

## HOUSE BILL NO. 314

INTRODUCED BY KARY, FISCUS, D. JONES, LENZ, C. SMITH, WEBB, ZOLNIKOV

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING SPECIAL DISTRICTS; ALLOWING A GOVERNING BODY TO ORDER A REFERENDUM ON THE CREATION OF A SPECIAL DISTRICT; REVISING THE REQUIREMENTS FOR INITIATING THE CREATION OF A SPECIAL DISTRICT BY PETITION; INCREASING THE AMOUNT OF TIME A CLERK OF A GOVERNING BODY HAS TO CERTIFY OR REJECT A PETITION; REQUIRING THAT MAPS OF PROPOSED BOUNDARIES BE MADE AVAILABLE TO THE PUBLIC AT A CERTAIN TIME; CLARIFYING WHO MUST RECEIVE NOTICE OF PASSAGE OF A RESOLUTION OF INTENT TO CREATE A SPECIAL DISTRICT; REVISING THE DEADLINE FOR PROTESTING A PROPOSED DISTRICT AND SUFFICIENCY OF PROTEST; REQUIRING A PROTEST FORM TO BE SENT TO PROPERTY OWNERS IN THE PROPOSED DISTRICT; REQUIRING A REFERENDUM UNDER CERTAIN CIRCUMSTANCES; REQUIRING CREATION OF A SPECIAL DISTRICT UNDER CERTAIN CIRCUMSTANCES; REVISING THE DEADLINE BY WHICH THE GOVERNING BODY MUST ESTIMATE COSTS OF A SPECIAL DISTRICT; LIMITING THE AMOUNT A GOVERNING BODY MAY CHARGE TO ADMINISTER A SPECIAL DISTRICT; REVISING SPECIAL DISTRICT COST ESTIMATE AND ASSESSMENT DATES; ~~PROHIBITING CERTAIN SPECIAL DISTRICTS FROM MAKING ASSESSMENTS UNTIL COMPLYING WITH THE ACT~~; AMENDING SECTIONS 7-11-1003, 7-11-1006, 7-11-1007, 7-11-1008, 7-11-1011, 7-11-1013, 7-11-1021, 7-11-1023, AND 7-11-1025, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**Section 1.** Section 7-11-1003, MCA, is amended to read:

**"7-11-1003. Authorization to create special districts.** (1) Whenever the public convenience and necessity may require:

(a) the governing body may:

(i) create a special district by resolution; or

(ii) order a referendum on the creation of a special district to serve the inhabitants of the special district as provided in 7-11-1011; or

1 (b) petitioners may initiate the creation of a special district to serve inhabitants of the special district as  
2 provided in subsection (2).

3 (2) (a) (i) ~~Subject to subsection (2)(b),~~ Upon receipt of a petition to institute the creation of a special  
4 district ~~must be~~ that is signed by 40% at least 25% of the registered voters or 40% of by the owners of at least  
5 25% of the real property within the boundary of the proposed special district and that is submitted to the clerk of  
6 the governing body, the governing body shall order a referendum on the creation of the special district pursuant  
7 to 7-11-1011.

8 (ii) Upon receipt of a petition to institute the creation of a special district that is signed by more than 50%  
9 of the registered voters or by the owners of more than 50% of the real property within the boundary of the  
10 proposed special district, the governing body shall conduct a public hearing pursuant to 7-11-1007. Following the  
11 hearing and if insufficient protests are made as provided in 7-11-1008, the governing body shall order the creation  
12 of the special district in accordance with 7-11-1013.

13 (b) If a proposed special district would be financed by a mill levy, a petition to institute the creation of the  
14 special district must be signed by at least 40% of the registered voters or at least 40% of the property taxpayers  
15 within the boundary of the proposed district.

16 (c) The form of the petition may be prescribed by the governing body, and the clerk of the governing body  
17 shall verify the signatures on the petition.

18 (d) Subject to subsection (2)(c), the petition must:

19 (i) require the printed name of each signatory;

20 (ii) specify whether the signatory is a property taxpayer or owner of real property within the proposed  
21 special district and EITHER the STREET address OR THE LEGAL DESCRIPTION, WHICHEVER THE SIGNATORY PREFERS,  
22 of that property;

23 (iii) describe the type of special district being proposed and the general character of any proposed  
24 improvements and program to be administered within the special district;

25 (iv) designate the method of financing any proposed improvements ~~and~~ or maintenance program within  
26 the special district;

27 (v) include a ~~general~~ description of the areas to be included in the proposed special district; and

28 (vi) specify whether the proposed special district would be administered by the local governing body or  
29 an appointed or elected board.

