

# HJ30: COUNTY WATER AND/OR SEWER DISTRICTS

## BOARD COMPOSITION, APPOINTMENT, ELECTION, AND VACANCIES – HISTORICAL ANALYSIS

### 64 YEARS OF WATER/SEWER DISTRICTS

In 1957, the Legislature passed House Bill 310 which created a framework for what were originally called county water districts, later reclassified as county water and/or sewer districts. Even from their inception, these water and sewer districts may have a somewhat misleading name since while called "county" districts, HB310 clearly states that "the people of any county, or portion of a county, or city and county...may organize a county water district".

So, HB310 intended to allow a water district to include both county and municipal areas, which is still allowed in current law.

HB310 from 1957 established a majority of the framework that county water and/or sewer districts still abide by today. Small, mostly organizational and stylistic changes occurred in 1959, 1965, 1967, and 1974 with a larger overhaul in 1975 to 1979 when the entirety of the Revised Codes of Montana (RCM) was recodified into what is now known as the Montana Code Annotated (MCA). As with most statutes that predate 1975, the county water and/or sewer district statutes were reorganized into a new numbering system and edited to reduce redundancy and general wordiness.

After 1979, the statutes now located in [Title 7, Chapter 13, parts 22](#) and [23](#) saw minor revisions through the rest of the 20<sup>th</sup> century with more impactful pieces of legislation brought in 1999, 2005, 2011, and 2015. The following analysis will look at these four bills at more length.

The Legislature created county water and/or sewer districts in 1957 during the 35<sup>th</sup> Legislative session.

During the last two LGIC meetings, discussion focused primarily on the processes to appoint or elect directors to the board of a county water and/or sewer district and the processes to fill vacancies. Thus, the following analysis focuses primarily on the statutes governing board composition and replacement.

**1999: SENATE BILL 488** ([CH. 254](#))

The most significant change added in SB488 created a process for how a district would seat a new director to the board if fewer candidates have filed for election than there are seats open on the board. The following changes were added to 7-13-2262, MCA to define the process:

- the election administrator may cancel the election;
- if the election is not held, the board of directors may declare the candidate who filed a nominating petition the new director; or
- if no candidate filed for the position, the board of directors may appoint someone to the position. The appointed director serves the same term as if the director were elected, and the appointed director must be elected in the subsequent election.

Additionally, in an instance when no directors remain on a board and no candidates file for nomination, the county commissioners may appoint the number of directors allowed on the board. If the district lies in more than one county or includes any municipalities, each county commission or mayor must be allowed to appoint a director for their respective areas. Again, these types of appointed directors must be subsequently elected in the next election.

**2005: HOUSE BILL 666** ([CH. 341](#))

HB 666 added a variety of changes to county water and/or sewer districts.

Revisions affecting board composition (7-13-2231):

- If no electors reside in a newly formed district when the board of directors is to be elected, the owners of all the real property in the district may sign a certificate of appointment to appoint the directors.

Miscellaneous revisions:

- Allows owners of real property in a proposed district to be included in the petition threshold (previously, only registered voters were included);
- Removes the requirement to hold an election for the creation of a district if the petition to create the district is signed by owners of all real property residing in the proposed district;
- Clarifies that if sufficient protests are received in response to an assessment resolution, the board may not utilize the proposed assessment method, but the board may adopt subsequent resolutions using a different method of assessment which must then proceed through the adoption process;
- Clarifies and authorizes the issuance of revenue bond and special assessment bond indebtedness in certain situations; and
- Allows the board of directors to establish a subdistrict by resolution.

**2011: HOUSE BILL 380** ([CH. 214](#))

HB380 mainly addressed the salaries of the board of directors and clarified the duties of board presidents, but also included a significant clarification related to vacancies on a board of directors.

A new section added in HB380, now codified as 7-13-2263, defined what constitutes a vacancy on a board of directors:

[7-13-2263. Vacancies.](#) A vacancy is created when any of the following events occurs before the expiration of the term of the incumbent:

- (1) death;
- (2) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent is mentally ill;
- (3) resignation;
- (4) removal from office;
- (5) neglect or refusal to perform the duties required by this part for 3 consecutive months, except when prevented by sickness or when absent from the district by permission of the board of directors;
- (6) conviction of a felony or a violation of official duties; or
- (7) the decision of a court declaring the incumbent's election or appointment void.

**2015: HOUSE BILL 84** ([CH. 49](#))

HB84 was a large bill requested by the State Administration and Veterans Affairs Interim Committee (SAVA) that primarily revised election laws. For the purposes of county water and/or sewer districts, the bill added a definition of "qualified elector" and subsequently replaced old language with the term throughout Title 7, Chapter 12, parts 22 and 23. The effect of this change was to clarify and simplify who can vote in county water and/or sewer district elections. The bill also revised language to clarify that [Title 13, chapter 1, part 5](#) (Special Purpose District Elections) governs all elections held in relation to county water and/or sewer districts.

However, the bill also made a change to a director's term of office which had noticeable impacts to districts. Prior to HB84, a director appointed by a mayor or county commission served a 6-year term. The bill removed this language but did not include any clarifying language, meaning that the appointed directors would serve terms equal to elected directors, normally a 4-year term. An appointed director may only serve a 2-year term, due to requirements that a newly created board serve staggered terms. After an initial 2-year term served, all subsequent directors serve 4-year terms.

