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Local Government Interim Committee

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FINAL REPORT TO THE 68TH MONTANA LEGISLATURE

HJ 30 COUNTY WATER AND/OR SEWER DISTRICT STUDY



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This report is a summary of the work of the Local Government Interim Committee as outlined in the Local Government Interim Committee’s 2021-2022 work plan and House Joint Resolution 30 (2021). Members received additional information and public testimony on the subject, and this report is an effort to highlight key information and the processes followed by the Local Government Interim Committee in reaching its conclusions. To review additional information, including audio, minutes, and exhibits, visit the Local Government Interim Committee website: <https://leg.mt.gov/committees/interim/lgic/>.

A full report, including links to the documents referenced in this print report, is available at the Local Government Interim Committee website: <https://leg.mt.gov/committees/interim/lgic/hj-30/>.

HJ 30: STUDY OF COUNTY WATER AND/OR SEWER DISTRICTS

OVERVIEW

Areas lacking water and/or sewer services may create a district to provide one or both services. While these districts often provide services similar to those provided by a municipality, a county water and/or sewer district "is a unit of local government separate and distinct from a municipality".¹

The statutory framework governing county water and/or sewer districts has seen few amendments during the last 60 years. Bills introduced during the prior two legislative sessions attempted to address localized issues, with most concerns centered around methods to address board governance issues of compliance or perceived malfeasance. The [House Bill 255](#) hearings during the 2021 legislative session elicited lengthy discussions of specific local issues but also illustrated that many water and/or sewer districts currently operate without complication. The lack of clarity of whether changes were necessary prompted the House Local Government Committee to introduce a study bill to investigate county water and/or sewer districts further.

Study Directives

The [study resolution](#) suggested that the committee:

- conduct a comprehensive review of current statutes and review the current governance structures for efficiency and effectiveness;
- review and assess the processes available to appoint, elect, and remove a director of a county water and/or sewer district board;
- identify and analyze any possible oversight processes available at the county or city level and assess if additional methods to correct ineffectiveness are needed; and
- potentially determine if a new statutory framework is more beneficial to both the state and to local governments.

A county water and/or sewer district is a unit of local government separate and distinct from a municipality.

The study ranked 18th out of 28 study resolutions in the postsession poll of legislators. The Legislative Council assigned HJ 30 to the Local Government Interim Committee, the first of three assigned studies. The committee moved to devote one-third of its committee time to HJ 30.

While the study resolution allowed the committee to analyze the entirety of [Title 7, chapter 13, parts 22 and 23](#), MCA, the committee expressed primary interest in district board composition, election, appointment, vacancies, and term of office. The committee also moved to include a discussion of general special district oversight since other types of districts may experience similar issues.

¹ [7-13-2201](#), MCA.

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65 YEARS OF COUNTY WATER/SEWER DISTRICTS

In 1957 the Legislature passed House Bill 310, creating a framework for what were originally called county water districts, later reclassified as county water and/or sewer districts. From their inception, these water and sewer districts may have a somewhat misleading title. While called "county" districts, HB 310 clearly states that "the people of any county, or portion of a county, or *city* and county...may organize a county water district" [italics added]. So, HB 310 intended to allow a water district to include both county and municipal areas, as still allowed in current law.

From 1957 HB 310 established most of the framework 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 from 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 predating 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, MCA](#), saw minor revisions through the rest of the 20th century with more impactful pieces of legislation brought in 1999, 2005, 2011, and 2015.²

BOARD COMPOSITION

Section [7-13-2232](#), MCA, provides that a county water and/or sewer district is governed by either three or five members, depending on the demographics of the district. If 10 or fewer electors reside in the district, a three-member board governs. A five-member board is seated if the district has no municipalities within its boundaries. However, statute also allows for appointed directors in certain cases, meaning the total number of board members may vary.

