

HOUSE BILL NO. 304

INTRODUCED BY G. HENDRICK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING SPECIAL DISTRICTS;
5 PROVIDING THAT A SPECIAL DISTRICT MAY ONLY BE CREATED BY REFERENDUM OR PETITION;
6 INCREASING THE PERCENTAGE OF VOTERS OR PROPERTY OWNERS REQUIRED FOR A PETITION;
7 PROHIBITING THE BOUNDARIES OF A SPECIAL DISTRICT FROM BEING IDENTICAL TO BOUNDARIES
8 OF A LOCAL GOVERNMENT UNLESS CERTAIN REQUIREMENTS ARE MET; CLARIFYING TO WHOM
9 NOTICES OF A RESOLUTION OF INTENT TO CREATE A DISTRICT MUST BE SENT; REVISING TIMING OF
10 A PROTEST AND WHO MAY PROTEST CREATION OF A DISTRICT; PROHIBITING CERTAIN USES OF
11 DISTRICT FUNDS; AND AMENDING SECTIONS 7-11-1003, 7-11-1006, 7-11-1007, 7-11-1008, 7-11-1013,
12 7-11-1021, 7-11-1023, AND 7-11-1024, MCA."

13

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

15

16 **Section 1.** Section 7-11-1003, MCA, is amended to read:

17 **"7-11-1003. Authorization to create special districts.** (1) Whenever the public convenience and
18 necessity may require:

19 (a) the governing body may ~~create~~ order a referendum on the creation of a special district to serve the
20 inhabitants of the special district as provided in 7-11-1011; or

21 (b) petitioners may initiate the creation of a special district to serve inhabitants of the special district.

22 (2) (a) Subject to subsection (2)(b), a petition to institute the creation of a special district must be signed
23 by ~~40%~~ at least 51% of registered voters or ~~40%~~ at least 51% of owners of real property within the boundary of
24 the proposed special district and submitted to the clerk of the governing body.

25 (b) If a proposed special district would be financed by a mill levy, a petition to institute the creation of the
26 special district must be signed by ~~40%~~ at least 51% of registered voters or ~~40%~~ at least 51% of property
27 taxpayers within the boundary of the proposed district.

28 (c) The form of the petition may be prescribed by the governing body.

29 (d) Subject to subsection (2)(c), the petition must:

30 (i) require the printed name of each signatory;

1 (ii) specify whether the signatory is a property taxpayer or owner of real property within the proposed
2 special district and the address of that property;

3 (iii) describe the type of special district being proposed and the ~~general~~ specific character of any
4 proposed improvements and program to be administered within the special district;

5 (iv) designate the method of financing any proposed improvements and program within the special
6 district;

7 (v) include a ~~general~~ specific description of the areas to be included in the proposed special district; and

8 (vi) specify whether the proposed special district would be administered by the local governing body or
9 an appointed or elected board.

10 (3) Within 30 days of receipt of a petition to create a special district, the clerk of the governing body shall:

11 (a) certify that the petition is sufficient under the provisions of subsection (2) and present it to the
12 governing body at its next meeting; or

13 (b) reject the petition if it is insufficient under the provisions of subsection (2).

14 (4) A defect in the contents of the petition or in its title, form of notice, or signatures may not invalidate
15 the petition and subsequent proceedings as long as the petition has a sufficient number of qualified signatures
16 attached."
17

18 **Section 2.** Section 7-11-1006, MCA, is amended to read:

19 **"7-11-1006. Determining special district boundaries.** (1) The boundaries of the proposed special
20 district must be mapped and clearly described before the district may be approved.

21 (2) The governing body or petitioners shall consult with a professional land surveyor, as defined in
22 37-67-101, to prepare a legal description of the boundaries for the proposed special district.

23 (3) ~~The~~ Subject to subsection (4), the boundaries must follow property ownership, precinct, school
24 district, municipal, and county lines as far as practical.

