

HOUSE BILL NO. 255

INTRODUCED BY L. BREWSTER, J. KASSMIER, J. PATELIS, A. REGIER, V. RICCI, K. SEEKINS-CROWE,
M. STROMSWOLD, K. WHITMAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SEWER AND/OR WATER DISTRICT LAWS;
PROVIDING THAT DIRECTORS APPOINTED TO A DISTRICT BOARD MUST SERVE AT THE PLEASURE
OF THE APPOINTING AUTHORITY; ALLOWING A COUNTY OR MUNICIPALITY TO APPOINT DIRECTORS
FOR VACANT SEATS ON A DISTRICT BOARD OF DIRECTORS; REQUIRING A PUBLIC HEARING FOR
ANY PROPOSED WATER AND/OR SEWER DISTRICT RATE CHANGE; PROVIDING THAT A DISTRICT
FOUND IN VIOLATION OF A PROVISION OF SECTION 7-13-2275, MCA, IS LIABLE FOR ALL ATTORNEY
FEES AND COSTS SHALL AGREE TO ARBITRATION AFTER RECEIVING A PETITION; ALLOWING A
PETITIONER TO BRING ACTION AGAINST THE DISTRICT; EXTENDING THE TIME PERIOD ALLOWED
FOR THE PROTEST OF PROPOSED ASSESSMENTS AND TO BRING ACTION FOR PAYMENTS PAID IN
PROTEST; AND AMENDING SECTIONS 7-13-2232, 7-13-2259, 7-13-2262, AND 7-13-2275, 7-13-2282, AND
7-13-2284, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

SECTION 1. SECTION 7-13-2232, MCA, IS AMENDED TO READ:

"7-13-2232. Composition of board of directors. (1) If there are no municipalities within the
boundaries of said district, the board of directors shall consist of five members or three members if there are 10
or less qualified electors in the district.

(2) In all cases where the boundaries of ~~such a~~ district include any municipality or municipalities, ~~said~~
~~the~~ board, in addition to ~~said the~~ five or three directors to be elected as ~~aforsaid~~ provided in subsection (1),
~~shall~~ must consist of one additional director for each of ~~said the~~ municipalities within ~~such the~~ district. ~~each~~
~~such~~ Each additional director ~~to~~ must be appointed by the mayor of the municipality for which ~~said the~~
additional director is allowed, and, if there ~~be is~~ any unincorporated territory within ~~said the~~ district, one
additional director ~~to~~ must be appointed by the board of county commissioners of each county ~~containing such~~

1 with unincorporated territory.

2 (3) All appointed directors serve at the pleasure of the appointing authority."

3

4 **SECTION 2. SECTION 7-13-2259, MCA, IS AMENDED TO READ:**

5 **"7-13-2259. Manner of making appointments. (1)** The mode of appointment of director or directors
6 by a mayor or by a board of county commissioners shall be by certificate of appointment signed by said mayor
7 or issued by said board of county commissioners and transmitted to the board of directors of said district.

8 (2) Any appointed director serves at the pleasure of the appointing authority."

9

10 **SECTION 3. SECTION 7-13-2262, MCA, IS AMENDED TO READ:**

11 **"7-13-2262. Vacancies on board of directors -- appointment. (1)** ~~(a) Except as provided in~~
12 ~~subsections (2) and (3), any vacancy in the board of directors, whether the vacant office is elective or~~
13 ~~appointive, must be filled by majority vote of the remaining directors.~~

14 ~~(b) (A) A vacancy in the board of directors, whether it is elective or appointive, must be determined~~
15 ~~in accordance with 7-13-2263 AND MUST BE FILLED AS PROVIDED IN SUBSECTIONS (2) AND (3) and must be filled as~~
16 ~~provided in subsections (2) and (3).~~

17 ~~(2) (B) A VACANCY IN THE BOARD OF DIRECTORS SHALL BE FILLED BY ELECTION EXCEPT AS PROVIDED IN~~
18 ~~SUBSECTIONS (2) AND (3) :~~

19 (2) (A) IF A VACANCY OCCURS ON THE BOARD OF DIRECTORS FOR A SEAT ORIGINALLY FILLED AS PROVIDED IN
20 7-13-2232(1), THE REMAINING DIRECTORS MAY APPOINT A REPLACEMENT DIRECTOR BY MAJORITY VOTE.

