

SENATE BILL NO. 550
INTRODUCED BY R. LAIBLE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS GOVERNING LOCAL GOVERNMENT STUDY COMMISSIONS; AUTHORIZING THE IMPOSITION OF A MILL LEVY AND PROVIDING FOR AN EXCEPTION FROM THE MILL LEVY LIMITS FOR A LEVY FOR FUNDING LOCAL GOVERNMENT STUDY COMMISSIONS; CLARIFYING THE PROCEDURES FOR PROPOSALS FOR ALTERNATIVE FORMS OR PLANS OF GOVERNMENT MADE BY PETITION OR BY A STUDY COMMISSION; PROVIDING THAT ELECTED OFFICIALS REMAIN IN OFFICE UNLESS THE NEW FORM OR PLAN ELIMINATES THE OFFICE FOR WHICH THEY WERE ELECTED; AND AMENDING SECTIONS 7-3-122, 7-3-141, 7-3-142, 7-3-149, 7-3-151, 7-3-152, 7-3-153, 7-3-155, 7-3-156, 7-3-157, 7-3-158, 7-3-160, 7-3-161, 7-3-175, 7-3-178, 7-3-184, 7-3-187, 7-3-192, 7-3-193, AND 15-10-420, MCA."

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

Section 1. Section 7-3-122, MCA, is amended to read:

"7-3-122. Definitions. As used in 7-3-121 through 7-3-161, unless the context indicates otherwise, the following definitions apply:

(1) "Authority" means:

- (a) a municipal or regional airport authority as provided in Title 67, chapter 11;
- (b) a conservancy district as provided in Title 85, chapter 9;
- (c) a conservation district as provided in Title 76, chapter 15;
- (d) a drainage district as provided in Title 85, chapter 8;
- (e) an irrigation district as provided in Title 85, chapter 7;
- (f) a hospital district as provided in Title 7, chapter 34, part 21;
- (g) a flood control and water conservation district as provided in Title 76, chapter 5, part 11;
- (h) a county water and sewer district as provided in Title 7, chapter 13, part 22; or
- (i) an urban transportation district as provided in Title 7, chapter 14, part 2.

(2) "Finance administrator" means the individual responsible for the financial administration of the local government and generally means the county or city treasurer or town clerk unless the alternative form or governing body specifies a different individual.

(3) "Form of government" or "form" means one of the types of local government enumerated in 7-3-102 and the type of government described in 7-3-111.

~~(3)~~(4) "Governing body" means the commission or the town meeting legislative body established in the alternative form of a local government under Title 7, chapter 3, parts 1 through 7.

~~(4)~~(5) "Local improvement district" means an improvement district in which property is assessed to pay for specific capital improvements benefiting the assessed property.

(6) "Plan of government" has the meaning provided in 7-1-4121.

~~(5)~~(7) "Records administrator" means the individual responsible for keeping the public records of the local government and generally means the county, city, or town clerk unless the alternative form or governing body specifies a different individual.

~~(6)~~(8) "Subordinate service district" means a special district within a local government in which certain services are provided and in which taxes may be levied to finance the services."

Section 2. Section 7-3-141, MCA, is amended to read:

"7-3-141. Permissible recommendations. (1) A petition proposing to alter an existing ~~form~~ of county government may:

- (a) recommend amendments to the existing plan of government;
- (b) recommend any ~~plan~~ form of government authorized by Title 7, chapter 3, parts 1 through ~~6~~ 5;
- (c) draft a charter;
- (d) recommend municipal-county consolidation or amendments to an existing consolidation; or
- (e) in cooperation with a similar petition calling for an election on county merger circulated in an adjoining county, recommend county merger.

(2) A petition proposing to alter an existing ~~form~~ of a municipal government may:

- (a) recommend amendments to the existing plan of government;
- (b) recommend any ~~plan~~ form of government authorized by Title 7, chapter 3, parts 1 through 6;
- (c) draft a charter; or
- (d) recommend disincorporation."

