

# HJ30: COMPARABLE STATUTES – APPOINTMENT AND ELECTION PROCESSES

## BACKGROUND

In July, the LGIC chose study option "A" on their HJ30 work plan, which included an "analysis of other comparable state statutes that address issues identified in panel discussions or other committee work".

The committee expressed interest in the processes to appoint or elect county water and/or sewer district board members and how to fill vacancies. The following document includes processes allowed in other special district types that operate with a board.

How do other districts elect and/or appoint board members?

How are vacancies handled in other districts?

## ORGANIZATION & ADDITIONAL CONSIDERATIONS

The following tables organize districts into two groups: those with appointed officials and those requiring elected officials.

Counties may also create "administrative" boards governed by [Title 7, chapter 1, part 2](#). County commissioners have the discretion to make these board positions appointed or elected, and vacancies may be filled by appointment until election (if applicable).

Of note: [7-1-201](#) lists the Uniform Districts (those created under [Title 7, chapter 11, part 10](#)) as "administrative boards, districts, or commissions", meaning the board of county commissioners has the discretion to make these boards appointed or elected.

DISTRICTS WITH APPOINTED BOARDS

District Type	Appointment Process	Removals/Vacancies
<b>Business Improvement Districts</b> <a href="#">7-12-1121</a> ; <a href="#">7-12-1123</a>	<ul style="list-style-type: none"> <li>Governing body of local government appoints 5 to 7 members to the board</li> <li>Appointed members serve 4 yr. terms</li> </ul>	<ul style="list-style-type: none"> <li>Appointing authority may remove with gov. body's approval</li> <li>Appointing authority appoints vacancies</li> </ul>
<b>Multicounty Rural Improvement District</b> <a href="#">7-12-2121</a>	<ul style="list-style-type: none"> <li>Board of county commissioners appoint initial members and subsequent trustees</li> </ul>	<ul style="list-style-type: none"> <li>Vacancies filled by county commission appointment</li> </ul>
<b>Transportation Improvement Authority</b> <a href="#">7-14-1002</a>	<ul style="list-style-type: none"> <li>County or municipality appoint first commissioners</li> <li>Each commissioner holds office until successor appointed</li> </ul>	<ul style="list-style-type: none"> <li>No process provided</li> </ul>
<b>County Housing Authority</b> <a href="#">7-15-2112</a>	<ul style="list-style-type: none"> <li>Board of county commissioners appoint commissioners</li> </ul>	<ul style="list-style-type: none"> <li>Removed by county commissioners</li> </ul>
<b>Railway Authority</b> <a href="#">7-14-1613</a>	<ul style="list-style-type: none"> <li>Board of county commissioners appoint 5 directors</li> </ul>	<ul style="list-style-type: none"> <li>Vacancies filled by the board of county commissioners</li> </ul>
<b>Urban Renewal District</b> <a href="#">7-15-4234</a>	<ul style="list-style-type: none"> <li>Mayor, with advice &amp; consent of gov. body, appoints 5-member board of commissioners</li> </ul>	<ul style="list-style-type: none"> <li>Commissioners may be removed for inefficiency, neglect of duty, or misconduct in office</li> </ul>
<b>Municipal Housing Authority</b> <a href="#">7-15-4406</a>	<ul style="list-style-type: none"> <li>Mayor appoints 7 commissioners</li> <li>Successors are appointed and qualified</li> </ul>	<ul style="list-style-type: none"> <li>Mayor may remove for inefficiency, neglect of duty, or misconduct in office after public hearing held</li> </ul>
<b>Weed Control District</b> <a href="#">7-22-2103</a>	<ul style="list-style-type: none"> <li>Board of county commissioners appoint board members</li> </ul>	<ul style="list-style-type: none"> <li>County commission fills vacancies by appointment (7-1-201)</li> </ul>
<b>Cemetery District – permanent care and improvement fund</b> <a href="#">7-35-2133</a>	<ul style="list-style-type: none"> <li>District judge appoints trustees to a board of trustees</li> </ul>	<ul style="list-style-type: none"> <li>Judge appoints trustee to fill vacancy (may allow the board of trustees to provide a list of qualified persons)</li> </ul>
<b>County Planning/ Zoning Commission</b> <a href="#">76-2-102</a>	<ul style="list-style-type: none"> <li>Citizen members appointed by board of county commissioners</li> <li>County official appointed by county commissioners</li> </ul>	<ul style="list-style-type: none"> <li>No process provided</li> </ul>
<b>Irrigation District</b> <a href="#">85-7-107</a>	<ul style="list-style-type: none"> <li>Court may appoint one commissioner per division under certain circumstances</li> </ul>	<ul style="list-style-type: none"> <li>Commissioners hold office until successor appointed and qualified</li> </ul>
<b>Municipal Airport Authority</b> <a href="#">67-11-102</a>	<ul style="list-style-type: none"> <li>Gov. body of municipality appoints 5 or more commissioners</li> </ul>	<ul style="list-style-type: none"> <li>Gov. body fills vacancies by appointment</li> </ul>

