

HOUSE BILL NO. 744  
INTRODUCED BY D. RICE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN SCHOOL LAWS; REVISING THE MORATORIUM ON NEW SCHOOL DISTRICTS TO ALLOW CREATION UNDER CERTAIN CIRCUMSTANCES OF A HIGH SCHOOL DISTRICT SOLELY FOR THE PURPOSE OF EXPANDING AN ELEMENTARY DISTRICT INTO A K-12 SCHOOL DISTRICT; REVISING TERRITORY TRANSFER LAWS RELATED TO THE NEWLY CREATED K-12 DISTRICT; ESTABLISHING PROCEDURES FOR CREATION OF A HIGH SCHOOL DISTRICT BY TRUSTEE RESOLUTION; AMENDING SECTIONS 20-6-104 AND 20-6-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**NEW SECTION. Section 1. Procedure for creation of high school district solely for expansion into K-12 school district -- trustee resolution.** (1) An existing elementary district may create a high school district solely for the purpose of expanding an elementary district into a K-12 district only if:

(a) the nearest elementary school building is located at a distance of at least 40 miles from the nearest accessible high school;

(b) the trip from the nearest elementary school building to the nearest accessible high school is 60 minutes or more over the shortest passable route;

(c) periodically during the school year, the condition of the road makes it impractical to attend the nearest accessible high school; and

(d) at least 50 high school students reside in the elementary district.

(2) The creation of a new high school district may be requested by the trustees of an existing elementary district through passage of a resolution that includes the information outlined in 20-6-105(3) and requests the county superintendent to order an election to allow the electors of the elementary district to consider the proposition to create a high school district solely for the purpose of expanding the elementary school district into a K-12 district.

(3) If the proposition for expansion is approved by the electors of the elementary district and the trustees issue a certificate of election as provided in 20-20-416, the county superintendent shall order the creation of the high school district and oversee the expansion of the high school district into a K-12 district pursuant to 20-6-701.

(4) The county superintendent shall send a copy of the order to the board of county commissioners and to the trustees of the districts affected by the creation of the district.

(5) If a new district is created, the effective date of its creation is the following July 1. The trustees of the elementary district must be designated as the trustees of the new K-12 district.

(6) Until the first school fiscal year in which the new K-12 district enrolls students, the existing high school district shall provide high school instruction to students residing in the newly created K-12 district with the K-12 district providing tuition pursuant to the provisions of 20-5-320 and 20-5-321. The BASE general fund mills for the existing high school district must continue to be assessed against the taxable valuation in the new K-12 district until the beginning of the first school year in which the high school program is operational in the new K-12 district.

(7) If bonded indebtedness has been approved by the voters of the existing high school district prior to [the effective date of this act] but the bonds have not been sold prior to the creation of the new K-12 district, then the future indebtedness of those bonds when those bonds are sold must be paid by levies on the original territory.

(8) If the K-12 school district does not open and operate a high school within 3 years after the effective date of the creation of the new district, the order of the county superintendent creating a new district under this section is void, the new district ceases to exist, and the trustees of the new district have no capacity to act. Those trustees retain authority as trustees of the elementary district.

**Section 2.** Section 20-6-104, MCA, is amended to read:

**"20-6-104. Moratorium on creation of new district -- ~~exception exceptions~~.** (1) ~~A~~ Except as provided in subsections (2) through (4), a school district may not initiate the creation of a new elementary district or a new high school district.

(2) Pursuant to the provisions of [section 1], the trustees or the electors of an existing elementary district may initiate the creation of a new high school district solely for the purpose of expanding into a K-12 district.

(3) If a K-12 district is created under this section and the provisions of [section 1]:

(a) the district boundaries of the newly formed K-12 district must remain within the original boundaries of the district requesting a territory transfer under 20-6-105;

(b) both school boards and the county superintendents must agree in writing before proceeding to a territory transfer under 20-6-105; and

(c) the transfer of territory under 20-6-105 may not be finalized until the newly created K-12 district is operational.

~~(2)(4) This section~~ The moratorium in subsection (1) does not apply to a district that results from the procedure for the dissolution of a K-12 school district pursuant to 20-6-704."

**Section 3.** Section 20-6-105, MCA, is amended to read:

**"20-6-105. Transfer of territory from one district to another -- hearing on effects of proposed transfer -- burden of proof -- standard of proof -- appeal to district court.** (1) Except as provided in 20-6-104, 20-6-214, 20-6-215, 20-6-308, and 20-6-322, a petition to transfer territory from one school district to another may be presented to the county superintendent if:

(a) the petition is signed by 60% of the registered electors qualified to vote at general elections in the territory proposed for transfer;

(b) the territory to be transferred is contiguous to the district to which it is to be attached, includes taxable property, and has school-age children living in it;

(c) the territory to be transferred is not located within 3 miles, over the shortest practicable route, of an operating school in the district from which it is to be transferred; and

(d) the board of trustees of the school district that would receive the territory has approved the proposed transfer by a resolution adopted by a majority of the members of the board of trustees at a meeting for which proper notice was given.

