

2021 HOUSE BILL 694 SUMMARY

BACKGROUND

Representative Steve Gist introduced HB694 during the 2021 session. The bill attempted to increase methods to oversee and aid special district boards struggling to adhere to statutory requirements.

The bill was introduced on March 26, amended twice - once in the House Local Government Committee and again in the Senate Local Government Committee, and eventually failed to pass second reading in the Senate on April 23.

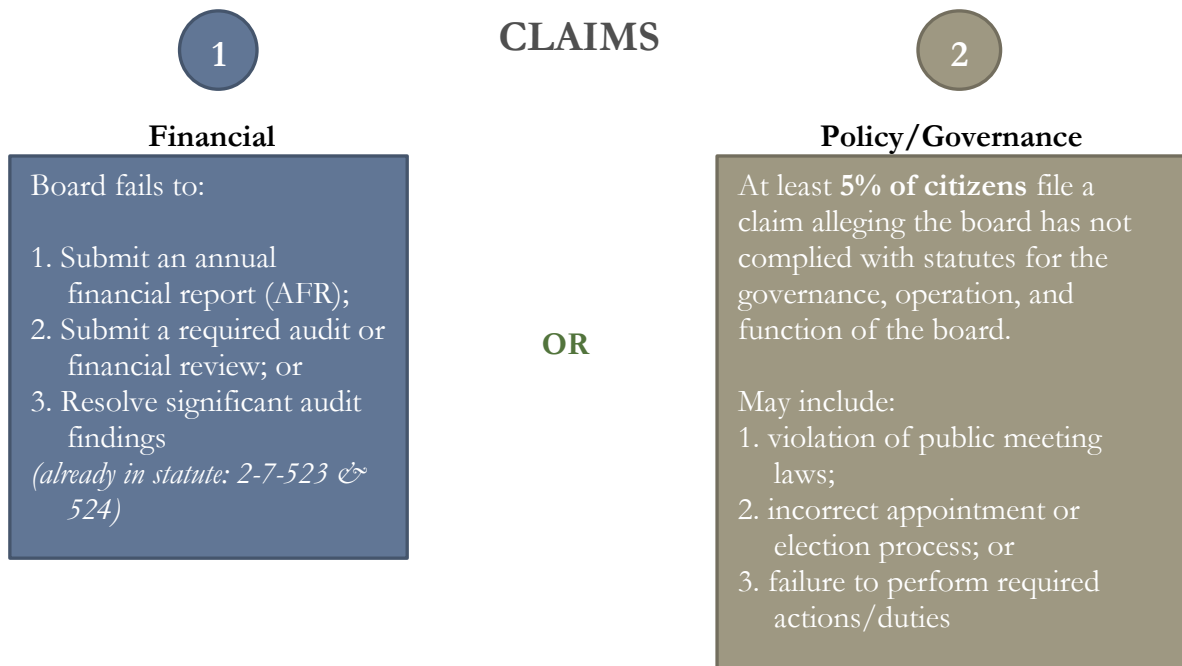
TYPES OF CLAIMS AGAINST AN LG ENTITY

HB694 provides for claims against certain "local government entities" as defined in [2-7-501](#). The definition in 2-7-501 is broad, including most special district types; however, the bill specifies that counties, consolidated city-counties, incorporated cities and towns, and school districts are **NOT** considered "local government entities".

