

HOUSE BILL NO. 102

INTRODUCED BY H. JACOBSON

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

ABILL FOR AN ACT ENTITLED: "AN ACT REVISING SPECIAL PURPOSE DISTRICT LAWS; MODIFYING THE PROTEST PROVISIONS FOR CITY PROPERTIES INCLUDED IN A PROPOSED RURAL SPECIAL IMPROVEMENT DISTRICT; MODIFYING THE PROTEST PROVISIONS FOR PROPERTIES OUTSIDE A CITY THAT ARE INCLUDED IN A PROPOSED SPECIAL IMPROVEMENT DISTRICT; CREATING AN EXCEPTION TO THE NOTICE REQUIREMENTS FOR A RESOLUTION OF INTENTION TO CREATE A SPECIAL IMPROVEMENT DISTRICT; CREATING AN EXCEPTION TO THE PROTEST AGAINST PROPOSED WORK OR AGAINST THE EXTENT OR CREATION OF A SPECIAL IMPROVEMENT DISTRICT; MODIFYING A CITY COUNCIL'S AUTHORITY TO ORDER IMPROVEMENTS; MODIFYING VOTER QUALIFICATIONS TO VOTE ON THE CREATION OF A COUNTY WATER OR SEWER DISTRICT; ELIMINATING THE PROPERTY TAX LIMITATIONS FOR IRRIGATION DISTRICT BONDING; PROHIBITING THE BOARD OF COMMISSIONERS OF AN IRRIGATION DISTRICT OR BOARD OF COUNTY COMMISSIONERS ON BEHALF OF AN IRRIGATION DISTRICT FROM LEVYING PROPERTY TAXES AS PROVIDED IN TITLE 15, CHAPTER 6, FOR IRRIGATION DISTRICT PURPOSES; AMENDING SECTIONS 7-12-2102, 7-12-4102, 7-12-4106, 7-12-4110, 7-12-4114, 7-13-2212, 7-13-2328, 85-7-206, 85-7-1953, 85-7-1973, 85-7-2104, 85-7-2117, 85-7-2134, AND 85-7-2136, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 7-12-2102, MCA, is amended to read:

"7-12-2102. Authorization to create rural improvement districts -- property owners may petition for creation. (1) Whenever the public interest or convenience may require, the board of county commissioners may order and create special improvement districts outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase one or more of the improvements of the kind described in 7-12-4102, in or for the benefit of the special improvement district.

(2) The board of county commissioners may order and create a special improvement district upon the receipt of a petition to create a special improvement district that contains the consent of all of the owners of property to be included in the district.

(3) The board of county commissioners may order and create special improvement districts covering projects abutting the city limits and include properties inside the city where the rural improvement district abuts and benefits that property. Property owners within the proposed district boundaries inside the city may not be included in the rural special improvement district if ~~40% of those property owners~~, under the assessment methodology provided in the resolution of intention, the owners of lots, tracts, or parcels in the city representing not less than 40% of the total projected assessments against properties in the city protest the creation of the rural special improvement district. The property inside the city must be treated in a similar manner as to improvements, notices, and assessments as the property outside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the rural special improvement district prior to passing the resolution of intention or resolution creating the rural special improvement district. A copy of the resolution of intention and the resolution creating the rural special improvement district must be provided to the city clerk upon the passage of the respective resolutions."

Section 2. Section 7-12-4102, MCA, is amended to read:

"7-12-4102. Authorization for creation of special improvement districts -- petition for creation. (1)

The city or town council may:

- (a) create special improvement districts, designating them by number;
 - (b) extend the time for payment of assessments levied upon the districts for district improvements for a period not exceeding 20 years or, if refunding bonds are issued pursuant to 7-12-4194, for a period not exceeding 30 years;
 - (c) make the assessments payable in installments; and
 - (d) pay all expenses of whatever character incurred in making the improvements with special improvement warrants or bonds.
- (2) Whenever the public interest or convenience requires, the city council may:
- (a) create special improvement districts for acquiring by purchase, building, constructing, or maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;
 - (b) create special improvement districts for acquiring by purchase or building and constructing municipal swimming pools and other recreation facilities;
 - (c) create special improvement districts and order the whole or a portion, either in length or width, of one or more of the streets, avenues, alleys, or places or public ways of the city:
 - (i) graded or regraded to the official grade;

