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RE: House Bill 247  
Comments in Opposition to Draft

TO: Honorable Members of House Local Government Committee

I am an attorney who represented the Beartooth Park and Recreation District Board of Commissioners last year during its proceedings to hear and decide a petition for alteration of boundaries brought by a sizeable group of landholders after the mail ballot election creating the district in 2003.

On the basis of their experience with these statutes, the Beartooth district park commissioners believe that Section 7-16-2441 could be improved to give a board more guidance as to procedure, time-frames, and criteria for decision on a petition for annexation or for withdrawal of territory from a district. They believe the description of the territory to be withdrawn or annexed must conform to the assessor's standard for describing the balance of the district in a manner which can accurately identify participating taxpayers in the new taxing district. They believe that the election which commissioners have discretion to order under the existing statutes is unnecessary if the commission's discretion includes the usual ability to make findings at a hearing. The election may be inherently unfair if it involves a self-selected electorate (just the petitioners) whose votes would be, by design, a foregone conclusion. The consequences to the district could prove disastrous and the remainder of the district would have no voice as to its diminishing size and resources. Additionally, the park commissioners believe that a petitioner or petitioners should shoulder the costs of the petition to withdraw or add land to the district. All of these ideas are supported by precedent in existing law governing other districts providing governmental service in rural or unincorporated areas.

Regarding Section 7-16-2441 (Section 1 of HB 247, Alteration of District Boundaries)

A mandatory election unencumbered by due process is at the heart of this draft amendment. Mandatory election removes discretion from the elected representatives of a unit of local government in a matter which requires the exercise of discretion if the interests of the district are to be served and its public funds collected, budgeted, and used for the purposes intended by the voters. Mandatory election obviates the purpose of the public hearing which precedes the election. Under this amendment, any petitioner or group of petitioners who can manipulate a map to advantage is able, without cost, at any time, on any whim, to force withdrawal from the district. The inevitable outcome of every such petition, after meaningless hearing and required selective election, both costing money intended to be used for kids, will be to diminish the size and thus the resources of the district. This can occur, without limitation in the law or control by the district, year after year.

It is dangerous for a county park district, particularly since the commission has broad financial power including the authority to issue bonds, if its commissioners are unable to predict or control the size of its taxpaying base from year to year, or to commit the amount of public funds needed to fulfill the purposes of the district, pay the bills, or repay the indebtedness of the district over time. Whether a district should be enlarged or diminished is a decision which should rest in the sound discretion of the elected district park commission in the first instance. The law should provide criteria for the better exercise of that discretion.

Sections 7-13-2344 through 7-13-2348, and Section 7-13-23 governing exclusion and annexation of territory in county water & sewer districts, are good models for improving the withdrawal and annexation provisions related to park districts. The districts are quite similar in many ways. Suggested amendments would include:

In the case of a **petition or resolution of intent for exclusion of land**, the commission makes the decision, after notice and public hearing, based on whether the land is benefited in any way by inclusion in the district and whether the best interests of the district are served by the withdrawal. The petition should be granted by the commission, no election required, if findings after hearing are that the lands are not benefited in any way by inclusion in the district and that the district's best interests are served by the withdrawal. The commission should deny the petition for withdrawal, no election required, if it finds after hearing that the lands are benefited by inclusion and such continued inclusion is in the best interests of the district. Although election on a petition or resolution for withdrawal of territory is not required following commission action, the final decision of the commission on withdrawal should be subject to referendum duly brought under the general laws of the state in protest of legislation of cities or towns.

In the case of **petition for annexation of territory** into a park district, the park commission should determine after notice and public hearing whether the lands proposed for annexation are contiguous with the district; whether they are petitioned for annexation by 100% of the ownership interests on the property; whether they will be benefited in any way by inclusion; and whether the annexation is in the best interest of the district. If there is no contiguity; less than 100% ownership requesting annexation; no benefit; and no district interest served by annexation, the petition should be denied by the commission. If there is contiguity, 100% of owners requesting annexation, benefit, and district best interest found by the commission, then the petition should be granted without election.

In the case of a **resolution of intent to annex territory** into the district, the park commission should determine after notice and public hearing whether the lands proposed for annexation will be benefited in any way by inclusion and whether the best interests of the district will be served by inclusion. If the findings after public hearing are that annexation will not benefit the lands proposed for inclusion and that the district's best interests will not be served, the resolution to annex should not be passed and no election will be held. If the findings of the park commission are that the lands will be benefited by inclusion and the district's best interests will be served, the commission must submit the question to the electorate. The election held requires separate simple majorities from the electorate of the area to be annexed and the existing area of the district. Written protests from 51% or more of landowners of the lands proposed for annexation, received at or before the time of hearing, will bar the commission from further proceedings on a petition or resolution of intent for annexation of territory into the district.