25 (4) The boundaries of a special district may not be identical to the boundaries of a local government
26 unless the governing body demonstrates by clear and convincing evidence that each lot or parcel within the
27 proposed district will derive substantially equal benefit from the district program or improvements."
28

29 **Section 3.** Section 7-11-1007, MCA, is amended to read:

30 **"7-11-1007. Public hearing -- resolution of intention to create special district.** (1) The governing

1 body shall hold at least one public hearing concerning the creation of a proposed special district prior to the
 2 passage of a resolution of intention to create the special district. A resolution of intention to create a special
 3 district ~~may be based upon a decision of the governing body or~~ must be based upon a petition that contains the
 4 required number of signatures.

5 (2) The resolution must designate:

6 (a) the proposed name of the special district;

7 (b) the necessity for the proposed special district;

8 (c) a general description of the territory or lands to be included within the proposed special district, giving
 9 the boundaries of the proposed special district;

10 (d) the general character of any proposed improvements and the proposed location for the proposed
 11 program or improvements;

12 (e) the estimated cost and method of financing the proposed program or improvements;

13 (f) any requirements specifically applicable to the type of special district; and

14 (g) whether the proposed special district would be administered by the governing body or an appointed
 15 or elected board.

16 (3) (a) The governing body shall publish notice of passage of the resolution of intention to create a
 17 special district as provided in 7-1-2121 and 7-1-2122 or 7-1-4127 and 7-1-4129, as applicable. The notice must
 18 contain a notice of a hearing and the time and place where the hearing will be held.

19 (b) At the same time that notice is published pursuant to subsection (3)(a), the governing body shall
 20 provide a list of those properties subject to potential assessment, fees, or taxation under the creation of the
 21 proposed special district. The list may not be distributed or sold for use as a mailing list in accordance with
 22 2-6-109.

23 (c) A copy of the notice described in subsection (3)(a) must be mailed to ~~the owners~~ each owner or
 24 purchaser under contract for deed of the property included on the list referred to in subsection (3)(b) as shown
 25 by the current property tax record maintained by the department of revenue for the county."

26

27 **Section 4.** Section 7-11-1008, MCA, is amended to read:

28 **"7-11-1008. Right to protest -- procedure -- hearing.** (1) An owner of property that is liable to be
 29 assessed for the program or improvements in the proposed special district has ~~30~~ 60 days from the date of the
 30 first publication of the notice of passage of the resolution of intention to make a written protest against the

1 proposed program or improvements.

2 (2) The protest must be in writing, identify the property in the district owned by the protestor, be signed
3 by ~~all of the owners~~ an owner of that property, and be delivered to the clerk of the governing body, who shall
4 endorse on the protest the date of receipt.

5 (3) (a) For purposes of this section, "owner" means, as of the date a protest is filed, ~~the a~~ record owner
6 of fee simple title to the property or ~~the a~~ contract buyer on file with the county clerk and recorder.

7 (b) The term does not include a tenant of or other holder of a leasehold interest in the property.

8 (4) An owner of property created as a condominium may protest pursuant to the provisions in 7-11-1027.

9 (5) (a) At the hearing provided for in 7-11-1007, the governing body shall consider all protests.

10 (b) In determining the sufficiency of protest, each protest must be weighted in proportion to the amount
11 of the assessment to be levied against the lot or parcel with respect to which it is made.

12 (c) If the protest is made by at least 15% of the owners of property in the proposed district, ~~to be~~
13 ~~assessed for more than 50% of the cost of the proposed program or improvements, in accordance with the~~
14 ~~method or methods of assessment,~~ further proceedings may not be taken by the governing body for at least 12
15 months.

16 (d) In determining whether or not sufficient protests have been filed in the proposed special district to
17 prevent further proceedings, property owned by a governmental entity must be considered the same as any other
18 property in the district.

19 (e) The decision of the governing body is final and conclusive.

