

1 HOUSE BILL NO. 694

2 INTRODUCED BY S. GIST, M. BERTOGLIO, L. BREWSTER, J. DOOLING, D. FERN, S. GALLOWAY, J.
 3 GILLETTE, S. GUNDERSON, D. HARVEY, D. HAWK, S. KERNS, M. MALONE, R. MARSHALL, J. READ, J.
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5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING SPECIAL DISTRICT LAWS; PROVIDING
 7 FOR CLAIMS TO BE FILED AGAINST THE BOARD OF A LOCAL DISTRICT IF THE BOARD HAS BEEN
 8 FOUND IN NONCOMPLIANCE WITH FINANCIAL REPORTING AND AUDIT REQUIREMENTS; ALLOWING
 9 FOR CITIZEN-INITIATED CLAIMS AGAINST THE BOARD OF A LOCAL DISTRICT FOR NONCOMPLIANCE
 10 WITH OTHER STATUTORY REQUIREMENTS; REQUIRING CLAIMS TO BE REPORTED TO THE
 11 DEPARTMENT OF ADMINISTRATION AND TRAINING TO BE DEVELOPED BY THE LOCAL
 12 GOVERNMENT CENTER; ~~INCLUDING THE FAILURE TO HOLD REGULAR MEETINGS AS AN ACT~~
 13 ~~CONSTITUTING OFFICIAL MISCONDUCT~~; REQUIRING THE LOCAL GOVERNMENT ENTITY TO PAY
 14 TRAINING FEES; CREATING THE OFFENSE OF DERELICTION AND PROVIDING PENALTIES; ALLOWING
 15 THE BOARD OF COUNTY COMMISSIONERS TO APPOINT VACANCIES ON A DRAINAGE DISTRICT
 16 BOARD; AMENDING ~~SECTIONS 45-7-401 AND SECTION~~ 85-8-307, MCA; AND PROVIDING AN
 17 APPLICABILITY DATE AND A TERMINATION DATE."

18
 19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20
 21 NEW SECTION. Section 1. Local district board oversight -- methods for redress. (1) If a claim
 22 has been made against the board of a local government entity as allowed in 2-7-524(1) and the board of a local
 23 government entity has been found in violation of this part as provided in 2-7-524(3)(b), the department shall
 24 notify the applicable governing body under whose authority the local government entity was created.

25 (2) (a) If at least 5% of the citizens ~~residing within the boundaries of~~ THAT ARE SERVED BY a local
 26 government entity file a claim against the board of the local government entity for allegations that the board has
 27 not complied with statutes applicable to the governance, operation, and function of the board, including but not
 28 limited to a violation of public meeting law, the board member appointment or election process, or the actions

1 and duties required of a board member, the claim must be filed with the governing body under whose authority
2 the local government entity was created.

3 (b) The governing body under whose authority the local government entity was created shall review
4 and remit claims received under subsection (2)(a) to the county attorney ~~or~~ AND the department.

5 (3) (a) The department shall review all claims received pursuant to subsections (1) and (2) and report
6 ~~these claims~~ RECEIVED PURSUANT TO SUBSECTION (2) to the local government center. The local government
7 center or the department shall develop a training curriculum appropriate to address the issues detailed in any
8 claim filed pursuant to subsections (1) and (2).

9 (b) The board of the local government entity shall participate in all relevant training offered by the
10 local government center OR THE DEPARTMENT.

11 (4) The ~~department~~ BOARD OF THE LOCAL GOVERNMENT ENTITY shall remit all fees necessary for the
12 training required in subsection (3) to the local government center. ~~After all training is completed, the board of~~
13 ~~the local government entity that received training shall reimburse the department for all fees and charges~~
14 ~~incurred in the process of receiving the training required under subsection (3).~~

15 (5) The local government center AND THE DEPARTMENT shall report to the local government interim
16 committee, in accordance with 5-11-210, all claims received that resulted in the development and delivery of
17 training required under subsection (3).

18 (6) As used in this section, THE FOLLOWING DEFINITIONS APPLY:

19 (a) "Local government center" means the local government center provided for in 20-25-237.

20 (b) (i) "Local government entity" has the meaning provided in 2-7-501, except as provided in ~~2-7-~~
21 ~~501(7)~~ SUBSECTION (6)(b)(ii) OF THIS SECTION.

22 (ii) The term does not include a county, consolidated city-county, incorporated city or town, or school
23 district.

24
25 NEW SECTION. SECTION 2. DERELICTION -- REMOVAL FROM OFFICE. (1) A MEMBER OF THE BOARD OF A
26 LOCAL GOVERNMENT ENTITY, AS DEFINED IN [SECTION 1(6)], COMMITS THE OFFENSE OF DERELICTION IF THE MEMBER
27 PURPOSEFULLY OR KNOWINGLY FAILS TO CONVENE REGULAR MEETINGS IN COMPLIANCE WITH ANY ADOPTED BYLAW OR
28 STATUTORY REQUIREMENT IF THE FAILURE IS REGULAR, REPEATED, AND NEGATIVELY IMPACTS THE:

- 1 (A) OPPORTUNITY FOR MEANINGFUL PUBLIC PARTICIPATION; OR
 2 (B) OPERATION OR FUNCTION OF THE LOCAL GOVERNMENT ENTITY.
 3 (2) THE DISTRICT COURT HAS EXCLUSIVE JURISDICTION IN PROSECUTIONS UNDER THIS SECTION. AN ACTION
 4 FOR DERELICTION MUST BE COMMENCED BY AN INFORMATION FILED AFTER LEAVE TO FILE HAS BEEN GRANTED BY THE
 5 DISTRICT COURT OR AFTER A GRAND JURY INDICTMENT HAS BEEN FOUND.
 6 (3) A MEMBER CONVICTED OF THE OFFENSE OF DERELICTION MUST BE REMOVED FROM OFFICE.
 7 (4) THIS SECTION DOES NOT AFFECT ANY POWER CONFERRED BY LAW TO IMPEACH OR REMOVE ANY PUBLIC
 8 SERVANT OR ANY PROCEEDING AUTHORIZED BY LAW TO CARRY INTO EFFECT AN IMPEACHMENT OR REMOVAL.

9
 10 **Section 2.** Section 45-7-401, MCA, is amended to read:

11 ~~"45-7-401. Official misconduct. (1) A public servant commits the offense of official misconduct when~~
 12 ~~in an official capacity the public servant commits any of the following acts:~~

13 ~~(a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of~~
 14 ~~competent jurisdiction;~~

15 ~~(b) knowingly performs an act in an official capacity that the public servant knows is forbidden by law;~~

16 ~~(c) with the purpose to obtain a personal advantage or an advantage for another, performs an act in~~
 17 ~~excess of the public servant's lawful authority;~~

18 ~~(d) solicits or knowingly accepts for the performance of any act a fee or reward that the public servant~~
 19 ~~knows is not authorized by law; or~~

20 ~~(e) knowingly conducts a meeting of a public agency in violation of 2-3-203.~~

21 ~~(2) A public servant convicted of the offense of official misconduct shall be fined not to exceed \$500~~
 22 ~~or be imprisoned in the county jail for a term not to exceed 6 months, or both.~~

23 ~~(3) The district court has exclusive jurisdiction in prosecutions under this section. Any action for~~
 24 ~~official misconduct must be commenced by an information filed after leave to file has been granted by the~~
 25 ~~district court or after a grand jury indictment has been found.~~

26 ~~(4) Failure of a board of a local government entity, as defined in [SECTION 1(6)], to convene~~
 27 ~~regular meetings in compliance with any adopted bylaw or statutory requirement may constitute official~~
 28 ~~misconduct under this section if the failure is regular, repeated, and negatively impacts the:~~

1 ~~(a) opportunity for meaningful public participation; or~~
 2 ~~(b) operation or function of a local government entity as defined in 2-7-501 [SECTION 1(6)].~~
 3 ~~(4)(5) A public servant who has been charged as provided in subsection (3) may be suspended from~~
 4 ~~office without pay pending final judgment. Upon final judgment of conviction, the public servant shall~~
 5 ~~permanently forfeit the public servant's office. Upon acquittal, the public servant must be reinstated in office and~~
 6 ~~must receive all backpay.~~
 7 ~~(5)(6) This section does not affect any power conferred by law to impeach or remove any public~~
 8 ~~servant or any proceeding authorized by law to carry into effect an impeachment or removal."~~

9
 10 **Section 3.** Section 85-8-307, MCA, is amended to read:
 11 "**85-8-307. Vacancies.** (1) Except as provided in subsection (2), ~~if~~ if a vacancy occurs on the board of
 12 commissioners, the remaining members of the board shall elect ~~some~~ a qualified elector to fill the vacancy, and
 13 the person elected holds office for the unexpired term and until a successor is elected and qualified. The person
 14 appointed must be appointed as a commissioner for the division in which the vacancy exists. If there is a
 15 vacancy or vacancies on the board of commissioners by reason of no appointment being made, due to the
 16 failure of the remaining members of the board to act or on account of no election being held, the judge of the
 17 court having jurisdiction over the drainage district shall, upon the receipt of a petition signed by 10% of the
 18 resident owners of land in the district, appoint to the vacancy or vacancies the person that the petition may
 19 designate.

20 (2) If a vacancy occurs on the board of commissioners and no other members of the board exist to
 21 elect a qualified elector to fill the vacancy, the board of county commissioners of the county with territory within
 22 the district shall:

23 (a) appoint members as commissioners for the division in which the vacancies occur; and
 24 (b) be considered ex officio members of the board of commissioners until the vacant seats are
 25 appointed as allowed in subsection (2)(a)."

26
 27 NEW SECTION. Section 4. Codification instruction. (1) [Section 1] is intended to be codified as an
 28 integral part of Title 2, chapter 7, part 5, and the provisions of Title 2, chapter 7, part 5, apply to [section 1].

1 (2) [SECTION 2] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 45, CHAPTER 7, PART 4, AND
2 THE PROVISIONS OF TITLE 45, CHAPTER 7, PART 4, APPLY TO [SECTION 2].

3
4 NEW SECTION. **SECTION 5. APPLICABILITY.** [SECTION 2] APPLIES TO ACTIONS TAKEN ON OR AFTER [THE
5 EFFECTIVE DATE OF THIS ACT].

6
7 NEW SECTION. **Section 6. Termination.** [Section 1] terminates June 30, 2023.

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