Section 3. Section 7-3-142, MCA, is amended to read:

"7-3-142. Requirements for petition. A petition proposing an alteration of an existing ~~form~~ of a local government must contain:

- (1) a certificate containing the "plan of government" of the existing form of local government;
- (2) a certificate containing the "plan of government" of the proposed new form of ~~local~~ government or amendments to the existing plan;
- (3) a certificate containing the "plan of apportionment" of commissioner districts if districts are contained in the "plan of government"; and
- (4) a comparison of the existing form of government and plan of government and proposed form of government and plan of local government, including, if desired, a statement of the strengths and weaknesses of the existing and proposed forms and plans of local government, information that supports the adoption of the proposed form and plan, and information that supports retention of the present form and plan."

Section 4. Section 7-3-149, MCA, is amended to read:

"7-3-149. Election on alternative alteration of form of government. (1) The governing body shall call a special election on the question of an alternative alteration of the form of government or change in a plan of government proposed by petition to be held at the next regular or primary election that is at least 75 days after the call and the date of filing with the records administrator under 7-3-146. The records administrator shall prepare and print notices of the election.

(2) The cost of the election must be paid for by the local government.

(3) (a) The affirmative vote of a simple majority of those voting on the question is required for adoption.

(b) In any election involving the question of consolidation, each question must be submitted to the electors in the county and requires an affirmative vote of a simple majority of the votes cast in the county on the question for adoption. There is no requirement for separate majorities in local governments voting on consolidation.

(c) In any election involving the question of county merger, the questions must be submitted to the electors in the counties affected and require a majority of the votes cast on the questions in each affected county for adoption.

(d) If the electors disapprove the proposed new form of local government, amendments, or consolidation plan, the local government retains its existing form."

Section 5. Section 7-3-151, MCA, is amended to read:

"7-3-151. Treatment of suboptions for proposed alternative forms. (1) ~~A~~ No petition recommendation may not involve more than three separate suboptions, and ~~no~~ a suboption may not contain more than two

alternatives. If a suboption is submitted to the voters, only the ballot alternatives within that suboption receiving the highest number of affirmative votes are considered approved and included in the alternative form of government. If the alternative form of government fails, a suboption is of no effect.

(2) A proposed change of the form of government or change in a plan of government ~~shall~~ must be submitted to the voters as a single question, except that the suboptions within the ~~alternative plan form~~ form of local government authorized in Title 7, chapter 3, parts 1 through 6, and the suboptions authorized in a charter may be submitted to the electors as separate questions. The question of adopting a suboption ~~shall~~ must be submitted to the electors in substantially the following form:

Vote for one:

A legal officer (who may be called the "county attorney"):

~~Shall~~ To be elected for a term of 4 years.

~~Shall~~ To be appointed for a term of 4 years by the ~~chairman~~ presiding officer of the local governing body."

Section 6. Section 7-3-152, MCA, is amended to read:

"7-3-152. Effect of adoption of new form of government or change in plan of government. The adoption of a new form of government or a change in a plan of government does not affect the validity of any bond, debt, contract, obligation, or cause of action accrued or established under the prior form of government."

Section 7. Section 7-3-153, MCA, is amended to read:

"7-3-153. Filing of approved plan. (1) A copy of the ~~existing or proposed~~ new form of government or change in a plan of government that is proposed by petition and that is ratified by the voters and any apportionment plan or consolidation or merger plan must be certified by the presiding officer of the governing body and filed with the department of administration, the county records administrator, and the municipal records administrator if it is a municipal plan.

(2) The approved form of government or change in a plan of government filed with the department of administration is the official plan and is a public record open to inspection by the public and judicially noticeable by all courts."

Section 8. Section 7-3-155, MCA, is amended to read:

"7-3-155. Three-year moratorium. (1) Unless the constitution requires otherwise, the electors of any

unit of local government ~~which that~~ has voted upon the question of changing the form of local government, charter, or consolidation plan ~~or upon the question of amending the alternative form, charter, or consolidation plan~~ may not vote on the question of changing ~~or amending~~ the form of local government for 3 years.

