

# HJ30: COUNTY WATER AND/OR SEWER DISTRICTS

## BOARD COMPOSITION, APPOINTMENT, ELECTION, AND VACANCIES

### 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" is 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)?

## PROCESS IF TOO FEW CANDIDATES FILE FOR ELECTION

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[7-13-2222](#) provides that all county water and/or sewer district elections are governed by Title, 13, ch. 1, part 5.

**[13-1-502](#). Deadlines for candidate filing, write-in candidacy, and withdrawal — election cancellation — election by acclamation.** (1) Consistent with the candidate filing deadline in 13-10-201(7) for primary elections and except as provided in subsection (3) for a write-in candidate, the candidate filing deadline for election to a special purpose district office is no sooner than 145 days and no later than 85 days before the election.

(2) Consistent with the withdrawal deadline in 13-10-325 for primary elections, a candidate may not withdraw after the candidate filing deadline provided in subsection (1).

(3) A declaration of intent to be a write-in candidate must be filed with the election administrator by 5 p.m. on the 65th day before the date of the election.

**(4) (a) Except as provided in subsection (4)(b), if by the write-in candidate deadline in subsection (3) the number of candidates is equal to or less than the number of positions to be filled at the election, the election administrator shall cancel the election and, pursuant to 13-1-304, immediately notify the governing body of the local government in writing of the cancellation. However, the governing body of the local government may by resolution require that the election be held.**

(b) For an election of conservation district supervisors held in conjunction with a federal primary or federal general election, if by the candidate filing deadline under subsection (1) the number of candidates is equal to or less than the number of positions to be filled at the election, the election administrator shall cancel the election and immediately notify the governing body of the conservation district in writing of the cancellation. However, the governing body of the conservation district may, by no later than 10 days after the candidate filing deadline, pass a resolution to require that the election be held.

**(5) (a) If an election has been canceled and there is only one candidate for a position, the governing body of the local government or, if appropriate, of the conservation district shall declare the candidate elected to the position by acclamation.**

**(b) Except as otherwise provided by law:**

**(i) if an election has been canceled and there are no regular or declared write-in candidates for a position, the governing body of the local government or, if appropriate, of the conservation district shall fill the position by appointment;**

**(ii) an appointed member shall serve the same term as if the member were elected.**