

## HOUSE BILL NO. 101

INTRODUCED BY M. MACDONALD

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO WATER AND SEWER DISTRICTS AND REGIONAL WATER AUTHORITIES; REQUIRING THE BOARD OF DIRECTORS TO CAUSE AN AUDIT TO BE MADE; ELIMINATING THE POSITION OF AUDITOR; ALLOWING THE OPERATOR OF A DISTRICT TO BE ASSIGNED THE DUTIES OF THE GENERAL MANAGER; CLARIFYING THE JOINT EXERCISE OF POWERS BY REGIONAL WATER AUTHORITIES; AMENDING SECTIONS 7-13-2221, 7-13-2277, 7-13-2278, 7-13-2279, AND 75-6-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 7-13-2221, MCA, is amended to read:

**"7-13-2221. Powers related to district finances -- audits.** (1) Any district incorporated as provided in this part may:

(1)(a) accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purposes of aiding the construction or maintenance of water or sewer development projects;

(2)(b) cooperate and contract with the state or federal government or any department or agency of the state or federal government in furnishing assurances for and meeting local cooperation requirements of any project involving control, conservation, and use of water;

(3)(c) borrow money and incur indebtedness and issue bonds or other evidence of indebtedness and refund or retire any indebtedness or lien that may exist against the district or property of the district;

(4)(d) cause taxes to be levied in the manner provided for in part 23 and this part for the purpose of paying any obligation of the district and to accomplish the purposes of part 23 and this part in the manner provided in part 23 and this part;

(5)(e) levy special assessments against property located in the district and benefited by any of its improvements, as provided in 7-13-2280 through 7-13-2289, and pledge the collections of the special assessments in whole or in part, with any other revenue of the district, to the payment of bonds issued pursuant

1 to part 23; and

2 ~~(6)(f)~~ enter into covenants and agreements as to the establishment and maintenance of reasonable rates  
 3 and charges for the use of its systems or improvements or any part of the systems or improvements as required,  
 4 in the judgment of the board of directors, for the favorable sale of bonds issued pursuant to part 23, including,  
 5 without limitation, a covenant to establish and maintain rates and charges sufficient, with the collection of any  
 6 special assessments, to pay debt service and operating, maintenance, and replacement costs of the system or  
 7 improvement and fund necessary reserves or a covenant to establish and maintain rates and charges sufficient,  
 8 with the collection of any special assessments, to pay operating and maintenance costs of the system or  
 9 improvement, fund necessary reserves for the system or improvement, and pay debt service on bonds and to  
 10 provide additional funds necessary for the purposes of the system or improvement or to provide assurance to the  
 11 holders of bonds as to the sufficiency of the revenue.

12 (2) The board of directors shall cause an audit of the financial records of the district to be made at the  
 13 expense of the district. Audits must comply with the requirements of Title 2, chapter 7, part 5. IN COMPLIANCE WITH  
 14 THE REQUIREMENTS OF TITLE 2, CHAPTER 7, PART 5, AT THE EXPENSE OF THE DISTRICT."

15  
 16 **Section 2.** Section 7-13-2277, MCA, is amended to read:

17 **"7-13-2277. Appointment of administrative personnel.** (1) The board of directors shall, at its first  
 18 meeting or as soon thereafter as practicable, appoint by a majority vote a general manager; and a secretary; ~~and~~  
 19 ~~an auditor. No A director shall may not~~ be eligible to the office of the general manager; or the secretary; ~~or~~ auditor.  
 20 The board of directors may assign the district's operator, as defined in 37-42-102, the additional duties of a  
 21 general manager.

22 (2) The general manager; and secretary; ~~and~~ ~~auditor shall must~~ receive such the compensation ~~as that~~  
 23 the board ~~shall determine~~ determines, and each shall serve at the pleasure of the board."

24  
 25 **Section 3.** Section 7-13-2278, MCA, is amended to read:

26 **"7-13-2278. Duties of administrative personnel.** (1) The general manager has full charge and control  
 27 of the maintenance, operation, and construction of all works and systems of the district, with full power and  
 28 authority to employ and discharge all employees and assistants at pleasure and prescribe their duties, and shall,  
 29 subject to the approval of the board of directors, fix their compensation. The general manager shall ENSURE THAT  
 30 THE DISTRICT ESTABLISHES AND MAINTAINS A SYSTEM OF AUDITING AND ACCOUNTING THAT SHOWS THE FINANCIAL

1 CONDITION OF THE DISTRICT, DRAW OR CAUSE THE SECRETARY TO DRAW WARRANTS TO PAY DEMANDS MADE AGAINST  
 2 THE DISTRICT THAT HAVE BEEN FIRST APPROVED BY AT LEAST THREE MEMBERS OF THE BOARD AND THE GENERAL  
 3 MANAGER, AND perform other duties that may be imposed by the board. The general manager shall report to the  
 4 board in accordance with rules that it may adopt.

