

LEGAL REVIEW NOTE

Bill No.: SB 490

LC#: LC 0182, To Legal Review Copy, as
of February 19, 2025

Short Title: Revise election laws regarding
late registration

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Date: February 25, 2025

CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of jurisdictionally relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.

This review is intended to inform the bill draft requestor of potential constitutional conformity issues that may be raised by the bill as drafted. This review IS NOT dispositive of the issue of constitutional conformity and the general rule as repeatedly stated by the Montana Supreme Court is that an enactment of the Legislature is presumed to be constitutional unless it is proven beyond a reasonable doubt that the enactment is unconstitutional. See Alexander v. Bozeman Motors, Inc., 356 Mont. 439, 234 P.3d 880 (2010); Eklund v. Wheatland County, 351 Mont. 370, 212 P.3d 297 (2009); St. v. Pyette, 337 Mont. 265, 159 P.3d 232 (2007); and Elliott v. Dept. of Revenue, 334 Mont. 195, 146 P.3d 741 (2006).

Legal Reviewer Comments:

SB 490, as drafted revises timelines for voter registration, including election day voter registration. SB 490 amends 13-2-304 to include a new subsection (3) that provides:

(3) In a federal election, an elector may register or change the elector's voter registration information after the close of regular registration as provided in 13-2-301 and

vote in the election if the election administrator in the county where the elector resides receives and verifies the elector's voter registration information:

- (a) prior to the close of business on the Friday before the election;
- (b) between 8 a.m. and 5 p.m. on the Saturday before the election;
- (c) prior to noon on the day before the election; or
- (d) prior to noon on the day of the election.

Prior to 2021, 13-2-304 provided for late registration “prior to the close of the polls on election day.” 13-2-304(1)(a) (2019). In 2021, the Legislature enacted House Bill No. 176, which amended 13-2-304 to move the deadline for voter registration from the close of the polls on election day to noon the day before election day. (HB 176, section 2.) Litigation over the constitutionality of HB 176 ensued and ultimately reached the Montana Supreme Court in *Montana Democratic Party v. Jacobsen*, 2024 MT 66, (*Jacobsen*).

While in *Jacobsen*, the Supreme Court acknowledged that Art. IV, section 3, of the Montana Constitution provides that the Legislature “may provide for a system of poll booth registration”, the Court concluded that this provision does not mean that the Legislature has “unfettered authority to terminate [registration] outside of constitutional constraints.” *MDP* at ¶ 65 and ¶ 68. Ultimately, the Supreme Court held that “13-2-304, MCA, impermissibly interferes with the right to vote” and did “not survive strict scrutiny and is therefore unconstitutional on its face.” *MDP* at ¶ 68 and ¶ 84.

SB 490, as drafted, limits election day registration to “prior to noon on the day of the election” instead of “prior to the close of the polls on election day” as provided by 13-2-304(1)(a) before the enactment of HB 176. Therefore, SB 490 may raise a potential constitutional conformity question as to whether this legislation conflicts the holding in *Montana Democratic Party v. Jacobsen*.

Requester Comments: