



AN ACT GENERALLY REVISING WATER AND SEWER LAWS; REVISING THE METHOD OF ESTABLISHING THE MONTHLY SALARY FOR A MEMBER OF THE BOARD OF DIRECTORS OF A COUNTY WATER AND SEWER DISTRICT; PROVIDING THAT A BOARD MEMBER MAY RECEIVE A CERTAIN SALARY IF PROPOSED BY THE PRESIDENT OF THE BOARD AND APPROVED BY THE MEMBERS OF THE DISTRICT; CLARIFYING THE DUTIES OF BOARD PRESIDENTS; AUTHORIZING A VOTE ON THE MONTHLY SALARY OF BOARD MEMBERS; PROVIDING CRITERIA FOR DETERMINING A VACANCY ON A WATER AND SEWER DISTRICT BOARD; ELIMINATING DATE REQUIREMENTS FOR SUBMITTING WATER AND SEWER DISTRICT ASSESSMENTS TO THE CLERK AND RECORDER; REPEALING PROCEDURES FOR CHALLENGING MUNICIPAL SEWER SYSTEM RATES BY FILING A COMPLAINT WITH THE PUBLIC SERVICE COMMISSION; ELIMINATING PUBLIC SERVICE COMMISSION REGULATION OF MUNICIPAL SEWER AND WATER SYSTEMS AND RATES; AMENDING SECTIONS 7-3-4302, 7-13-2225, 7-13-2262, 7-13-2272, 7-13-2273, 7-13-2282, 7-13-4312, 69-3-101, AND 76-3-103, MCA; REPEALING SECTIONS 7-13-4208 AND 7-13-4310, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1. Vacancies.** A vacancy is created when any of the following events occurs before the expiration of the term of the incumbent:

- (1) death;
- (2) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent is mentally ill;
- (3) resignation;
- (4) removal from office;
- (5) neglect or refusal to perform the duties required by this part for 3 consecutive months, except when prevented by sickness or when absent from the district by permission of the board of directors;
- (6) conviction of a felony or a violation of official duties; or
- (7) the decision of a court declaring the incumbent's election or appointment void.

**Section 2.** Section 7-3-4302, MCA, is amended to read:

**"7-3-4302. Construction.** (1) Except as otherwise provided in ~~this part and part 44 and this part~~, all acts, and parts of acts, and all laws now in force or hereafter enacted relative to municipal corporations are hereby continued in full force and effect and shall be considered and construed as are not repealed by ~~this part and part 44~~ except insofar as the same may be in and this part unless they conflict or are inconsistent with the provisions of ~~this part and part 44 and this part~~.

(2) ~~This part and part Part 44 and this part~~ do not repeal or modify Title 69, chapter 3, or 69-4-101, and ~~this part and part 44 and this part~~ do not curtail or impair the power or authority of the public service commission; and any order made, action taken, or regulation provided by the commission shall supersede and nullify any order, regulation, ordinance, or other action authorized by ~~this part or part 44~~ in conflict with any such order, regulation, or action of said public service commission. However, the annual report relating to the operation of a public utility owned by a municipality operating under ~~this part and part 44~~ to be made to the public service commission shall conform to the fiscal year of the city or town."

**Section 3.** Section 7-13-2225, MCA, is amended to read:

**"7-13-2225. Combination of elections.** (1) The board of county commissioners in its discretion may combine in one election the election on the formation of the district, the election of directors, ~~and~~ the election on incurring a bonded indebtedness, and, if applicable, the vote on the proposed monthly salary for members of the board of directors so that the electors of the district may vote on all of these matters on the same date and at the same time.

(2) If the elections are combined, the board of county commissioners shall so declare by resolution containing the provisions required by 7-13-2321. If the elections are combined, the notice of the election ~~shall~~ must contain the names of the candidates, ~~and~~ the details concerning the bonded indebtedness, and, if applicable, the proposed monthly salary for members of the board of directors as provided in 7-13-2273.

(3) Candidates for the office of director shall be nominated in the manner required by 7-13-2241 and 7-13-2246."

**Section 4.** Section 7-13-2262, MCA, is amended to read:

**"7-13-2262. Insufficient candidates -- vacancies on board of directors -- appointment of entire board.** (1) If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held, the board of directors shall declare elected by acclamation the candidate who filed a nominating petition for the position. If no candidate filed a nominating petition for the position, the board of directors shall make an appointment to fill the position and the term is the same as if the director were elected.

(2) (a) Except as provided in subsections (3) and (4), any vacancy in the board of directors, whether the vacant office is elective or appointive, must be filled by the remaining directors.

(b) A vacancy must be determined in accordance with [section 1].

(3) If there are no directors remaining on the board and no nominees for any director position to be elected, the county commissioners may appoint the number of directors specified in 7-13-2232(1). If the district lies in more than one county, the county commissioners of each county with territory included in the district shall jointly appoint the directors. The county commissioners shall stagger the terms of the directors appointed.