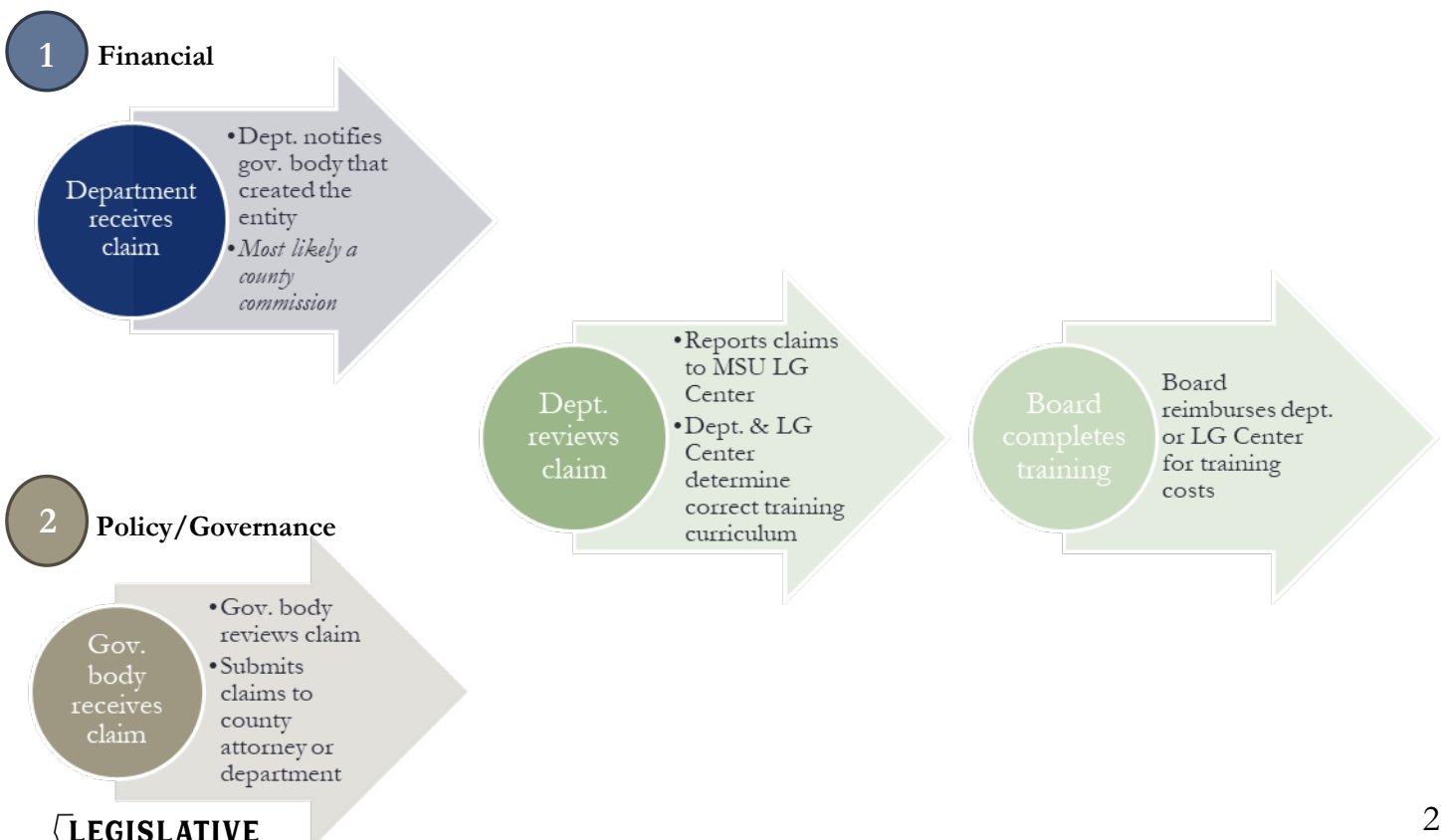
For the purposes of HB694, "local government entities" include, but are not limited to:

- airport authority districts
- cemetery districts
- county housing authorities
- county road improvement districts
- county sewer districts
- county water districts
- county weed management districts
- drainage districts
- fire companies
- fire districts
- fire service areas
- hospital districts
- irrigation districts
- mosquito districts
- municipal fire departments
- port authorities
- solid waste management districts
- rural improvement districts
- soil conservation districts
- special education or other cooperatives
- television districts
- urban transportation districts
- water conservancy districts
- regional resource authorities
- other miscellaneous and special districts

The bill allows for two types of claims to be submitted against the board of a "local government entity". The two types of claims follow similar paths once filed with either the Department of Administration or the "governing body under whose authority the local government entity was created" – most likely the board of county commissioners or city government.



FLOWCHART OF ACTIONS:



Questions/Considerations:

1. Would HB694 create redundancies in actions allowed in Title 2, Chapter 7, Part 5: Audits of Political Subdivisions? *See Appendix A for more information.*
2. The mechanism to fund training may need additional work: HB694 requires the department (assume the Local Government Services Division) to initially remit all fees for training to the MSU LG Center, later to be paid back by the local government entity after training is completed. Does the department have the capacity to provide funding in this way? Is the step unnecessary?
3. Do both the department and the MSU LG Center have the capacity and resources to offer required training? *See [fiscal note](#) for more information.*

Technical Issues:

1. Page 2, line 9 should read: "local government center or the department." Refer to [fiscal note](#) – this error was noted in testimony and should require that training offered by the department must be completed.
2. Page 2, line 19-20 should read: "9b)(i) "Local government entity" has the meaning provided in 2-7-501, except as provided in ~~2-7-501(7)(b)(ii)~~ subsection (6)(b)(ii)."