(2) ~~On or after March 27, 2003, once~~ Once a petition to transfer territory has been filed, an additional petition to transfer that territory may not be filed for 4 years.

(3) The petition for a transfer of territory must be delivered to the county superintendent and must:

(a) provide a legal description of the territory that is requested to be transferred and a description of the district to which the territory is to be transferred;

(b) state the reasons why the transfer is requested; and

(c) state the number of school-age children residing in the territory.

(4) If both the trustees of the receiving and transferring school districts have approved the proposed territory transfer in writing, the county superintendent shall grant the transfer.

(5) For any petition that meets the criteria specified in subsection (1) and contains the information required by subsection (3) but that has not been approved in writing by the board of trustees of the school district that would transfer the territory, the county superintendent shall:

(a) not more than 40 days after receipt of the petition, set a place, date, and time for a hearing to consider the petition; and

(b) give notice of the place, date, and time of the hearing. The notice must be posted in the districts affected by the petition for the transfer of territory in the manner prescribed in this title for notices for school elections, with at least one notice posted in the territory to be transferred. Notice must also be delivered to the board of trustees of the school district from which the territory is to be transferred.

(6) The county superintendent shall conduct a hearing as scheduled, and any resident, taxpayer, or representative of the receiving or transferring district must, upon request, be heard. At the hearing, the petitioners have the initial burden of presenting evidence on the proposed transfer's effect on:

(a) the educational opportunity for the students in the receiving and transferring districts, including but not limited to:

- (i) class size;
- (ii) ability to maintain demographic diversity;
- (iii) local control;
- (iv) parental involvement; and
- (v) the capability of the receiving district to provide educational services;

(b) student transportation, including but not limited to:

- (i) safety;
- (ii) cost; and
- (iii) travel time of students;

(c) the economic viability of the proposed new districts, including but not limited to:

(i) the existence of a significant burden on the taxpayers of the district from which the territory will be transferred;

(ii) the significance of any loss in state funding for the students in both the receiving and transferring districts;

(iii) the viability of the future bonding capacity of the receiving and transferring districts, including but not limited to the ability of the receiving district and the transferring district to meet minimum bonding requirements;

(iv) the ability of the receiving district and the transferring district to maintain sufficient reserves; and

(v) the cumulative effect of other transfers of territory out of the district in the previous 8 years on the taxable value of the district from which the territory is to be transferred. In cases where the cumulative effect of other transfers of territory out of the district in the previous 8 years is equal to or greater than 25% of the district's taxable value, the following additional factors must be considered and weighed in the decision:

(A) the district's rate of passage of discretionary levies placed before the voters over the previous 8 years;

(B) the district's reduction or elimination of instructional staff or programs over the previous 8 years; and  
(C) any increase in district taxes over the previous 8 years and the likely increase in district taxes if the transfer is granted.

(7) After receiving evidence from both the proponents and opponents of the proposed territory transfer on the effects described in subsection (6), the county superintendent shall, within 30 days after the hearing, issue findings of fact, conclusions of law, and an order.

(8) If, based on a preponderance of the evidence, the county superintendent determines that the evidence on the effects described in subsection (6) supports a conclusion that a transfer of the territory is in the best and collective interest of students in the receiving and transferring districts and does not negatively impact the ability of the districts to serve those students, the county superintendent shall grant the transfer. If the county superintendent determines that, based on a preponderance of the evidence presented at the hearing, a transfer of the territory is not in the best and collective interest of students in the receiving and transferring districts and will negatively impact the ability of the districts to serve those students, the county superintendent shall deny the territory transfer.

(9) The decision of the county superintendent is final 30 days after the date of the decision unless it is appealed to the district court by a resident, taxpayer, or representative of either district affected by the petitioned territory transfer. The county superintendent's decision must be upheld unless the court finds that the county superintendent's decision constituted an abuse of discretion under this section.

(10) Whenever a petition to transfer territory from one district to another district creates a joint district or affects the boundary of an existing joint district, the petition to transfer territory must be delivered to the county superintendent of the county in which the territory proposed to be transferred is located. The county superintendent shall notify any other county superintendents of counties with districts affected by the petition, and the duties prescribed in this section for the county superintendent must be performed jointly. If the number of county superintendents involved is an even number, the county superintendents shall jointly appoint an additional county superintendent from an unaffected county to join them in conducting the hearing required in subsection (6) and in issuing the decision required in subsection (8). The decision issued under subsection (8) must be made by a majority of the county superintendents.

(11) A petition seeking to transfer territory out of or into a K-12 district must propose the transfer of territory for both elementary and high school purposes. In the case of a proposed transfer out of or into a K-12 district, a petition that fails to propose the transfer of territory for both elementary and high school purposes is invalid for the purposes of this section."

NEW SECTION. **Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 6, part 3, and the provisions of Title 20, chapter 6, part 3, apply to [section 1].

NEW SECTION. **Section 5. Coordination instruction.** If both Senate Bill No. 291 and [this act] are passed and approved, then Senate Bill No. 291 is void.

NEW SECTION. **Section 6. Effective date -- applicability.** [This act] is effective on passage and approval and applies to the creation of new districts on or after [the effective date of this act].

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