- (ii) planked or replanked;
- (iii) paved or repaved;
- (iv) macadamized or remacadamized;
- (v) graveled or regraveled;
- (vi) piled or repiled;
- (vii) capped or recapped;
- (viii) surfaced or resurfaced;
- (ix) oiled or reoiled;

(d) create special improvement districts and order the acquisition, construction, or reconstruction within the districts of:

(i) sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings (including the planting of grassplots and setting out of trees);

(ii) sewers, ditches, drains, conduits, and channels for sanitary or drainage purposes, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances;

(iii) waterworks, water mains, and extensions of water mains;

(iv) pipes, hydrants, and hose connections for irrigating purposes;

(v) appliances for fire protection;

(vi) tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect them from overflow or injury by water;

(vii) the opening of streets, avenues, and alleys and the planting of trees on the streets, avenues, and alleys;

(e) create special improvement districts and order the construction or reconstruction in, over, or through property or rights-of-way owned by the city of:

(i) tunnels, sewers, ditches, drains, conduits, and channels for sanitary or drainage purposes, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances;

(ii) pipes and hose connections for irrigating and hydrants and appliances for fire protection;

(iii) breakwaters, levees, retaining walls, and bulkheads; and

(iv) walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in the city from overflow by water;

(f) create special improvement districts to make monetary advances or contributions to aid in the construction of additional natural gas and electric distribution lines and telecommunications facilities in order to extend those public utility services;

(g) create special improvement districts and order work to be done that is considered necessary to improve the whole or a portion of the streets, avenues, sidewalks, alleys, places, or public ways, property, or right-of-way of the city;

(h) create special improvement districts to acquire and improve by purchase, gift, bequest, lease, or other means land to be designated as public park or open-space land;

(i) create special improvement districts for the conversion of overhead utilities to underground locations in accordance with 69-4-311 through 69-4-314;

(j) create special improvement districts for the purchase, installation, maintenance, and management of alternative energy production facilities; and

(k) maintain, preserve, and care for any of the improvements authorized in this section.

(3) The city governing body may order and create a special improvement district upon the receipt of a petition to create a special improvement district that contains the consent of all of the owners of property to be included in the district.

~~(3)~~(4) The city governing body may order and create special improvement districts covering projects abutting the city limits and include properties outside the city when the special improvement district abuts and benefits that property. Property owners within the proposed district boundaries outside the city may not be included in the special improvement district if ~~40% of those property owners, under the assessment methodology provided in the resolution of intention, the owners of lots, tracts, or parcels outside the city representing not less than 40% of the total projected assessments against properties outside the city~~ protest the creation of the special improvement district. The property outside the city must be treated in a similar manner as to improvements, notices, and assessments as the property inside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the special improvement district prior to passing the resolution of intention or the resolution creating the special improvement district. A copy of the resolution of intention and the resolution creating the special improvement district must be provided to the county commissioners upon the passage of the respective resolutions."

Section 3. Section 7-12-4106, MCA, is amended to read:

"7-12-4106. Notice of passage of resolution of intention -- exception. (1) ~~Upon~~ Except as provided

in subsection (4), upon having passed the resolution of intention pursuant to 7-12-4104, the council shall give notice of the passage of the resolution of intention.

(2) The notice must be published as provided in 7-1-2121. A copy of the notice must be mailed to each person, firm, or corporation or the agent of the person, firm, or corporation having real property within the proposed district listed in the owner's name upon the last-completed assessment roll for state, county, and school district taxes, at the owner's last-known address, upon the same day that the notice is first published or posted.

(3) (a) The notice must describe the general character of the proposed improvements, state the estimated cost of the improvements, describe generally the method by which the costs of the improvements will be assessed, and designate the time when and the place where the council will hear and pass upon all written protests that may be made against the making or acquisition of the improvements or the creation of the district.

(b) If the revolving fund is to be pledged to secure the payment of bonds and warrants, the notice must include a statement that, subject to the limitations in 7-12-4222:

(i) the general fund of the city or town may be used to provide loans to the revolving fund; or

(ii) a general tax levy may be imposed on all taxable property in the city or town to meet the financial requirements of the revolving fund.

