided in 5-2-406.

5-2-406. Elections to fill vacancies in senate. (1) Whenever a vacancy occurs 85 days or more before the general election held during the second year of the term, an individual must be appointed pursuant to 5-2-402. The appointment continues until a person is elected to complete the term at the upcoming general election and is sworn into office. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 85 days or more prior to the primary election during the second year, the same procedure as is used for senators who will be elected to full 4-year terms at that general election must be utilized.

(b) Whenever the vacancy occurs on or after the 85th day prior to the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-10-327 and 13-38-204. A political party shall notify the secretary of state of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate must be filed with the secretary of state on or before the 85th day prior to the general election.

(2) Whenever a vacancy occurs on or after the 85th day prior to the general election held during the second year of the term, the person appointed by the board under 5-2-402 shall serve until the end of the term.

5-2-407. Anticipated vacancy. (1) Whenever it appears that a vacancy will exist in the legislature because of the inability of an elected legislator to take office at the commencement of the term to which the legislator was elected, an appointee may be selected in advance of the commencement of the term under the provisions of 5-2-402 through 5-2-406.

(2) For purposes of determining the term of office of the appointee, the term of office commences on the day on which the appointee takes the oath of office.

(3) An appointee under this section may take office only if the vacancy in fact exists at the commencement of the term of office.