30 (3) Within ~~30~~ 60 days of receipt of a petition to create a special district, the clerk of the governing body

1 shall:

2 (a) certify that the petition is sufficient under the provisions of subsection (2) and present it to the  
3 governing body at its next meeting; or

4 (b) reject the petition if it is insufficient under the provisions of subsection (2).

5 (4) A defect in the contents of the petition or in its title, form of notice, or signatures may not invalidate  
6 the petition and subsequent proceedings as long as the petition has a sufficient number of qualified signatures  
7 attached."

8

9 **Section 2.** Section 7-11-1006, MCA, is amended to read:

10 **"7-11-1006. Determining special district boundaries.** (1) The boundaries of the proposed special  
11 district must be mapped, ~~and~~ clearly described, and made available to the public at the time of the publication  
12 of the notice of public hearing pursuant to 7-11-1007 before the district may be approved.

13 (2) The governing body or petitioners shall consult with a professional land surveyor, as defined in  
14 37-67-101, to prepare a legal description of the boundaries for the proposed special district.

15 (3) The boundaries must follow property ownership, precinct, school district, municipal, and county lines  
16 as far as practical."

17

18 **Section 3.** Section 7-11-1007, MCA, is amended to read:

19 **"7-11-1007. Public hearing -- resolution of intention to create special district.** (1) The governing  
20 body shall hold at least one public hearing concerning the creation of a proposed special district prior to the  
21 passage of a resolution of intention to create the special district. A resolution of intention to create a special  
22 district may be based upon a decision of the governing body as provided in 7-11-1003(1)(a) or upon a petition  
23 that contains the required number of signatures as provided in 7-11-1003(1)(b).

24 (2) The resolution must designate:

25 (a) the proposed name of the special district;

26 (b) the necessity for the proposed special district;

27 (c) a general description of the territory or lands to be included within the proposed special district, giving  
28 the boundaries of the proposed special district;

29 (d) the general character of any proposed improvements and the proposed location for the proposed  
30 program or improvements;

- 1 (e) the estimated cost and method of financing the proposed program or improvements;
- 2 (f) any requirements specifically applicable to the type of special district; ~~and~~
- 3 (g) whether the proposed special district would be administered by the governing body or an appointed
- 4 or elected board; and
- 5 (h) the duration of the proposed special district.

6 (3) (a) The governing body shall publish notice of passage of the resolution of intention to create a

7 special district as provided in 7-1-2121 and 7-1-2122 or 7-1-4127 and 7-1-4129, as applicable. The notice must

8 contain a notice of a hearing and the time and place where the hearing will be held.

9 (b) At the same time that notice is published pursuant to subsection (3)(a), the governing body shall

10 provide a list of those properties subject to potential assessment, fees, or taxation under the creation of the

11 proposed special district. The list may not be distributed or sold for use as a mailing list in accordance with

12 2-6-109.

13 (c) A copy of the notice described in subsection (3)(a) must be mailed to ~~the owners~~ each owner or

14 purchaser under contract for deed of the property included on the list referred to in subsection (3)(b) as shown

15 by the current property tax record maintained by the department of revenue for the county."

16

17 **Section 4.** Section 7-11-1008, MCA, is amended to read:

18 **"7-11-1008. Right to protest -- procedure -- hearing.** (1) An owner of property that is liable to be

19 assessed for the program or improvements in the proposed special district has ~~30~~ 60 days from EITHER the date

20 of the first publication of the notice of passage of the resolution of intention OR THE DATE THE PROTEST FORM

21 PROVIDED FOR IN SUBSECTION (2)(C) WAS SENT TO PROPERTY OWNERS, WHICHEVER IS LATER, to make a written protest

22 against the proposed program or improvements.

23 (2) (A) A PROPERTY OWNER MAY REGISTER A WRITTEN PROTEST UNDER EITHER SUBSECTION (2)(B) OR (2)(C).

24 (B) A PROPERTY OWNER MAY REGISTER A WRITTEN PROTEST IN ANY FORMAT IN CONFORMITY WITH THIS

25 SECTION. The protest must be in writing, identify the property in the district owned by the protestor BY EITHER ITS

26 STREET ADDRESS OR ITS LEGAL DESCRIPTION, WHICHEVER THE PROPERTY OWNER PREFERS, be signed by a majority

27 of the owners of that property, and be delivered to the clerk of the governing body, who shall endorse on the

28 protest the date of receipt.