(c) The notice must refer to the resolution on file in the office of the city clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice must state the exact purchase price of the existing improvement.

(4) The provisions of this section do not apply to a district that is created under 7-12-4114 following receipt of a petition as provided in 7-12-4102."

Section 4. Section 7-12-4110, MCA, is amended to read:

"7-12-4110. Protest against proposed work or district. (1) (a) Except as provided in ~~subsection subsections~~ (1)(b) and (2), at any time within 15 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for the work may make written protest against the proposed work or against the extent or creation of the district to be assessed, or both.

(b) If the period described in subsection (1)(a) includes a holiday as enumerated in 1-1-216, other than a Sunday, the period must be extended for an additional 2 days.

(2) The provisions of subsection (1) do not apply to a district created under 7-12-4114 as a result of a petition submitted as provided in 7-12-4102(3). ~~(2)(3)~~ A protest must be in writing, identify the property in the district owned by the protestor, and be signed by all the owners of the property. The protest must be delivered

to the clerk of the city or town council or commission not later than 5 p.m. of the last day within the protest period. The clerk shall endorse on the protest document the date and hour of its receipt by the clerk.

~~(3)~~(4) (a) For purposes of this section, "owner" means, as of the date a protest is filed, the record owner of fee simple title to the property.

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

Section 5. Section 7-12-4114, MCA, is amended to read:

"7-12-4114. Resolution creating special improvement district. (1) The council may order proposed improvements after:

(a) no protests have been delivered to the clerk of the city council within the time prescribed in 7-12-4110 after the date of the first publication of the notice of the passing of the resolution of intention;

(b) a protest has been found to be insufficient or has been overruled; ~~or~~

(c) a protest against the extent of the proposed district has been heard and denied; or

(d) a resolution creating the district following receipt of a petition as provided in 7-12-4102(3) has been passed.

(2) Before ordering any of the proposed improvements, the council shall pass a resolution creating the special improvement district in accordance with the resolution of intention introduced and passed by the council."

Section 6. Section 7-13-2212, MCA, is amended to read:

"7-13-2212. Qualifications to vote on question of creating district. (1) Except as provided in subsection (2), an individual is not entitled to vote at any election under the provisions of part 23 and this part unless the individual possesses all the qualifications required of electors under the general election laws of the state and is a resident of the proposed district or the owner of taxable real property located within the county in which the individual proposes to vote and situated within the boundaries of the proposed district.

(2) An individual who is the owner of the real property described in subsection (1) need not possess the qualifications required of an elector in 13-1-111(1)(c), provided that the elector is qualified if registered to vote in any state of the United States and files proof of registration with the election administrator at least ~~20~~ 40 days prior to the election in which the individual intends to vote."

Section 7. Section 7-13-2328, MCA, is amended to read:

"7-13-2328. Sufficient vote required to issue bonds. (1) (a) When the board of directors canvasses

the vote of a bond election, # the board shall determine the approval or rejection of the bond proposition as provided in subsections (1)(b) through (1)(d) after calculating the percentage of qualified electors voting in the bond election in the following manner:

(i) determine the total number of electors of the district who were qualified to vote at the bond election;

(ii) determine the total number of qualified electors who voted at the bond election;

(iii) calculate the percentage of qualified electors voting at the bond election by dividing the amount determined in subsection (1)(a)(ii) by the amount determined in subsection (1)(a)(i).

(b) When the calculated percentage in subsection (1)(a)(iii) is 40% or more, the bond proposition is approved and adopted if a majority of the votes are cast in favor of the proposition; otherwise it must be rejected.

(c) When the calculated percentage in subsection (1)(a)(iii) is more than 30% but less than 40%, the bond proposition is approved and adopted if 60% or more of the votes have been cast in favor of the proposition; otherwise it must be rejected.

(d) When the calculated percentage in subsection (1)(a)(iii) is 30% or less, the bond proposition must be rejected.