(2) For the purposes of this section, general election dates are considered to be 1 year apart and may be used in computing the 3-year moratorium. ~~No~~ An election on the question of changing an alternative form of a unit of local government may not be challenged as failing to conform with the moratorium provisions of this section because 3 full calendar years may not have elapsed."

Section 9. Section 7-3-156, MCA, is amended to read:

"7-3-156. Effective date of alternative plan form or amendment -- officers. (1) ~~An alternative plan~~ A change in form of local government or plan of government approved by the electors takes effect when the new officers take office pursuant to 7-3-161, except as otherwise provided in any charter or ~~consolidation transition~~ plan. A consolidation or merger plan adopted by the electors takes effect in the same manner.

(2) Provisions creating offices and establishing qualifications for office under any apportionment plan become effective immediately for the purpose of electing officials.

~~(3) An officer elected under an existing form of government or plan of government continues to hold office under a new form of government or change to a plan of government if the new form or plan continues to have that office, whether or not the new officer is to be elected or appointed. A successor may be elected or appointed, as appropriate, to fill the office at the end of the term for which the holdover officer was elected.~~

~~(3)(4)~~(3) An amendment to the plan of an existing plan form of government becomes effective at the beginning of the local government's fiscal year commencing after the election results are officially declared unless the plan provides for an increase in the number or type of elective officers, in which case the amendment takes effect when the new officers take office."

Section 10. Section 7-3-157, MCA, is amended to read:

"7-3-157. General transition provisions. (1) The governing body shall prepare an advisory plan for orderly transition to a new form of government or plan of local government proposed by petition. The transition plan may propose necessary ordinances, plans for consolidation of services and functions, and a plan for reorganizing boards, departments, and agencies.

(2) The governing body of a local government may enact and enforce ordinances to bring about an orderly transition to the new form of government or plan of government, including transfer of powers, records,

documents, properties, assets, funds, liabilities, or personnel. These ordinances are to be consistent with the approved plan and necessary or convenient to place it into full effect. Whenever a question arises concerning transition ~~which that~~ is not provided for, the governing body may provide for the transition by ordinance, rule, or resolution not inconsistent with law."

SECTION 11. SECTION 7-3-158, MCA, IS AMENDED TO READ:

"7-3-158. Transition provisions affecting personnel. (1) The members of the governing body holding office on the date the new plan of government is adopted by the electors of the local government continue in office and in the performance of their duties until the governing body authorized by the plan has been elected and qualified, ~~whereupon the prior governing body is abolished.~~

(2) An officer, including a member of the governing body, elected under an existing form of government or plan of government continues to hold office under a new form of government or change to a plan of government if the new form or plan continues to have that office, whether the new officer is to be elected or appointed. A successor may be elected or appointed, as appropriate, to fill the office at the end of the term for which the holdover officer was elected.

~~(2)(3)~~ (3) All other employees holding offices or positions, ~~whether elective or appointive,~~ under the government of the county or municipality continue in the performance of the duties of their respective offices and positions until provisions are made for the performance or discontinuance of the duties or the discontinuance of the offices or positions.

~~(3)(4)~~ (4) A charter or a petition proposing an alteration to an existing form of local government change in a form of government or a plan of government may provide that existing elected officers shall of an office that is abolished may continue in office until the end of the term for which they were elected or may provide that the existing elected officers shall be retained as local government employees until the end of the term for which they were elected, and their salaries may not be reduced.

Section 12. Section 7-3-160, MCA, is amended to read:

"7-3-160. Election of new officials. (1) Within 20 days after an election at which ~~the a new plan form~~ of government or change in a plan of government is approved by the electors, the governing body of the local government shall meet and order a special primary and general election for the purpose of electing the officials required by the new form or plan of government. The elections for officials ~~may~~ must be held in conjunction with any other election of that government.