29 (C) THE GOVERNING BODY SHALL SEND EACH PERSON REFERRED TO IN 7-11-1007(3)(C) A PROTEST FORM WITH

30 SPACE FOR ANY INFORMATION REQUIRED UNDER SUBSECTION (2)(B) OF THIS SECTION, MAILING INSTRUCTIONS, AND THE

1 DATE THE FORM MUST BE RETURNED TO THE GOVERNING BODY. THE FORM MUST SPECIFY THAT IF IT IS NOT RETURNED,  
 2 THE OWNER'S LACK OF ACTION MUST BE CONSTRUED AS SUPPORT OF THE CREATION OF THE SPECIAL DISTRICT. THE FORM  
 3 MUST ALLOW A PROPERTY OWNER TO SELECT EITHER SUPPORT FOR OR OPPOSITION AGAINST THE CREATION OF THE  
 4 DISTRICT. HOWEVER, IF AN OWNER DOES NOT MAKE A SELECTION OF SUPPORT OR OPPOSITION AND RETURNS THE FORM  
 5 TO THE GOVERNING BODY, IT MUST BE CONSTRUED AS A PROTEST OF THE CREATION OF THE SPECIAL DISTRICT.

6 (3) (a) For purposes of this section, "owner" means, as of the date a protest is filed, ~~the~~ a record owner  
 7 of fee simple title to the property or ~~the~~ a contract buyer on file with the county clerk and recorder.

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

9 (4) An owner of property created as a condominium may protest pursuant to the provisions in 7-11-1027.

10 (5) (a) At the hearing provided for in 7-11-1007, the governing body shall consider all protests.

11 ~~(b) In determining the sufficiency of protest, each protest must be weighted in proportion to the amount~~  
 12 ~~of the assessment to be levied against the lot or parcel with respect to which it is made.~~

13 ~~(c)(b)~~ If the protest is made by the owners of property in the proposed district to be assessed for:

14 ~~(i) more than 50% or more~~ of the cost of the proposed program or improvements, in accordance with the  
 15 method or methods of assessment, further proceedings may not be taken by the governing body for at least 12  
 16 months; ~~or~~

17 ~~(ii) more than 10% but less than 50% of the cost of the proposed program or improvements, in~~  
 18 ~~accordance with the method or methods of assessment, AND IF THE GOVERNING BODY DECIDES TO PROCEED WITH~~  
 19 ~~PROPOSING THE DISTRICT, the governing body shall order a referendum in accordance with 7-11-1011.~~

20 ~~(d)(c)~~ In determining whether or not sufficient protests have been filed in the proposed special district  
 21 to prevent further proceedings, property owned by a governmental entity must be considered the same as any  
 22 other property in the district.

23 ~~(e)(d)~~ The decision of the governing body is final and conclusive.

24 ~~(f)(e)~~ The governing body may adjourn the hearing from time to time."  
 25

26 **Section 5.** Section 7-11-1011, MCA, is amended to read:

27 **"7-11-1011. Referendum -- election.** (1) The governing body may order a referendum on the creation  
 28 of the proposed special district to be submitted to the registered voters who reside within the proposed special  
 29 district and the individuals qualified to vote pursuant to subsections (5) and (6).

30 (2) The referendum must state:

1 (a) the type and maximum rate of the initial proposed assessments or fees that would be imposed,  
2 consistent with the requirements of 7-11-1007(2)(e) and 7-11-1024;

3 (b) the type of activities proposed to be financed, including a general description of the program or  
4 improvements;

5 (c) a ~~general~~ description of the areas included in the proposed special district; and

6 (d) whether the proposed special district would be administered by the governing body or an appointed  
7 or elected board.

8 (3) The referendum must be held in conjunction with a regular or primary election or must be conducted  
9 by mail ballot election as provided in Title 13, chapter 19.

10 (4) The proposition to be submitted to the electorate must read: "Shall the proposition to organize (name  
11 of proposed special district) be adopted?"

12 (5) Except as provided in subsection (6), an individual is entitled to vote on the proposition if the  
13 individual:

14 (a) meets all qualifications required of electors under the general election laws of the state; and

15 (b) is a resident of or owner of taxable real property in the area subject to the proposed special district.

16 (6) An individual who is the owner of real property described in subsection (5)(b) need not possess the  
17 qualifications required of an elector in subsection (5)(a) if the individual is qualified to vote in any county of the  
18 state and files proof of registration with the election administrator at least 20 days prior to the referendum in which  
19 the individual intends to vote.