ADDITIONAL CAUSES FOR OFFICIAL MISCONDUCT

HB694 also inserted a new subsection (4) in [45-7-401](#). **Official misconduct:**

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

- (a) opportunity for meaningful public participation; or
- (b) operation or function of a local government entity as defined in [section 1(6)].

Questions/Considerations:

1. How, or who, would define whether a failure is "regular, repeated, and negatively impacts" the operations of the entity?
2. Official misconduct often applies to the actions of one person. If a board fails to correctly notice a meeting, for example, would all board members be liable for official misconduct? Would an investigation be necessary to determine if the entirety of the board was at fault? If not the entire board, who would be liable for official misconduct in this case?

SIGNIFICANT AMENDMENT

The Senate Local Government (SLG) Committee amended the bill to remove the section on Official Misconduct and create a new section, Dereliction – removal from office, intended for codification in Title 45, chapter 7, part 4.

NEW SECTION. Section 2. Dereliction -- removal from office. (1) A **member** of the board of a local government entity, as defined in [section 1(6)], commits the offense of dereliction if the **member** **purposefully or knowingly** fails to convene regular meetings in compliance with any adopted bylaw or statutory requirement if the failure is regular, repeated, and negatively impacts the:

- (a) opportunity for meaningful public participation; or
- (b) operation or function of the local government entity.

(2) The **district court** has exclusive jurisdiction in prosecutions under this section. An action for dereliction must be commenced by an information filed after leave to file has been granted by the district court or after a grand jury indictment has been found.

(3) **A member convicted of the offense of dereliction must be removed from office.**

(4) This section does not affect any power conferred by law to impeach or remove any public servant or any proceeding authorized by law to carry into effect an impeachment or removal.

SLG placed the amendment on the bill, but the bill then failed
Second Reading on the Senate floor: 14-36

LEGISLATIVE ACTION SUMMARY FOR HB694

Date	Action	Votes Yes	Votes No
4/1/21	(H) Local Government – Exec Action – Pass as amended	17	0
4/07/21	(H) 2 nd Reading	100	0
4/8/21	(H) 3 rd Reading	99	0
4/16/21	(S) Local Government – Concurred as amended	9	1
4/22/21	(S) 2 nd Reading Motion to Amend Failed	19	31
4/22/21	(S) 2 nd Reading Concur Motion Failed	14	36
4/22/21	(S) 2 nd Reading Indefinitely Postponed	45	5
4/23/21	(S) Motion to reconsider last action and place on 2 nd Reading Failed	20	29

APPENDIX A

EXISTING PROCESS FOR LOCAL GOVERNMENT ENTITIES WITH AUDIT FINDINGS:

2-7-515. Actions by governing bodies. (1) Upon receipt of the audit report, the governing bodies of each audited local government entity shall review the contents and within 30 days shall submit to the department a corrective action plan detailing what action or actions they plan to take on any findings or recommendations contained in the audit report. If no findings or recommendations appear in the audit report, notification is not required. If the local government entity is a school district, the local government entity shall also send a copy of the corrective action plan to the superintendent of public instruction.

(2) Notification to the department shall include a statement by the governing bodies that noted findings or recommendations for improvement have been acted on by adoption as recommended, adoption with modification, or rejection.

(3) Within 30 days of receipt of the corrective action plan, the department shall notify the entity of the acceptance or rejection of the corrective measures. If the department and the local government entity fail to agree on the corrective measures, a conference between the parties must be held within 30 days of the department's decision not to accept the local government entity's corrective measures. Failure to resolve significant findings or implement corrective measures must result in the withholding of financial assistance in accordance with rules adopted by the department pending resolution or compliance.

(4) In cases where a violation of law or nonperformance of duty is found on the part of an officer, employee, or board, the officer, employee, or board must be proceeded against by the attorney general or county, city, or town attorney as provided by law. If a written request to do so is received from the department, the county, city, or town attorney shall report the proceedings instituted or to be instituted, relating to the violations of law and nonperformance of duty, to the department within 30 days after receiving the request. If the county, city, or town attorney fails or refuses to prosecute the case, the department shall refer the case to the attorney general to prosecute the case at the expense of the local government entity.

EXISTING PROCESS FOR LOCAL GOVERNMENT ENTITIES WHO FAIL TO SUBMIT
REQUIRED FINANCIAL REPORTS:

2-7-517. Penalties — rules to establish fine. (1) Except as provided in 15-1-121(12)(b), when a local government entity has failed to file a report as required by 2-7-503(1) or to make the payment required by 2-7-514(2) within 60 days, the department may issue an order stopping payment of any state financial assistance to the local government entity or may charge a late payment penalty as adopted by rule. Upon receipt of the report or payment of the filing fee, all financial assistance that was withheld under this section must be released and paid to the local government entity.