(2) The order ~~shall~~ must specify:

(a) a date for the primary election to be held no later than the government's next regularly scheduled ~~city or county~~ primary election; and

(b) a date for the general election to be held no later than the next regularly scheduled city or county general election following the primary election date established under subsection (2)(a)."

Section 13. Section 7-3-161, MCA, is amended to read:

"7-3-161. Organization of new governing body. (1) The first meeting of a new governing body for a ~~new plan~~ different form of government ~~shall~~ must be held at 10 a.m., 60 days after the election of the new officers. At that time, newly elected ~~members~~ officers shall take the oath of office prior to assuming the duties of office.

(2) If the terms of the commissioners are to be overlapping, ~~they shall~~ newly elected commissioners shall draw lots to establish their respective terms of office."

Section 14. Section 7-3-175, MCA, is amended to read:

"7-3-175. Election on question of establishing study commission. (1) The question of conducting a local government review and establishing a study commission ~~shall~~ must be submitted to the electors in substantially the following form:

Vote for one:

FOR the review of the government of (insert name of local government) and the establishment and funding, NOT TO EXCEED (INSERT DOLLAR OR MILL AMOUNT), of a local government study commission consisting of (insert number of members) members to examine the government of (insert name of local government) and submit recommendations ~~thereon~~ on the government.

AGAINST the review of the government of (insert name of local government) and the establishment and funding, NOT TO EXCEED (INSERT DOLLAR OR MILL AMOUNT), of a local government study commission consisting of (insert number of members) members to examine the government of (insert name of local government) and submit recommendations on the government.

(2) The question of conducting a local government review and establishing a study commission requires an affirmative vote of a majority of those voting on the question for passage.

(3) Except for elections to be conducted pursuant to 7-3-173(2), a special election on the question of reviewing a local government and establishing a study commission ~~shall~~ must be held no sooner than 60 days

and no later than 90 days after the passage of a resolution or the certification of a petition calling for an election on the question."

Section 15. Section 7-3-178, MCA, is amended to read:

"7-3-178. Term of office -- vacancies -- compensation. (1) The term of office of study commission members begins on the day that their election to the study commission is declared or certified under 13-15-405 or on the day of their appointment and ends on the day of the vote on the alternative plan. If the alternative plan is adopted, the term continues for 90 days after the day of the vote on the alternative plan. If the commission recommends no alternative plan, the term ends 30 days after submission of the final report in accordance with 7-3-187.

(2) Except as provided in subsection (1), the term of office of study commission members terminates on the date of the first statewide general election following the election required by 7-3-176.

~~(2)~~(3) A vacancy on a study commission, including an ex officio member vacancy, ~~shall~~ must be determined in the same manner as a vacancy in municipal office as provided in 7-4-4111. A vacancy on a study commission ~~shall~~ must be filled by appointment by the governing body of the local government being studied by the commission. The appointment ~~shall~~ must be made within 30 days of the date the vacancy occurs.

~~(3)~~(4) Members of the study commission may not receive ~~no~~ compensation other than for actual and necessary expenses incurred in their official capacity."

Section 16. Section 7-3-184, MCA, is amended to read:

"7-3-184. Financial administration. (1) A study commission shall prepare a budget for each fiscal year that it is in existence and shall submit it to the local governing body for approval.

(2) (a) ~~Subject to 15-10-420~~ For the support of the study commission, for each fiscal year that the study commission is in existence, each local government under study ~~may~~ shall appropriate an amount necessary to fund the study ~~not to exceed 1 mill~~, and the local government may ~~levy up to 1 mill~~ levy up to 1 mill MILLS in excess of all other mill levies authorized by law to fund the appropriation for the support of the study commission.

(b) The local government shall provide office and meeting space and clerical assistance to the study commission. The cost of clerical assistance and other in-kind services provided by the local government may be used to partially fulfill the appropriation provision of subsection (2)(a).