(4) If the boundaries of the district include any municipality or municipalities and a new board must be appointed as provided in subsection (3), the board shall include one additional director to be appointed by the mayor of the municipality for which the additional director is allowed.

(5) Following the appointment of a board in accordance with subsection (3), the directors must be elected as provided in this part."

**Section 5.** Section 7-13-2272, MCA, is amended to read:

**"7-13-2272. Duties of board president.** (1) The president shall sign all contracts on behalf of the district and perform ~~such~~ other duties as may be imposed by the board of directors.

(2) The president may propose a monthly salary in excess of the amounts provided in 7-13-2273(2) for the members of the board of directors. The proposed monthly salary must be approved by the voters in the district pursuant to 7-13-2273."

**Section 6.** Section 7-13-2273, MCA, is amended to read:

**"7-13-2273. Compensation of members of board -- approval by voters of district.** (1) Each of the members of the board of directors ~~shall~~ may receive a monthly salary, ~~that may not exceed the following amounts:~~

- ~~\_\_\_\_\_ (1) \$60 in districts with a population of no more than 500 persons;~~
- ~~\_\_\_\_\_ (2) \$80 in districts with a population that exceeds 500 but is no more than 5,000 persons; and~~
- ~~\_\_\_\_\_ (3) \$100 in districts with a population of more than 5,000 persons.~~
- (2) Except as provided in subsection (3), a salary may not exceed the following amounts:
  - (a) \$60 in districts with a population of no more than 500 persons;
  - (b) \$80 in districts with a population that exceeds 500 but is no more than 5,000 persons; and
  - (c) \$100 in districts with a population of more than 5,000 persons.
- (3) A salary may exceed the amounts provided under subsection (2) if the salary is in an amount proposed by the president of the board and approved by one of the following methods:
  - (a) an affirmative vote of the majority of the votes cast by the qualified voters of the district in an election held either by mail ballot, as provided in Title 13, chapter 19, or in conjunction with a regular or primary election;
  - or
  - (b) an affirmative vote of the majority of the qualified voters of the district who are present and voting at an annual organizational meeting of the district.
- (4) A newly elected member of the board of directors must receive the monthly salary, if any, established for the board member position at the time that the member was elected.
- (5) A vote on the question of the proposed salary for members of the board of directors may be held in combination with the elections provided in 7-13-2225 if the vote is conducted by mail ballot or held in conjunction with a regular or primary election.
- (6) (a) Notice of the vote on the proposed monthly salary for the members of the board of directors must be provided to the members of the district and state the following:
  - (i) the date on which the vote will be held;
  - (ii) the manner in which the vote will be held;
  - (iii) the amount of the proposed monthly salary for the members of the board of directors; and
  - (iv) any other information regarding the vote that may be necessary.
- (b) The notice must be published as provided in 13-1-108.
- (7) For purposes of this section, "qualified voters of the district" means the voters qualified to vote on the question of the creation of the district as provided in 7-13-2212."

**Section 7.** Section 7-13-2282, MCA, is amended to read:

**"7-13-2282. Hearing on assessment.** (1) At the time fixed, the board of directors shall meet and hear all objections and for that purpose may adjourn from day to day.

(2) The board of directors may by resolution modify the assessment in whole or in part. A copy of the resolution, certified by the secretary, must be delivered to the county clerk and recorder of the county in which the lot, tract, or parcel is located within 2 days after passage of the resolution ~~and not later than July 15 preceding the county's next fiscal year.~~

(3) At any time within 30 days after the date of the first publication of the notice of proposed assessments, any owner of property to be assessed for the costs of making the improvements may make written protest against the levy of assessments. The protest must be in writing, identify the property in the district owned by the protestor, and be signed by all owners of the property except as provided in 7-13-2290. The protest must be delivered to the secretary of the district not later than 5 p.m. of the last day of the 30-day period provided for in this subsection. The secretary shall endorse the date and hour of receipt on the protest.

(4) If the board of directors finds that a protest with respect to the method or methods of assessment described in the resolution is made by the owners of property in the district to be assessed for more than 50% of the cost of improvements, the board of directors may not use the method or methods of assessment described in the resolution. A protest does not bar the board of directors from adopting subsequent resolutions pursuant to 7-13-2280, using a different method of assessment, and levying the assessments following notice and hearing as provided in 7-13-2281 and this section or, not less than 6 months after the receipt of sufficient protests, instituting proceedings under 7-13-2280, 7-13-2281, and this section proposing the same method of assessment."