20 (f) The governing body may adjourn the hearing from time to time."
21

22 **Section 5.** Section 7-11-1013, MCA, is amended to read:

23 **"7-11-1013. Order creating district -- power to implement program.** (1) The governing body may
24 create a special district and establish assessments or fees if the governing body finds that insufficient protests
25 have been made in accordance with 7-11-1008 or if the eligible registered voters have approved a referendum
26 as provided in 7-11-1011.

27 (2) To create a special district, the governing body shall issue an order or pass an ordinance or
28 resolution in accordance with the resolution of intention introduced and passed ~~by the governing body or~~ in
29 accordance with the terms of the referendum or petition. This must be done within 30 days of the end of the
30 protest period or approval of the referendum.

1 (3) If the governing body creates the special district ~~of its own accord~~ as a result of a petition submitted
2 in accordance with 7-11-1003 and without a referendum being held, a copy of the order, ordinance, or resolution
3 creating the district, certified by the clerk of the governing body, must be delivered to the clerk and recorder of
4 the county or counties in which the special district is situated and to the secretary of state, who shall issue a
5 certificate of establishment in accordance with 7-11-1012."

6

7 **Section 6.** Section 7-11-1021, MCA, is amended to read:

8 **"7-11-1021. Governance -- powers and duties.** (1) A special district must be administered and
9 operated either by the governing body or by a separate elected or appointed board as determined by the
10 governing body.

11 (2) (a) If the special district is governed by a separate board, the board must be established in
12 accordance with Title 7, chapter 1, part 2, and specific powers and duties granted to the board and those
13 specifically withheld must be stated.

14 (b) The governing body may grant additional powers to the board. This includes the authorization to use
15 privately contracted legal counsel or the attorney of the governing body. If privately contracted counsel is used,
16 notice must be provided to the attorney of the governing body.

17 (c) The governing body has ultimate authority under this subsection (2).

18 (3) The entity chosen to administer the special district, as provided in subsection (1), may:

19 (a) implement a program and order improvements for the special district designed to fulfill the purposes
20 of the special district;

21 (b) administer the budget of the special district;

22 (c) employ personnel directly related to the specific improvement or program;

23 (d) purchase, rent, or lease equipment, personal property, and material necessary to develop and
24 implement an effective program;

25 (e) cooperate or contract with any corporation, association, individual, or group of individuals, including
26 any agency of federal, state, or local government, in order to develop and implement an effective program;

27 (f) receive gifts, grants, or donations for the purpose of advancing the program and, by gift, deed, devise,
28 or purchase, acquire land, facilities, buildings, and material necessary to implement the purposes of the special
29 district;

30 (g) construct and, except as provided in subsection (6), maintain facilities and buildings necessary to

1 accomplish the purposes of the special district;

2 (h) provide grants to private, nonprofit entities as part of implementing an effective program;

3 (i) adopt a seal and alter it at the entity's pleasure;

4 (j) administer local ordinances as appropriate;

5 (k) establish district capital improvement funds pursuant to 7-6-616, maintenance funds, and debt service
6 funds; and

7 (l) borrow money by the issuance of:

8 (i) general obligation bonds as authorized by the governing body pursuant to Title 7, chapter 6, part 40,
9 and the appropriate provisions of Title 7, chapter 7, part 22 or 42; or

10 (ii) except as provided in subsection (6), revenue bonds for the lease, purchase, and maintenance of
11 land, facilities, and buildings and the funding of projects in the manner and subject to the appropriate provisions
12 of Title 7, chapter 7, part 25 or 44.

13 (4) The Subject to subsection (7), the entity chosen to administer the special district shall submit annual
14 budget and work plans to the governing body for review and approval.

15 (5) The right to exercise eminent domain pursuant to 70-30-102 is limited to cemetery districts.

16 (6) (a) Special district funds may not be used to maintain facilities existing prior to creation of the special
17 district.

18 (b) Money derived from revenue bonds issued under subsection (3)(l)(ii) may not be used for lease
19 payments or maintenance of land, facilities, and buildings existing prior to creation of the special district.