(c) The local government may provide additional funds and other assistance.

(3) The study commission may apply for and accept available private, state, and federal money and may

accept donations from any source.

(4) All money received by the study commission must be deposited with the local government finance administrator. The finance administrator is authorized to disburse appropriated money of the study commission on the study commission's order after approval of the budget by the governing body. Unexpended money of the study commission does not revert to the general fund of the local government at the end of the fiscal year but carries over to the study commission's appropriation for the following fiscal year. Upon termination of the study commission, unexpended money reverts to the general fund of the local government."

Section 17. Section 7-3-187, MCA, is amended to read:

"7-3-187. Final report. (1) A study commission shall adopt a final report. If the study commission recommends an ~~alternative form of~~ alteration of a local government, the final report must contain the following materials and documents, each signed by a majority of the study commission members:

(a) those materials and documents required of a petition proposing an alteration of ~~an existing form of~~ a local government in 7-3-142;

(b) a certificate establishing the date of the special election, which must be held in conjunction with a regular or primary election, at which the alternative form of government or change in a plan of government is presented to the electors and a certificate establishing the form of the ballot question or questions; and

(c) a certificate establishing the dates of the first primary and general elections for officers of a new government if the proposal is approved and establishing the effective date of the proposal if approved.

(2) The final report must contain any minority report signed by members of the commission who do not support the majority proposal.

(3) If the study commission is not recommending any changes, its final report must indicate that changes are not recommended.

(4) The study commission shall file two copies of the final report with the department of administration, one of which the department shall forward to the state library. A copy of the final report must be certified by the study commission to the municipal or county records administrator within 30 days after the adoption of the final report.

(5) Sufficient copies of the final report must be prepared for public distribution. The final report must be available to the electors not later than 30 days prior to the election on the issue of adopting the alternative form or plan of government. Copies of the final report may be distributed to electors or residents of the local government or governments affected.

(6) After submission of the final report, the commission shall deposit copies of its minutes and other records with the county clerk and recorder."

Section 18. Section 7-3-192, MCA, is amended to read:

"7-3-192. Election on recommendation. (1) An alternative form or plan of government recommended by a study commission must be submitted to the voters as provided in 7-3-149. The election must be held in conjunction with any regularly scheduled election of that government.

(2) General ballot requirements and treatment of suboptions on an alternative form or plan of government recommended by a study commission must be the same as for recommendations by petition as provided in 7-3-150 and 7-3-151."

Section 19. Section 7-3-193, MCA, is amended to read:

"7-3-193. Application of other sections. (1) Except as provided in subsection (2) of this section, the provisions of 7-3-122 and 7-3-152 through 7-3-161 apply to the adoption of an alternative form or plan of government upon recommendation by a study commission.

(2) (a) The ~~chairman~~ presiding officer of the study commission and not the ~~chairman~~ presiding officer of the governing body shall certify documents under 7-3-153.

(b) The study commission and not the governing body shall prepare an advisory plan for orderly transition to a new form or plan of ~~local~~ government under 7-3-157.

(c) A study commission plan may provide for existing elected officers under 7-3-158~~(3)~~(4)."

Section 20. Section 15-10-420, MCA, is amended to read:

"15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between

the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) (a) For purposes of this section, newly taxable property includes:

- (i) annexation of real property and improvements into a taxing unit;
- (ii) construction, expansion, or remodeling of improvements;
- (iii) transfer of property into a taxing unit;
- (iv) subdivision of real property; and
- (v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

- (i) a change in the boundary of a tax increment financing district;
- (ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or
- (iii) the termination of a tax increment financing district.

(b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

(c) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as nonqualified agricultural land as described in 15-6-133(1)(c).

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

- (a) school district levies established in Title 20; or
- (b) the portion of a governmental entity's property tax levy for premium contributions for group benefits

excluded under 2-9-212 or 2-18-703.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402; ~~or~~

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326; or

(iv) a levy for the support of a study commission under 7-3-184.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

(11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

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