21 (B) If there are NO DIRECTORS REMAINING ON THE BOARD AND ~~no directors remaining on the board and~~
22 ~~no nominees for any director position to be elected, the county commissioners may appoint up to~~ the number
23 of directors specified in 7-13-2232(1). If the district lies in more than one county, the county commissioners of
24 each county with territory included in the district shall jointly appoint the directors. The county commissioners
25 shall stagger the terms of the directors appointed.

26 (B)(C) IF THE BOUNDARIES OF THE DISTRICT INCLUDE ANY UNINCORPORATED TERRITORY AND THE SEAT HELD
27 BY A BOARD MEMBER ORIGINALLY APPOINTED BY THE BOARD OF COUNTY COMMISSIONERS UNDER 7-13-2232(2)
28 BECOMES VACANT, THE BOARD SHALL ALLOW THE REPLACEMENT DIRECTOR TO BE APPOINTED BY THE BOARD OF

1 COUNTY COMMISSIONERS OF EACH COUNTY CONTAINING THE UNINCORPORATED TERRITORY.

2 (3) If the boundaries of the district include any ~~municipality or municipalities and a new board must be~~
 3 ~~appointed as provided in subsection (2) and the seat held by a board member originally appointed by the mayor~~
 4 ~~of a municipality AS PROVIDED IN 7-13-2232(2) becomes vacant and no nominees exist for the director position to~~
 5 ~~be elected~~, the board shall ~~include one additional~~ allow the replacement director to be appointed by the mayor
 6 of the municipality for which the additional director is allowed.

7 (4) Following the appointment of a ~~board~~ director in accordance with ~~subsection (2)~~ subsections (2)
 8 ~~and (3)~~ SUBSECTION SUBSECTIONS (2)(A) AND (2)(B), the ~~directors~~ director must be elected as provided in this
 9 part.

10 (5) All directors appointed under this section serve at the pleasure of the appointing authority."

11

12 **Section 4.** Section 7-13-2275, MCA, is amended to read:

13 **"7-13-2275. Procedure relating to ordinances and resolutions -- rates, fees, and charges**

14 **established.** (1) The ~~ayes and noes must be taken upon the passage~~ voting record of all ordinances or
 15 resolutions ~~and entered upon~~ must be entered in the journal of the proceedings of the board of directors. An
 16 ordinance or resolution may not be passed or become effective without the affirmative votes of at least a
 17 majority of the total members of the board.

18 (2) The enacting clause of all ordinances passed by the board must ~~be in these words~~ read: "Be it
 19 ordained by the board of directors of _____ district as follows:"

20 (3) All resolutions and ordinances must be signed by the president of the board and attested by the
 21 secretary.

22 (4) (a) Except as provided in subsections (5) and (6), prior to the passage or enactment of an
 23 ordinance or resolution imposing, establishing, changing, or increasing rates, fees, or charges for services or
 24 facilities, the board shall order a public hearing.

25 (b) Notice of the public hearing must be published as provided in 7-1-2121. The published notice must
 26 contain:

27 (i) the date, time, and place of the hearing;

28 (ii) a brief statement of the proposed action; and

1 (iii) the address and telephone number of a person who may be contacted for further information
2 regarding the hearing.

3 (c) The notice must also be ~~mailed to all persons who own property in the district and to all customers~~
4 ~~of the district~~ POSTED TO A WEBSITE OPERATED BY THE DISTRICT OR, IF THE DISTRICT DOES NOT OPERATE A WEBSITE,
5 POSTED TO A WEBSITE OPERATED BY THE COUNTY OR CITY WITH TERRITORY WITHIN THE DISTRICT at least 7 days and
6 not more than 30 days prior to the public hearing. The ~~mailed notice~~ POSTED TO THE WEBSITE must contain an
7 estimate of the amount that the property owner or customer will be charged under the proposed ordinance or
8 resolution.

9 (d) Any interested person, corporation, or company may be present, represented by counsel, and
10 testify at the hearing.

11 (e) The hearing may be continued by the board as necessary. After the public hearing, the board
12 may, by resolution, impose, establish, change, or increase rates, fees, or charges.

13 (5) A public hearing is ~~not~~ NOT required for a cumulative rate increase of less than or equal to 5%
14 within a 12-month period if the board provides notification of the increase to persons within the district on whom
15 the rate will be imposed at least 10 days prior to the passage or enactment of the ordinance or resolution
16 implementing the increase.