<b>Regional Airport Authority</b> <a href="#">67-11-103</a>	<ul style="list-style-type: none"> <li>• 2 or more municipalities appoint first commissioners by resolution</li> </ul>	<ul style="list-style-type: none"> <li>• Vacancies filled by appointment of the gov. body</li> </ul>
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DISTRICTS WITH APPOINTED AND ELECTED BOARDS

District Type	Appointment/Election Process	Removals/Vacancies
<b>County Water and/or Sewer Districts</b> <a href="#">7-13-2231</a> ; <a href="#">7-13-2232</a> ; <a href="#">7-13-2262</a>	<ul style="list-style-type: none"> <li>• Directors elected (appointment allowed in areas where no qualified electors reside)</li> <li>• If territory includes a municipality, one additional director appointed by mayor</li> <li>• If territory includes unincorporated territory, one additional director appointed by county commissioners</li> <li>• Appointed directors must be subsequently elected</li> </ul>	<ul style="list-style-type: none"> <li>• Vacancies filled by majority vote of remaining directors</li> <li>• Appointed directors must be subsequently elected</li> </ul>
<b>Urban Transportation District</b> <a href="#">7-14-212</a>	<ul style="list-style-type: none"> <li>• County commissioners and gov. body of each city or town included determine if board is to be elected or appointed</li> <li>• May be combination of appointed and elected members</li> </ul>	<ul style="list-style-type: none"> <li>• County commissioners and gov. body determine process to fill vacancies</li> <li>• If elected board is used, must also include a process for if no nominees file for elective office</li> </ul>
<b>Port Authority</b> <a href="#">7-14-1101</a> ; <a href="#">7-14-1103</a>	<ul style="list-style-type: none"> <li>• County or municipality may choose to appoint or elect at least 5 commissioners</li> <li>• If no nominees file, the appropriate local governing body may appoint</li> </ul>	<ul style="list-style-type: none"> <li>• Each commissioner holds office until a successor has been appointed or elected</li> </ul>
<b>Rural Fire District<sup>1</sup></b> <a href="#">7-33-2104</a> ; <a href="#">7-33-2106</a>	<ul style="list-style-type: none"> <li>• County commissioners appoint initial 5 trustees</li> <li>• Successors are either elected or appointed</li> <li>• If no candidate files, county commissioners appoint the position</li> </ul>	<ul style="list-style-type: none"> <li>• County governing body appoints vacancies</li> </ul>
<b>Conservation Districts</b> <a href="#">76-15-301</a> ; <a href="#">76-15-303</a> ; <a href="#">76-15-311</a>	<ul style="list-style-type: none"> <li>• Supervisors elected at large for each supervisor district (up to 5 districts, 1 supervisor per district)</li> <li>• If there are municipalities within the district, 2 additional supervisors appointed by legislative bodies of the municipalities (after consultation with the elected supervisors)</li> <li>• Appointed supervisors must be elected for</li> </ul>	<ul style="list-style-type: none"> <li>• Vacancy of the office of an elected supervisor: remaining supervisors appoint position until the next election</li> </ul>

<sup>1</sup> [7-33-2106](#) mentions methods for both appointing and electing rural fire district trustees. Language is unclear, but it may be inferred that trustees are elected unless no candidate files. Subsection (3) clearly states that vacancies may be filled by appointment, but the rest of the section does not specifically state how trustee positions are filled when not open by vacancy.

	subsequent terms	
<b>Drainage District</b> <a href="#">85-8-301</a> ; <a href="#">85-8-302</a> ; <a href="#">85-8-307</a>	<ul style="list-style-type: none"> <li>Initial commissioners appointed by judge</li> <li>Successors are elected</li> </ul>	<ul style="list-style-type: none"> <li>Remaining board members elect a replacement for a vacancy</li> <li>If board fails to fill vacancy, judge of the court with jurisdiction over the district may appoint vacancies if a petition signed by 10% of the owners of land in the district is received</li> </ul>
<b>Hospital District</b> <a href="#">7-34-2115</a> ; <a href="#">7-34-2117</a> ; <a href="#">7-34-2121</a>	<ul style="list-style-type: none"> <li>3 – 5 trustees are elected</li> <li>If no candidate files, board of county commissioners appoints the trustee</li> </ul>	<ul style="list-style-type: none"> <li>Vacancies filled by appointment of remaining members</li> </ul>
<b>Public Library District</b> <a href="#">22-1-704</a> ; <a href="#">22-1-706</a>	<ul style="list-style-type: none"> <li>Gov. body of each county with territory in district jointly appoints initial board members</li> <li>Successors are elected</li> </ul>	<ul style="list-style-type: none"> <li>Vacancies filled by appointment of remaining members</li> </ul>
<b>Resort District</b> <a href="#">7-6-1544</a>	<ul style="list-style-type: none"> <li>5 elected members</li> <li>If no candidates file, the existing board appoints members</li> <li>Appointees must be elected during the next year following the appointment</li> </ul>	<ul style="list-style-type: none"> <li>Vacancies filled by appointment of remaining directors – must be elected ASAP following the appointment</li> </ul>
<b>Regional Resource Authority</b> <a href="#">7-10-110</a>	<ul style="list-style-type: none"> <li>Initial members appointed by county commissioners</li> <li>Subsequent board members are elected</li> </ul>	<ul style="list-style-type: none"> <li>No process provided</li> </ul>