**Section 8.** Section 7-13-4312, MCA, is amended to read:

**"7-13-4312. Authorization to furnish water and sewer services to persons located outside municipality.** ~~The city council of any city within Montana~~ A city council that owns and operates a municipal water system, ~~and/or a municipal sewer system, or both,~~ to furnish water and sewer services to the inhabitants of ~~such~~ a city as a public utility ~~shall, in addition to all other powers, have power to~~ may furnish water from ~~such~~ the water system and sewage services from ~~such~~ the sewer system to the inhabitants or to any person, factory, industry, or producer of farm or other products located outside of the corporate limits of ~~such~~ the city at reasonable rates filed by the city or town council ~~and approved, when otherwise required by statute, by the public service~~

commission. ~~Such~~ The city council is further empowered to may make collections for ~~furnishing~~ to provide water and sewer services in the same manner as collections are made within the corporate limits."

**Section 9.** Section 69-3-101, MCA, is amended to read:

**"69-3-101. Meaning of term "public utility".** (1) The term "public utility", within the meaning of this chapter, ~~shall embrace~~ includes every corporation, both public and private, company, individual, association of individuals, and their lessees, trustees, or receivers appointed by any court ~~whatsoever~~, that ~~now or hereafter may own, operate, or control~~ own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

- (a) heat;
- (b) street-railway service;
- (c) light;
- (d) power in any form or by any agency;
- (e) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities; ~~or towns, and villages~~ or elsewhere;
- (f) regulated telecommunications service.

(2) The term "public utility" does not include:

- (a) privately owned and operated water, sewer, or ~~combination~~ water and sewer systems that do not serve the public;
- (b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter 13, parts 22 and 23;
- (c) except as provided in chapter 7, municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44;

or

~~(e)~~(d) a person exempted from regulation as a public utility as provided in 69-3-111."

**Section 10.** Section 76-3-103, MCA, is amended to read:

**"76-3-103. Definitions.** As used in this chapter, unless the context or subject matter clearly requires

otherwise, the following definitions apply:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Cluster development" means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.

(3) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(4) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

(5) "Examining land surveyor" means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.

(6) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

(7) "Governing body" means a board of county commissioners or the governing authority of a city or town organized pursuant to law.

(8) "Immediate family" means a spouse, children by blood or adoption, and parents.

(9) "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.

(10) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(11) "Plat" means a graphical representation of a subdivision showing the division of land into lots,

parcels, blocks, streets, alleys, and other divisions and dedications.

(12) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.

(13) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter, the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

(14) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

(15) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.

(16) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not merge parcels of land under subsection (16)(b)(i) unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels,

clearly expressing the owner's intent to effect a merger of parcels."

**Section 11. Repealer.** The following sections of the Montana Code Annotated are repealed:

- 7-13-4208. Procedure to challenge rates.
- 7-13-4310. Role of public service commission unaffected.

**Section 12. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 13, part 22, and the provisions of Title 7, chapter 13, part 22, apply to [section 1].

**Section 13. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 15. Applicability.** The provisions of [section 6] apply to a change in salary occurring after [the effective date of this act].

- END -

I hereby certify that the within bill,  
HB 0380, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

HOUSE BILL NO. 380

INTRODUCED BY M. BLASDEL, MCCHESENEY, OLSON, BELCOURT

AN ACT GENERALLY REVISING WATER AND SEWER LAWS; REVISING THE METHOD OF ESTABLISHING THE MONTHLY SALARY FOR A MEMBER OF THE BOARD OF DIRECTORS OF A COUNTY WATER AND SEWER DISTRICT; PROVIDING THAT A BOARD MEMBER MAY RECEIVE A CERTAIN SALARY IF PROPOSED BY THE PRESIDENT OF THE BOARD AND APPROVED BY THE MEMBERS OF THE DISTRICT; CLARIFYING THE DUTIES OF BOARD PRESIDENTS; AUTHORIZING A VOTE ON THE MONTHLY SALARY OF BOARD MEMBERS; PROVIDING CRITERIA FOR DETERMINING A VACANCY ON A WATER AND SEWER DISTRICT BOARD; ELIMINATING DATE REQUIREMENTS FOR SUBMITTING WATER AND SEWER DISTRICT ASSESSMENTS TO THE CLERK AND RECORDER; REPEALING PROCEDURES FOR CHALLENGING MUNICIPAL SEWER SYSTEM RATES BY FILING A COMPLAINT WITH THE PUBLIC SERVICE COMMISSION; ELIMINATING PUBLIC SERVICE COMMISSION REGULATION OF MUNICIPAL SEWER AND WATER SYSTEMS AND RATES; AMENDING SECTIONS 7-3-4302, 7-13-2225, 7-13-2262, 7-13-2272, 7-13-2273, 7-13-2282, 7-13-4312, 69-3-101, AND 76-3-103, MCA; REPEALING SECTIONS 7-13-4208 AND 7-13-4310, MCA; AND PROVIDING AN APPLICABILITY DATE.