(2) In addition to the penalty provided in subsection (1), if a local government entity has not filed the audits or reports pursuant to 2-7-503 within 180 days of the dates required by 2-7-503, the department shall notify the entity of the fine due to the department and shall provide public notice of the delinquent audits or reports.

(3) When a local government entity has failed to make payment as required by 2-7-516 within 60 days of receiving a bill for an audit, the department may issue an order stopping payment of any state financial aid to the local government entity. Upon payment for the audit, all financial aid that was withheld because of failure to make payment must be released and paid to the local government entity.

(4) The department may grant an extension to a local government entity for filing the audits and reports required under 2-7-503 or may waive the fines, fees, and other penalties imposed in this section if the local government entity shows good cause for the delinquency or demonstrates that the failure to comply with 2-7-503 was the result of circumstances beyond the entity's control.

(5) The department shall adopt rules establishing a fine, not to exceed \$100, based on the cost of providing public notice under subsection (2), for failure to file audits or reports required by 2-7-503 in the timeframes required under that section.

ADDITIONAL PROCESSES FOR FAILURE TO COMPLY WITH FINANCIAL REQUIREMENTS:

- *New sections enacted in SB302(2019)*

2-7-523. Cause of action — failure to file reports and audits or resolve findings. (1) If a local government entity fails to file an annual financial report with the department as required by 2-7-503(1), to complete and submit an audit or financial review to the department as required by 2-7-503(3), or to resolve significant audit findings or implement corrective measures as required by 2-7-515(3) within 2 years of the applicable deadlines, a person

identified in subsection (2) of this section who has received a written determination from the department under 2-7-524(3)(c) or (4)(b) may bring a **cause of action** against the local government entity for failure to comply with the local government entity's fiduciary requirements.

(2) The following parties may bring a cause of action under the provisions of subsection (1):

(a) any person who pays property taxes to the local government entity;

(b) any elected officer of any local taxing jurisdiction that collects revenue from or distributes revenue to the local government entity;

(c) any person residing within the jurisdictional boundaries of the local government entity who can demonstrate a specific personal and legal interest, as distinguished from a general interest, and has been or is likely to be specially and injuriously affected by the local government entity's failure to meet the requirements as set forth in subsection (1).

(3) The cause of action must be filed in the district court in the county where the local government entity is located.

(4) **In addition to any other penalty provided by law, the court may grant relief that it considers appropriate, including but not limited to providing declaratory relief, appointing a financial receiver for the local government entity, or compelling a mandatory duty required under this part that is imposed on a state or local government officer or local government entity. If a party identified in subsection (2) prevails in an action brought under this section, that party must be awarded costs and reasonable attorney fees.**

2-7-524. Filing of claims against local government entity — disposition by department as prerequisite. (1) All claims against a local government entity for failure to file an annual financial report with the department as required by 2-7-503(1), failure to complete and submit an audit or financial review to the department as required by 2-7-503(3), or failure to resolve significant audit findings or implement corrective measures as required by 2-7-515(3) within 2 years of the applicable deadlines must be presented in writing to the department.

(2) A complaint based on a claim subject to the provisions of subsection (1) may not be filed in district court unless the claimant has first presented the claim to the department and submitted a copy of the claim to the local government entity. Upon the department's receipt of the claim, the statute of limitations on the claim is tolled until a written determination is issued under subsection (3).

(3) The department must review the claim and issue one of the following determinations in writing within 60 days after the claim is presented to the department:

(a) the local government entity has not violated the requirements of this part for a period of 2 years from the applicable deadlines;

(b) there is sufficient evidence of the violations of the requirements of this part for a period of 2 years from the applicable deadlines, and the department will initiate further technical assistance to help the local government entity come into compliance with this part within 6 months; or

(c) there is sufficient evidence of the violations of the requirements of this part for a period of 2 years from the applicable deadlines.

(4) If the department issues a written determination under subsection (3)(b), within 6 months the department must provide the complainant with a final determination that either:

(a) the local government entity has come into compliance with the provisions of this part; or

(b) there is sufficient evidence of the violations of the requirements of this part.

(5) A complainant must receive a written determination from the department under subsection (3)(c) or (4)(b) before proceeding to district court in accordance with 2-7-523.

(6) The failure of the department to issue a written determination of a claim within 60 days after the claim is presented to the department must be considered a written determination under subsection (3)(c) for purposes of this section.