20 (7) The referendum must be conducted, the vote canvassed, and the result declared in the same manner  
21 as provided by Title 13 in respect to general elections, so far as it is applicable, except as provided in subsection  
22 (3).

23 (8) If the referendum is approved, the election administrator of each county shall:

24 (a) immediately file with the secretary of state a certificate stating that the proposition was adopted ~~and~~;

25 (b) record the certificate in the office of the clerk and recorder of the county or counties in which the  
26 special district is situated; and

27 ~~(b)~~(c) notify any municipalities lying within the boundaries of the special district."  
28

29 **Section 6.** Section 7-11-1013, MCA, is amended to read:

30 **"7-11-1013. Order creating district -- power to implement program.** (1) The governing body ~~may~~ shall

1 create a special district and establish assessments or fees if the governing body finds that insufficient protests  
 2 have been made in accordance with 7-11-1008 or if the eligible registered voters have approved a referendum  
 3 as provided in 7-11-1011.

4 (2) To create a special district, the governing body shall issue an order or pass an ordinance or  
 5 resolution in accordance with the resolution of intention introduced and passed by the governing body or in  
 6 accordance with the terms of the referendum required under 7-11-1011. This must be done within 30 days of the  
 7 end of the protest period or approval of the referendum.

8 (3) If the governing body creates the special district of its own accord and without a referendum being  
 9 held, a copy of the order, ordinance, or resolution creating the district, certified by the clerk of the governing body,  
 10 must be delivered to the clerk and recorder of the county or counties in which the special district is situated and  
 11 to the secretary of state, who shall issue a certificate of establishment in accordance with 7-11-1012."  
 12

13 **Section 7.** Section 7-11-1021, MCA, is amended to read:

14 **"7-11-1021. Governance -- powers and duties.** (1) A special district must be administered and  
 15 operated either by the governing body or by a separate elected or appointed board as determined by the  
 16 governing body.

17 (2) (a) If the special district is governed by a separate board, the board must be established in  
 18 accordance with Title 7, chapter 1, part 2, and specific powers and duties granted to the board and those  
 19 specifically withheld must be stated.

20 (b) The governing body may grant additional powers to the board. This includes the authorization to use  
 21 privately contracted legal counsel or the attorney of the governing body. If privately contracted counsel is used,  
 22 notice must be provided to the attorney of the governing body.

23 (c) The governing body has ultimate authority under this subsection (2).

24 (3) The entity chosen to administer the special district, as provided in subsection (1), may:

25 (a) implement a program and order improvements for the special district designed to fulfill the purposes  
 26 of the special district;

27 ~~(b) administer the budget of the special district;~~

28 ~~(e)~~(b) employ personnel directly related to the specific improvement or program;

29 ~~(d)~~(c) purchase, rent, or lease equipment, personal property, and material necessary to develop and  
 30 implement an effective program;

1           ~~(e)~~(d) cooperate or contract with any corporation, association, individual, or group of individuals,  
2 including any agency of federal, state, or local government, in order to develop and implement an effective  
3 program;

4           ~~(f)~~(e) receive gifts, grants, or donations for the purpose of advancing the program and, by gift, deed,  
5 devise, or purchase, acquire land, facilities, buildings, and material necessary to implement the purposes of the  
6 special district;

7           ~~(g)~~(f) construct, improve, and maintain new or existing facilities and buildings necessary to accomplish  
8 the purposes of the special district;

9           ~~(h)~~(g) provide grants to private, nonprofit entities as part of implementing an effective program;

10          ~~(i)~~(h) adopt a seal and alter it at the entity's pleasure;

11          ~~(j)~~(i) administer local ordinances as appropriate;

12          ~~(k)~~(j) establish district capital improvement funds pursuant to 7-6-616, maintenance funds, and debt  
13 service funds; and

14          ~~(l)~~(k) borrow money by the issuance of:

15           (i) general obligation bonds as authorized by the governing body pursuant to Title 7, chapter 6, part 40,  
16 and the appropriate provisions of Title 7, chapter 7, part 22 or 42; or

17           (ii) revenue bonds for the lease, purchase, and maintenance of land, facilities, and buildings and the  
18 funding of projects in the manner and subject to the appropriate provisions of Title 7, chapter 7, part 25 or 44.

19           (4) ~~The entity chosen to administer~~ If the special district is administered by a separate board, the board  
20 shall submit annual budget and work plans to the governing body for review and approval.