17 (6) (a) If the establishment of or change in rates, fees, or charges proposed by a regional authority
18 requires the authority to hold a public hearing pursuant to 75-6-326 and requires an increase to the rates, fees,
19 or charges imposed by the district greater than the increase provided in subsection (5) of this section, the board
20 shall:

21 (i) mail notice of the public hearing to be held by the authority to all customers of the district system at
22 least 15 days prior to the public hearing; and

23 (ii) provide notification of the change to customers of the district system on whom the increased rates,
24 fees, or charges will be imposed at least 10 days prior to the passage or enactment of the ordinance or
25 resolution implementing the increase.

26 (b) The district is not required to hold a public hearing on the increase.

27 ~~(7) If the district is found in violation of any provision of this section, the district is responsible for all~~
28 ~~applicable attorney fees and costs that may arise from an action brought by either party OR IF CUSTOMERS~~

1 ~~DISPUTE THE RATES FOR SERVICE CHARGED BY THE DISTRICT, ANY CUSTOMER OF THE DISTRICT MAY SUBMIT A PETITION~~
 2 ~~TO THE DISTRICT TO REQUIRE ARBITRATION. ONCE THE DISTRICT RECEIVES A PETITION, THE DISTRICT SHALL AGREE TO~~
 3 ~~ENTER ARBITRATION AND SHARE THE COSTS OF ARBITRATION EQUALLY WITH THE CUSTOMER OR CUSTOMERS WHO HAVE~~
 4 ~~FILED THE PETITION. BOTH PARTIES SHALL ENTER INTO AND PARTICIPATE IN THE ARBITRATION PROCESS IN GOOD FAITH.~~
 5 ~~IF THE ARBITRATOR DECIDES THAT A REASONABLE EFFORT WAS MADE BY THE PETITIONER IN RESOLVING THE DISPUTE,~~
 6 ~~THE PETITIONER MAY PROCEED WITH LEGAL ACTION AGAINST THE DISTRICT."~~

7

8 **Section 5.** Section 7-13-2282, MCA, is amended to read:

9 ~~"7-13-2282. **Hearing on assessment.** (1) At the time fixed, the board of directors shall meet and~~
 10 ~~hear all objections and for that purpose may adjourn from day to day.~~

11 ~~(2) The board of directors may by resolution modify the assessment in whole or in part. A copy of the~~
 12 ~~resolution, certified by the secretary, must be delivered to the county clerk and recorder of the county in which~~
 13 ~~the lot, tract, or parcel is located within 2 days after passage of the resolution.~~

14 ~~(3) At any time within 30 90 45 days after the date of the first publication of the notice of proposed~~
 15 ~~assessments, any owner of property to be assessed for the costs of making the improvements may make~~
 16 ~~written protest against the levy of assessments. The protest must be in writing, identify the property in the~~
 17 ~~district owned by the protestor, and be signed by all owners of the property except as provided in 7-13-2290.~~
 18 ~~The protest must be delivered to the secretary of the district not later than 5 p.m. of the last day of the 30-day~~
 19 ~~period provided for in this subsection. The secretary shall endorse the date and hour of receipt on the protest.~~

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

28

1 **Section 6.** Section 7-13-2284, MCA, is amended to read:

2 ~~"7-13-2284. — Payment of assessment under protest -- action to recover. (1) When any special~~
3 ~~assessment levied and assessed under any of the provisions of this part is considered unlawful by the party~~
4 ~~whose property is assessed, the person may pay the assessment or any part of the assessment considered~~
5 ~~unlawful under protest to the county treasurer.~~

6 ~~(2) After the payment, the party or the party's legal representative may bring an action in any court of~~
7 ~~competent jurisdiction against the officer to whom the assessment was paid or against the district on whose~~
8 ~~behalf the assessment was collected to recover the assessment or any portion of the assessment paid under~~
9 ~~protest. Any action instituted to recover the assessment paid under protest must be commenced within 60 120~~
10 ~~75 days after the date of payment.~~

11 ~~(3) The assessment paid under protest must be held by the county treasurer until the determination of~~
12 ~~any action brought for the recovery of the assessment."~~

13

14 NEW SECTION. SECTION 5. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

15

- END -