(2) For purposes of this section, the total number of electors of the district who are qualified to vote at the bond election equals the sum of:

(a) the individuals who possess all the qualifications required of electors under the general election laws of the state and who are residents of the district; and

(b) the individuals who have satisfied the requirements of 7-13-2212(2) with respect to the particular bond election.

~~(2)(3)~~ If the canvass of the vote establishes the approval and adoption of the bond proposition, then the board of directors may by resolution provide for the form and execution of the bonds and for the issuance of the bonds."

Section 8. Section 85-7-206, MCA, is amended to read:

"85-7-206. Basis and apportionment of annual tax. ~~Subject to 15-10-420, the~~ The annual tax levy and the apportionment and distribution of the total amount required to be raised in any year must be determined and imposed in accordance with 85-7-2104 and the provisions and limitations of law applicable to irrigation districts organized under the provisions of parts 1 and 15 of this chapter."

Section 9. Section 85-7-1953, MCA, is amended to read:

"85-7-1953. Amount owed United States -- lien and special tax. All amounts to be paid to the United States under any contract made pursuant to this part between the district and the United States are a general obligation of the district, and the amounts to be paid to the United States are a lien upon the irrigation system of the district. ~~Subject to 15-10-420, all~~ All lands within the district or added to the district must be subject to a special tax or assessment authorized under 85-7-2104 for the payment of all amounts to be paid to the United States under the contract between the district and the United States. The special tax or assessment constitutes a first and prior lien on the land against which the tax or assessment is levied to the same extent and with like force and effect as taxes levied for state and county purposes."

Section 10. Section 85-7-1973, MCA, is amended to read:

"85-7-1973. Amount owed state -- lien and special tax. All amounts owed to the state under any contract made under 85-7-1971 through 85-7-1975 between the district and the state of Montana establish a general obligation of the district for payment, and any amounts to be paid to the state of Montana constitute a lien upon the irrigation system of the district. ~~Subject to 15-10-420, all~~ All lands now within the district or added to the district are subject to a special tax or assessment under 85-7-2104 for the payment of all amounts owed to the state under the contract between the district and the state of Montana. The special tax or assessment constitutes a first and prior lien on the land against which it is levied to the same extent and with the same force and effect as taxes levied for state and county purposes."

Section 11. Section 85-7-2104, MCA, is amended to read:

"85-7-2104. Annual tax levy -- apportionment when tracts divided. (1) (a) On or before the first Monday in August each year, the board of commissioners of each irrigation district organized under parts 1 and 15 shall ascertain:

(i) the total amount required to be raised in that year for the general administrative expenses of the district, including the cost of maintenance and repairs; and

(ii) the total amount to be raised that year for interest on and principal of the outstanding bonded or other indebtedness of the district for which bonds of the district have not been deposited with the United States as provided in 85-7-1906.

(b) ~~Subject to 15-10-420, the~~ The board shall levy against each 40-acre tract or fractional lot, as designated by United States government survey, or platted lot if land is subdivided in lots and blocks (or where land is owned in less than 40-acre tracts or in less than the platted lot, against each tract) in the district, that

portion of the respective total amounts to be raised that the total irrigable area of any tract or lot bears to the total irrigable area of the lands in the district, so that each acre of irrigable land in the district is assessed and required to pay the same amount as every other acre of irrigable land in the district, unless otherwise specifically provided by the board. The board may also charge the administrative charge authorized in 85-7-2103(1).

(c) Indebtedness under subsection (1) includes debt incurred under any contract between the district and the United States but excludes any indebtedness incurred by the district on behalf of a subdistrict.

(2) (a) On or before the first Monday in August each year, the board of commissioners of each irrigation district organized under parts 1 and 15 for which a subdistrict has been created pursuant to 85-7-404 shall determine the total amount to be raised that year for interest and principal payments on the outstanding bonded or other indebtedness of the district incurred on behalf of the subdistrict.

(b) The board shall levy against each 40-acre tract or fractional lot, as designated by United States government survey, or platted lot if land is subdivided in lots and blocks (or where land is owned in less than 40-acre tracts or in less than the platted lot, against each tract) in the subdistrict, the portion of the total amount to be raised apportioned according to the ratio of the total irrigable area of the tract or lot to the total irrigable area of the lands in the subdistrict, so that each acre of irrigable land in the subdistrict is assessed and required to pay the same amount as every other acre of irrigable land in the subdistrict, unless otherwise specifically provided by the board. The board may also charge the administrative charge authorized in 85-7-2103(1).