DISTRICT OF NOTE: CONSERVATION DISTRICTS

The inclusion of "municipal" directors on county water and/or sewer boards has been an item of discussion. Very few other districts contemplate this occurrence, so little exists in statute to offer guidance. However, one district type stood out: conservation districts.

The statutes governing conservation districts offer:

1. much more detail than other district statutes;
2. a process to divide into "supervisor areas" with individual supervisors representing different areas; and
3. processes for adding additional members based on the inclusion of municipalities, much like county water and/or sewer districts.

## Reorganization of District

- District may divide the area into 5 supervisor areas, each area represented by a supervisor
- If district qualifies for 7 supervisors (see pg. 6), district shall pass a resolution and the Department of Natural Resources may reorganize the district

**76-15-301. Establishment of supervisor areas and reorganization of district governing bodies.**

(1) (a) A conservation district is authorized to divide the unincorporated area of the district into no more than five supervisor areas.

(b) Each supervisor area must be represented by one supervisor. If less than five supervisor areas are established, a sufficient number of supervisors must be elected at large to complete the governing body of the district as provided in 76-15-311(1).

(2) (a) In a district containing no incorporated municipalities that are completely within the boundaries of the district, the department shall, upon passage of a resolution by the district to transition to seven supervisors, reorganize the district as provided in 76-15-305 and this subsection (2).

(b) A district that is reorganized pursuant to this section may be divided into no more than seven supervisor areas.

(3) If provided by ordinance of the district, a supervisor must reside in the area the supervisor represents.

**76-15-305. Transition to seven supervisors.** (1) At the time of reorganization under 76-15-301(2), the department shall appoint:

(a) one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the next general election; and

(b) one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the general election following the next general election.

(2) The supervisor positions held by the appointed supervisors become open for election at the time the terms expire. A district having seven supervisors shall alternately elect four and three supervisors at succeeding general elections.

**76-15-311. Governing body of district.** (1) If there are no incorporated municipalities that are completely within the boundaries of the district, the governing body of the district must consist of five elected supervisors unless the district has been reorganized pursuant to 76-15-301(2) and 76-15-305.

(2) If there are incorporated municipalities that are completely within the boundaries of the district, the governing body of the district must consist of seven supervisors as follows:

(a) The board of supervisors, in addition to five elected supervisors, must consist of two appointed supervisors, making a total of seven supervisors in those districts. The legislative bodies of the incorporated municipalities within the district shall appoint the two additional supervisors after consultation with the elected supervisors.

(b) Where there are two or more incorporated municipalities that are completely within the boundaries of a district, the two appointed supervisors shall represent all the municipalities and urban interests in the district. A municipality may not have more than one appointed supervisor residing in the municipality. The legislative bodies of the incorporated municipalities within the district shall agree on the persons appointed to serve as the appointed supervisors.

(3) If there are no incorporated municipalities that are completely within the boundaries of the district but a portion of one or more incorporated municipalities is within the boundaries of a district, the elected supervisors may pass a resolution to transition to a board of seven members consisting of five elected supervisors and two supervisors appointed by the legislative bodies of the partially included municipalities as provided in subsection (2).

## Adjustments for Municipalities

- Districts with municipalities "completely within the boundaries of the district":
  - 2 additional supervisors appointed by municipalities "after consultation with the elected supervisors"
- 2 or more municipalities included: 2 additional appointees represent all municipalities
  - Each municipality may not have more than one appointed supervisor living in the municipality
- Districts with portions of municipalities within district boundaries:
  - Elected supervisors may pass resolution to transition to board of 7 (5 elected & 2 appointed)

## Residency requirements

- Appointed supervisor may live outside the municipality he or she represents, but must live within the district
- Elected supervisors must live in the district

(4) A supervisor appointed under subsection (2) or (3) may live outside the municipality the supervisor represents, but the supervisor must reside within the boundaries of the district.

(5) An elected supervisor must reside within the boundaries of the district.

(6) The board of supervisors may appoint associate supervisors it considers necessary to advise the board of supervisors on the operation of the conservation district as provided in part 4 of this chapter.