5 (2) The secretary shall countersign all contracts on behalf of the district and perform other duties that  
 6 may be imposed by the board.

7 ~~(3) The auditor is charged with the duty of installing and maintaining a system of auditing and accounting~~  
 8 ~~that must completely and at all times show the financial condition of the district. The auditor shall draw warrants~~  
 9 ~~to pay demands made against the district when the demands have been first approved by at least three members~~  
 10 ~~of the board and by the general manager."~~

11

12 **Section 4.** Section 7-13-2279, MCA, is amended to read:

13 **"7-13-2279. Performance bonds for administrative personnel.** The general manager, secretary, and  
 14 ~~auditor~~ and all other employees or assistants of ~~said~~ the district who may be required to do so by the board of  
 15 directors shall give bonds to the district, conditioned for the faithful performance of their duties, as the board from  
 16 time to time may provide."

17

18 **Section 5.** Section 75-6-305, MCA, is amended to read:

19 **"75-6-305. Joint exercise of powers by certain public agencies -- agreements among agencies**  
 20 **-- filing of agreement -- prohibition against competition -- retirement of bonds -- consent of public agency.**

21 (1) Any powers, privileges, or authority of a public agency of this state relating to public water supplies or the  
 22 transportation or treatment of wastewater may be exercised jointly with any other public agency of this state or  
 23 with any agency of the United States to the extent that the laws of the United States permit. An agency of the  
 24 state government when acting jointly with any public or private agency may exercise all of the powers, privileges,  
 25 and authority conferred by this part upon a public agency.

26 (2) A public agency may enter into agreements with one or more other public agencies for the purpose  
 27 of organizing an authority. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the  
 28 governing bodies of the participating public agencies is necessary before any agreement may take effect.

29 (3) An agreement must specify the following:

30 (a) its duration;

1 (b) the precise organization, composition, and nature of the authority created, together with the powers  
2 delegated to the authority;

3 (c) its purpose or purposes;

4 (d) the manner of financing for the authority and of establishing and maintaining a budget for the  
5 authority;

6 (e) the permissible methods for partial or complete termination of the agreement and for disposing of  
7 property upon partial or complete termination;

8 (f) the manner of acquiring, holding, and disposing of real and personal property of the authority; and

9 (g) any other necessary and proper matters.

10 (4) An agreement may be amended to include additional public agencies by consent of two-thirds of the  
11 signatories to the agreement, if the terms of the agreement are not changed. Otherwise, a new agreement with  
12 the new public agency must be made. When only two public agencies form an authority, both parties shall  
13 consent to the amendment of the agreement to include additional public agencies.

14 (5) Prior to taking effect, an agreement made under this part must be filed with the clerk of the county  
15 commission of each county in which a member of the authority is located and the agreement then must also be  
16 filed with the secretary of state, accompanied by a certificate from the clerk of the county commission of the  
17 county or counties where filed, stating that the agreement has been filed in that county.

18 (6) A public agency that enters into an agreement made under this part may not offer or provide water  
19 or wastewater services in competition with another public agency entering into the agreement.

20 (7) A public agency that enters into an agreement made under this part may not withdraw from the  
21 agreement until the outstanding bonded indebtedness of the authority is retired or the bondholders are otherwise  
22 protected.

23 (8) (a) An authority may not provide water or wastewater services to end users located within the  
24 jurisdiction of a public agency that owns or operates a community water system or a public sewage system, as  
25 those terms are defined in 75-6-102, without the consent of the governing body of the public agency through the  
26 adoption of a resolution or ordinance.

27 (b) The governing body may not adopt a resolution or ordinance without first holding a public hearing.  
28 The hearing must address relevant factors relating to the provision of the water or wastewater services, including  
29 but not limited to the scope of the proposed service, rates and charges, the indebtedness of the public agency  
30 and the authority, and the rights and obligations of the persons or entities to be served. Notice must be given as

1 provided in 7-1-2121 or 7-1-4127.

2 (c) For purposes of this subsection (8), "governing body" means the council, commission, board of  
3 directors, or other legislative body charged with governing the public agency."

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5 **NEW SECTION. Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable  
6 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part  
7 remains in effect in all valid applications that are severable from the invalid applications.

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9 **NEW SECTION. Section 7. Effective date.** [This act] is effective ~~on passage and approval~~ JULY 1,  
10 2011.

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