## CURRENT STATUTORY LANGUAGE FOR BOARD COMPOSITION

*The following are the current statutes governing board composition. The committee may find certain subsections worthy of further discussion or analysis, so language is highlighted and further commentary provided.*

### CREATING A NEW DISTRICT AND BOARD

**7-13-2231. Election or appointment of board of directors.** (1) The district shall elect a board of directors, except as provided in subsection (2).

(2) If no qualified electors reside in the district at a time when directors of the district are to be elected, the directors must be appointed in a certificate of appointment. The certificate of appointment must be signed by the owners of all of the real property in the district and must contain the signed acceptance of the appointment by all of the directors.

(3) The board of directors is the governing body of the district.

**(4) When an appointed director's term expires, the position must be filled by election, except as provided in subsection (2).** – clarifies that an appointed director must be elected after the first term unless there are no electors in the district

**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 district **include any municipality or municipalities**, said board, in addition to said five or three directors to be elected as aforesaid, shall consist of **one additional director for each of said municipalities within such district**, each such additional director to be **appointed by the mayor** of the municipality for which said additional director is allowed, and, **if there be any unincorporated territory within said district, one additional director to be appointed by the board of county commissioners** of each county containing such territory.

- No municipalities included = 5 directors (if only 10 or fewer qualified electors in district = 3 directors)
- Municipalities included = 1 additional director for each municipality, appointed by the mayor
- Unincorporated territory included = 1 additional director for each county, appointed by county commission

**7-13-2233. Qualifications of directors.** (1) To be eligible for election or appointment to a board of directors, a person must be:

- (a) registered to vote as required by law;
- (b) 18 years of age or older;

(c) a citizen of the United States; and

(d) a resident of the district or an owner of real property in the district who is a resident of the state of Montana.

(2) A person who is serving on a board of directors on July 1, 2017, who does not meet the qualifications under subsection (1) may serve the remainder of the person's term but may not be reelected or reappointed to the board. A person elected or appointed after July 1, 2017, must meet the qualifications under subsection (1).

**7-13-2234. Term of office.** (1) A director, **elected or appointed**, shall hold office until the **election and qualification** or the **appointment and qualification** of the director's successor.

(2) Except as provided in subsection (3), the term of office of a director must be **4 years**.

(3) (a) In districts requiring the election of five directors, **three of the initial directors shall serve for a term of 2 years** and **two of the initial directors shall serve for a term of 4 years**. – **staggered initial terms**

(b) In districts requiring the election of three directors, one initial director shall serve for a term of 2 years and two initial directors shall serve for a term of 4 years.

(c) At the first meeting following an initial election or appointment of directors, the directors shall determine by lot who shall serve a 2-year term.

(4) Directors to be first appointed under the provisions of this part and part 23 must be appointed within 90 days after the formation of the district.

- **Possible area in need of clarification:** What defines "qualification" in subsection (1)? Is additional language needed to clearly identify the timeline of when a new director is seated?

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

**7-13-2260. Provision for municipalities not having mayor.** In municipalities in which there is no mayor, the duty imposed upon said officer by the provisions of this part and part 23 shall be performed by the president of the board of trustees or other chief executive of the municipality.

**7-13-2271. Organization of board of directors.** (1) A new board of directors shall hold its first meeting on the sixth Monday after the election of directors. It shall choose one of its members president and shall provide for the time and place of holding its meetings and the manner in which its special meetings may be called.

(2) The board shall establish rules for its proceedings.

## VACANCY ON AN EXISTING BOARD

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**7-13-2263. Vacancies.** A vacancy is created when any of the following events occurs before the expiration of the term of the incumbent:

- (1) death;
- (2) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent is mentally ill;
- (3) resignation;
- (4) removal from office;
- (5) neglect or refusal to perform the duties required by this part for 3 consecutive months, except when prevented by sickness or when absent from the district by permission of the board of directors;
- (6) conviction of a felony or a violation of official duties; or
- (7) the decision of a court declaring the incumbent's election or appointment void.

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

(b) A vacancy must be determined in accordance with 7-13-2263.

(2) **If there are no directors remaining on the board and no nominees for any director position to be elected, the county commissioners may appoint the number of directors specified in 7-13-2232(1). If the district lies in more than one county, the county commissioners of each county with territory included in the district shall jointly appoint the directors. The county commissioners shall stagger the terms of the directors appointed.**

(3) **If the boundaries of the district include any municipality or municipalities and a new board must be appointed as provided in subsection (2), the board shall include one additional director to be appointed by the mayor of the municipality for which the additional director is allowed.**

(4) **Following the appointment of a board in accordance with subsection (2), the directors must be elected as provided in this part.**

- Single vacancy = the remaining directors elect a replacement (regardless of whether a director was originally appointed or elected)
- If NO directors are left after vacancies (and no nominees file to run for election):
  - County commission (or commissions if more than one county) appoints the number of directors allowed in 7-13-2232(1) (either 5 or 3 with possible additional appointed members depending on unincorporated territory included in district)
  - Mayor appoints a replacement director if the district was allowed a municipal representative in 7-13-2232(2)
    - subsection (3) above may benefit from added clarification related to the "one additional director". Is this additional director the one allowed for in 7-13-2232(2)?