(3) ~~In the event that~~ If the ownership of any 40-acre tract or other subdivision of land in the district or subdistrict is divided after a special tax or assessment against the land has been levied, each of the owners of a tract or subdivision is entitled to have the special tax or assessment equitably apportioned to and against the divisions of the tract or subdivision, so that each owner is enabled to pay a special tax or assessment against the owner's portion of the tract or subdivision and have the land discharged from the lien. The charge against any separately owned tract of land may not be less than \$5.

(4) The board of commissioners of an irrigation district or the board of county commissioners on behalf of a district may not levy property taxes as provided in Title 15, chapter 6, for district administration, operations, debt service, or any other district purpose."

Section 12. Section 85-7-2117, MCA, is amended to read:

"85-7-2117. Conclusiveness of tax or assessment. In determining the proper and just tax or assessment to be levied against any land for district purposes, the finding of the board of commissioners of the district, in the absence of fraud or mistake and subject to 15-10-420, are conclusive and final, except as otherwise

provided in this part."

Section 13. Section 85-7-2134, MCA, is amended to read:

"85-7-2134. Levy of taxes and assessments by county commissioners. If for any reason a levy of taxes or assessments under 85-7-2104 is not made for any irrigation district in any year by the board of commissioners of the district within the time provided by 85-7-2104, the board of county commissioners of the county in which the district is situated shall, not later than the second Monday in August, ascertain the total amount to be raised for all purposes of the district. ~~Subject to 15-10-420, the~~ The board of county commissioners shall make the levy pursuant to 85-7-2104 that should have been made by the board of commissioners of the district and shall furnish the county clerk with a list of the lands and the amount of taxes or assessments as provided in 85-7-2136. The levy has the same force and effect as though made by the board of commissioners of the district. This section applies only to irrigation districts having a bonded indebtedness and actually in possession of a dependable water supply system and furnishing substantial amounts of water to bona fide users."

Section 14. Section 85-7-2136, MCA, is amended to read:

"85-7-2136. Collection of taxes or assessment. (1) ~~Subject to 15-10-420 and on~~ On or before the third Monday in August of each year, the board of commissioners shall furnish to the department of revenue a correct list of all the district lands in the county, together with the amount of the total taxes or assessments against the lands for district purposes. The department of revenue shall immediately upon receipt of the list enter the assessment roll in the property tax record of the county subject to taxation or assessment under 85-7-2104 for each year.

(2) The county treasurer of each county in which any irrigation district is located, in whole or in part, shall collect and receipt for all taxes and assessments levied by the district, in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. The treasurer shall receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not.

(3) During the water delivery season, as determined by the irrigation district commissioners, the county treasurer shall make available to the board of commissioners of an irrigation district notice of the receipt of payments of district assessments by 9 a.m. on the day following receipt of those payments.

(4) If requested in writing by a board of commissioners of an irrigation district, the county treasurer may receive assistance from an employee of the irrigation district or a commissioner of the district for the purpose of

collecting district assessments as provided in 15-16-102, investing district funds as directed by the board of commissioners of the district, and preparing district assessment notices.

(5) When any real estate on account of which the district taxes and assessments have been levied has been sold to the county and tax certificate of sale is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of the district tax or assessment, together with the penalty and interest to date of payment on the installment. However, the payment may not be considered a redemption of the property from the tax sale but must be credited on account of any redemption that may be made. In case of any payment pursuant to this subsection, a separate tax receipt must be issued showing exactly what assessments have been paid and showing that no other tax on the real estate has been received by the treasurer. The county treasurer may not collect, receive, or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any irrigation district upon which an assessment for the purposes of the irrigation district has been levied unless the assessment levied for irrigation district purposes is either paid as permitted in this section and the receipt for the payment is presented to the county treasurer at the time the taxes are paid or paid at the time the irrigation district taxes are paid."

NEW SECTION. Section 15. Effective date. [This act] is effective on passage and approval.

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