Regarding Section 7-16 -2442 (Section 2 of HB 247, Dissolution of County Park District)

In my view, removing the district park commission as an entity which can adopt a resolution of intent to dissolve the district is a mistake. Removing the county commissioners' option to change a petition or resolution for dissolution to one for alteration of boundaries may be reasonable, as long as 2441 is modified to eliminate mandatory elections and in other ways be modeled on the water & sewer district statutes. I suggest modeling this statute on the dissolution statute provided for county water & sewer districts in Title 7, Chapter 13, Parts 22 and 23. Election is not required. I represented a citizen board which dissolved a county water district, and the procedure is comprehensive, tidy, and understandable.

I urge the committee to refer this draft of H.B. 247 for further work in conformance with provisions existing in statutes governing exclusion, annexation, and dissolution in county water & sewer district. Thank you for your courtesies and attention.

Anne Sheehy Yegen

**7-16-2441, Alteration of district boundaries.** (1) The boundaries of a county park district may be enlarged by the annexation of contiguous territory in the county or it may be reduced in size by the withdrawal of territory from the district. Territory proposed to be withdrawn must be compact and contiguous to a boundary of the district, and the balance of the district following withdrawal must not be left in broken or disconnected sections not readily described according to the standards of the county assessor as a new taxing district.

(2) Proceedings to annex contiguous territory or to exclude territory to be withdrawn from the district may be initiated either by petition of landowners or by resolution of intent adopted by the district park commission in the same manner as creation of the district was initiated. The applicable resolutions, hearings, and procedures for alteration of boundaries shall be adopted and conducted by the county park district commission and not by the county governing body.

(3) The district park commission may by its order after public hearing act on a petition to alter district boundaries by excluding territory from the district.

(a) Such petition must request withdrawal of lands from the district and:

i) include a map and legal description of the contiguous territory to be withdrawn and a map and correct legal description of the balance of the district remaining after exclusion, approved by the county assessor as satisfying her requirements for accurately describing the new taxing district and identifying with precision the participating taxpayers remaining in the district;

ii) set forth that the territory to be withdrawn from the district is not benefited in any way by the district or its continued inclusion therein;

iii) be signed by 15% of the landowners in the territory to be withdrawn from the district and certified as sufficient by the county clerk; and

iv) be accompanied by funds sufficient to pay for expenses associated with hearing the petition, including surveys if required; notice and publication; copying; rental if required for hearing space; record of hearing; and recording of final decision.

(b) The park commission must conduct a public hearing on the petition not earlier than 30 days and not later than 60 days following receipt by the park district of the petition certified and approved by the county officials designated in 7-16-2441(3)(a). The park district shall comply with notice and publication requirements of Section 7-1-2121.

(c) Any landowner or taxpayer within the district shall have the right to appear at the public hearing, either in behalf of or in opposition to the granting of the petition.

(d) If the county park commission determines upon public hearing that it is for the best interests of the district that the lands mentioned in the petition or some portion thereof be excluded from the district or if it appears that such lands or some portion thereof will not be benefited by their continued inclusion in the district, then the board shall grant the petition and make an order that such lands or such portion thereof be excluded from the district, such order to describe specifically the lands so excluded. A copy of such order of exclusion, certified to by the secretary of the district, shall be recorded in the office of the county recorder of the county or counties in which the district is situated, and the record of such certified copy shall be deemed prima facie evidence of the exclusion from the district of the lands purporting to be excluded thereby.

(e) If the findings of the commission upon public hearing are not in accordance with the provisions of 7-16-2441(2)(d), the commission shall deny the petition.

(e) The final action of the commission on a petition to exclude lands to be withdrawn from the district boundaries shall be subject to referendum by the electors of the district according to 7-13-2276(2).

(f). From the time of making the order of exclusion, the lands so excluded shall be deemed to be no longer included in the district, but such order of exclusion shall not be taken to invalidate in any manner any taxes or assessments theretofore levied or assessed against the lands so excluded.

(4) The district park commission may by its order after notice and public hearing, act upon a resolution of intent to exclude territory from the district which was initiated by the commission itself and not by petition of landowners.

(a) The contents of the resolution of intent to exclude land from the district must include the same information as is required for a petition under Section 7-16-2441(3) herein including a statement that the lands described in the resolution may not be benefited in any manner by their continued inclusion in the district or that it may not be for the best interests of the district that the lands be included in the district, and, in addition:

i) notice requiring all persons interested to appear and show cause before the board, at a time and place specified, why such lands should not be excluded from the district; and

ii) notice of the time and place for such hearing and directing the secretary of the district to give notice of the passage of such resolution and such hearing.

(b) Upon the passage of such resolution, the secretary of the district shall give notice thereof and of the public hearing in the manner prescribed by Section 7-1-2121. Thereafter all proceedings shall be had in the manner and with the effect herein provided for proceedings upon a petition by landowners.