21           (5) The right to exercise eminent domain pursuant to 70-30-102 is limited to cemetery districts."  
22

23           **Section 8.** Section 7-11-1023, MCA, is amended to read:

24           **"7-11-1023. Alteration of special districts.** (1) The Subject to subsections (2) and (3), the governing  
25 body may change the boundaries of any special district by resolution.

26           (2) The boundaries may be altered by petition after complying with the requirements for petitions as  
27 provided in 7-11-1003.

28           (3) Alteration of special district boundaries is also subject to procedures for public notice, protest,  
29 referendum, certification, reporting, and establishment of assessment as provided in 7-11-1006 through  
30 7-11-1008, 7-11-1011 through 7-11-1015, and 7-11-1024.



- 1 (4) Changes made to the boundaries may not:
- 2 (a) occur more than once each year unless the governing body makes a special finding that an alteration
- 3 is necessary;
- 4 (b) delete any portion of the area if the deletion will create an island of included or excluded lands;
- 5 (c) delete any portion of the area that is negatively contributing or may reasonably be expected to
- 6 negatively contribute to environmental impacts that fall within the scope of the special district's program; and
- 7 (d) affect indebtedness existing at the time of the change."

8

9 **Section 9.** Section 7-11-1025, MCA, is amended to read:

10 **"7-11-1025. Notice of resolution for assessment -- assessment.** (1) The governing body shall

11 estimate, as near as practicable, the cost of each established special district annually by the later of the ~~second~~

12 ~~Monday in August~~ first Thursday AFTER THE FIRST TUESDAY in September or within ~~45~~ 30 calendar days after

13 receiving certified taxable values from the department of revenue.

14 (2) (a) The governing body shall pass and finally adopt a resolution specifying the special district

15 assessment option and levying and assessing all the property within the special district with an amount equal to

16 the annual cost of the program and improvements as provided in 7-6-4012 and 7-6-4013.

17 (b) If the entity chosen to administer the special district is the governing body, the governing body may

18 not charge more than 15% of the annual fees or assessments collected to administer the special district.

19 ~~(c) Assessments and fees collected for support of the special district must be used for district expenses~~

20 ~~and may not be used to circumvent the provisions of 15-10-420.~~

21 (3) The resolution levying the assessment to defray the cost of the special district must contain or refer

22 to a list that describes the lot or parcel of land assessed with the name of the owner of the lot or parcel, if known,

23 and the amount assessed.

24 (4) The resolution must be kept on file in the office of the clerk of the governing body.

25 (5) A notice, signed by the clerk of the governing body, stating that the resolution levying a special

26 assessment or changing the method of assessment to defray the cost of the special district is on file in the clerk's

27 office and subject to inspection must be published as provided in 7-1-2121 or 7-1-4127. The notice must state

28 the time and place at which objections to the final adoption of the resolution will be heard by the governing body

29 and must contain a statement setting out the method of assessment being proposed for adoption or the change

30 in assessment being proposed for adoption. The time for the hearing must be at least 5 days after the final

1 publication of the notice.

2 (6) The notice and hearing process may be included in the local government's general budgeting process  
3 as provided in Title 7, chapter 6, part 40.

4 (7) At the time set, the governing body shall meet and hear all objections that may be made to the  
5 assessment or any part of the assessment, may adjourn from time to time for that purpose, and may by resolution  
6 modify the assessment.

7 (8) A copy of the resolution, certified by the clerk of the governing body, must be delivered to the  
8 department of revenue by the ~~third Monday in August~~ LATER OF THE first Thursday AFTER THE FIRST TUESDAY in  
9 September or within ~~45~~ 30 calendar days after receiving certified taxable values from the department of revenue."  
10

11 ~~NEW SECTION. Section 10. Transition. A special district established by a municipality under the~~  
12 ~~provisions of 7-11-1001 through 7-11-1029 before [the effective date of this act] may continue to operate, but~~  
13 ~~further assessments may not be made for the costs and expenses of the special district until the district is brought~~  
14 ~~into conformance with the provisions of [this act].~~

15  
16 NEW SECTION. Section 10. Saving clause. [This act] does not affect rights and duties that matured,  
17 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

18  
19 NEW SECTION. Section 11. Severability. If a part of [this act] is invalid, all valid parts that are  
20 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
21 the part remains in effect in all valid applications that are severable from the invalid applications.

22  
23 NEW SECTION. Section 12. Effective date. [This act] is effective on passage and approval.

24  
25 NEW SECTION. SECTION 13. APPLICABILITY. [THIS ACT] APPLIES TO SPECIAL DISTRICTS CREATED ON OR  
26 AFTER [THE EFFECTIVE DATE OF THIS ACT].

27 - END -