20 (7) An increase in the special district's budget is subject to the petition or referendum process established
21 in this part for creation of a special district."

22

23 **Section 7.** Section 7-11-1023, MCA, is amended to read:

24 **"7-11-1023. Alteration of special districts.** ~~(1) The governing body may change the boundaries of any~~
25 ~~special district by resolution.~~

26 ~~_____ (2) The boundaries may be altered by petition after complying with the requirements for petitions as~~
27 ~~provided in 7-11-1003.~~

28 ~~_____ (3)(1)~~ Alteration of special district boundaries is ~~also~~ subject to procedures for petition, public notice,
29 protest, referendum, certification, reporting, and establishment of assessment as provided in 7-11-1003,
30 7-11-1006 through 7-11-1008, 7-11-1011 through 7-11-1015, and 7-11-1024.

1 ~~(4)~~(2) Changes made to the boundaries may not:

2 (a) occur more than once each year unless the governing body makes a special finding that an alteration
3 is necessary;

4 (b) delete any portion of the area if the deletion will create an island of included or excluded lands;

5 (c) delete any portion of the area that is negatively contributing or may reasonably be expected to
6 negatively contribute to environmental impacts that fall within the scope of the special district's program; and

7 (d) affect indebtedness existing at the time of the change."
8

9 **Section 8.** Section 7-11-1024, MCA, is amended to read:

10 **"7-11-1024. Financing for special district.** (1) The governing body shall make assessments or impose
11 fees for the costs and expenses of the special district based upon a budget proposed by the governing body or
12 separate board administering the district pursuant to 7-11-1021.

13 (2) For the purposes of this section, "assessable area" means the portion of a lot or parcel of land that
14 is benefited by the special district. The assessable area may be less than but may not exceed the actual area
15 of the lot or parcel.

16 (3) The governing body shall assess the percentage of the cost of the program or improvements:

17 (a) against the entire district as follows:

18 (i) each lot or parcel of land within the special district may be assessed for that part of the cost that its
19 assessable area bears to the assessable area of the entire special district, exclusive of roads, streets, avenues,
20 alleys, and public places;

21 (ii) if the governing body determines that the benefits derived from the program or improvements by each
22 lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within
23 the special district without regard to the assessable area of the lot or parcel;

24 (iii) each lot or parcel of land, including the improvements on the lot or parcel, may be assessed for that
25 part of the cost of the special district that its taxable valuation bears to the total taxable valuation of the property
26 of the district;

27 (iv) each lot or parcel of land may be assessed based on the lineal front footage of any part of the lot or
28 parcel that is in the district and abuts the area to be improved or maintained;

29 (v) each lot or parcel of land within the district may be assessed for that part of the cost that the
30 reasonably estimated vehicle trips generated for a lot or parcel of its size in its zoning classification bear to the

1 reasonably estimated vehicle trips generated for all lots in the district based on their size and zoning classification;

2 or

3 (vi) any combination of the assessment options provided in subsections (3)(a)(i) through (3)(a)(v) may

4 be used for the special district as a whole; or

5 (b) based upon the character, kind, and quality of service for a residential or commercial unit, taking into

6 consideration:

7 (i) the nature of the property or entity assessed;

8 (ii) a calculated basis for the program or service, including volume or weight;

9 (iii) the cost, incentives, or penalties applicable to the program or service practices; or

10 (iv) any combination of these factors.

11 (4) If property created as a condominium is subject to assessment, each unit within the condominium

12 is considered a separate parcel of real property subject to separate assessment and the lien of the assessment.

13 Each unit must be assessed for the unit's percentage of undivided interest in the common elements of the

14 condominium. The percentage of the undivided ownership interest must be as set forth in the condominium

15 declaration.

16 (5) Assessments and fees collected for support of the special district must be used for district expenses

17 and may not be used to circumvent the provisions of 15-10-420."

18 - END -