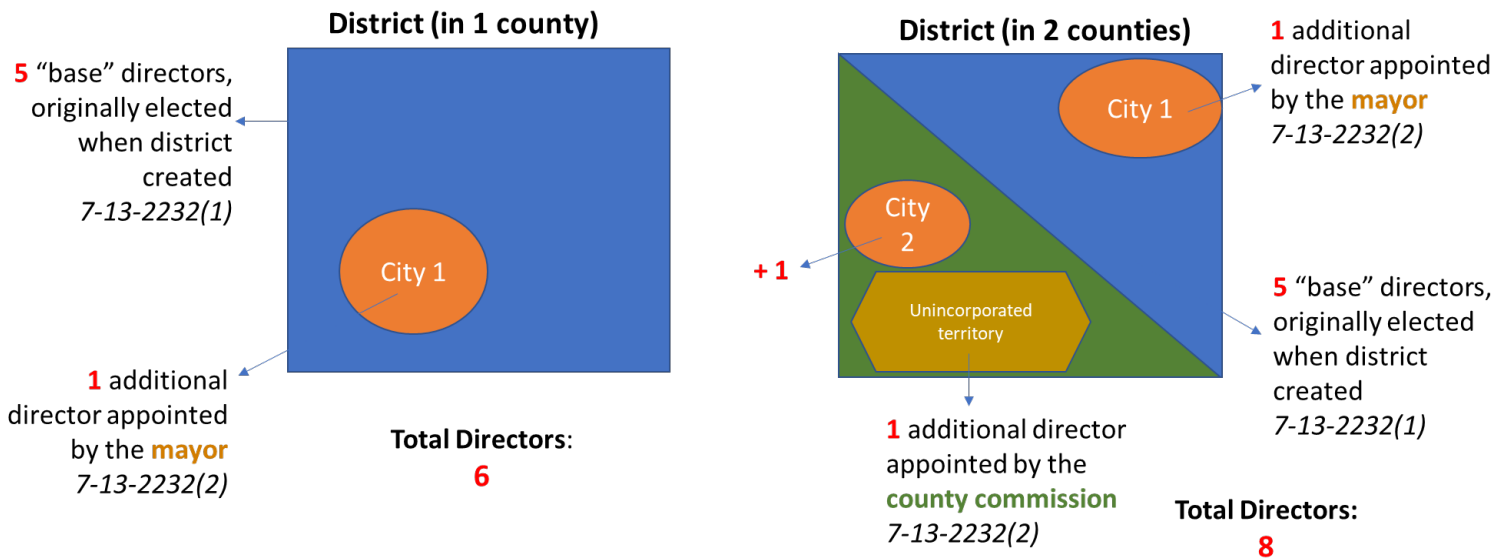
Each municipality included in a county water and/or sewer district appoints one additional board member with a similar process included for counties: a county may appoint a board member if the district includes unincorporated territory. The committee heard testimony that only a handful of districts operate with city and county appointees, but the process may create confusion. The historical record leaves little solid evidence, but the intent of allowing a city-appointed or county-appointed member may have been to ensure adequate representation within a district that encompasses multiple jurisdictions. However, the committee questioned the importance of the appointed directors partly due to so few districts operating with these directors. Another question before the committee asked whether the originally appointed directors remain appointed by the respective city or county or if the

² See [HJ30: County Water and/or Sewer Districts: Board Composition, Appointment, Election, and Vacancies – Historical Analysis](#) for more information.

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board member transitions to an elected member. Lacking clarity, testimony received hinted that both processes have occurred, leading to uncertainty.

Examples of possible board composition scenarios³:



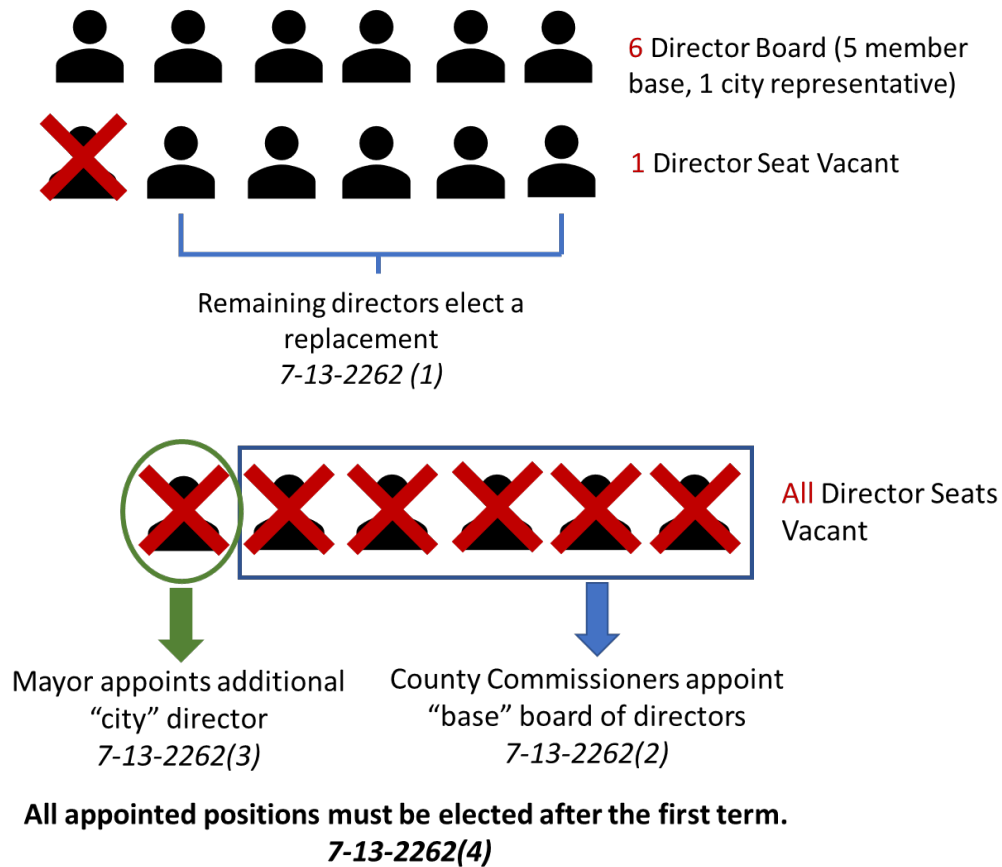
Board vacancies also became an area of interest, including how vacancies are determined as well as the process to fill a vacancy. Section [7-13-2263](#), MCA, provides seven instances that create a vacancy:

- (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.

³ [How to seat a board and fill vacancies](#), presentation provided November 18, 2022.

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The following graphics illustrate how to fill a vacancy or multiple vacancies⁴:



COMPARABLE STATUTES

The committee requested an analysis of comparable state statutes related to the appointment or election of board members to other types of districts and how other districts fill vacancies. Table 1 compares districts with appointed boards and Table 2 compares districts with appointed and elected boards.

Table 1: Districts with Appointed Boards

District Type	Appointment Process	Removals/Vacancies
Business Improvement Districts 7-12-1121 ;	<ul style="list-style-type: none"> Governing body of local government appoints 5 to 7 members to the board Appointed members serve 4-year terms 	<ul style="list-style-type: none"> Appointing authority may remove with governing body's approval Appointing authority appoints

⁴ Ibid.

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7-12-1123		vacancies
Multicounty Rural Improvement District 7-12-2121	<ul style="list-style-type: none"> Board of county commissioners appoints initial members and subsequent trustees 	<ul style="list-style-type: none"> Vacancies filled by county commission appointment
Transportation Improvement Authority 7-14-1002	<ul style="list-style-type: none"> County or municipality appoints first commissioners Each commissioner holds office until successor appointed 	<ul style="list-style-type: none"> No process provided
County Housing Authority 7-15-2112	<ul style="list-style-type: none"> Board of county commissioners appoints commissioners 	<ul style="list-style-type: none"> Removed by county commissioners
Railway Authority 7-14-1613	<ul style="list-style-type: none"> Board of county commissioners appoints 5 directors 	<ul style="list-style-type: none"> Vacancies filled by the board of county commissioners
Urban Renewal District 7-15-4234	<ul style="list-style-type: none"> Mayor, with advice and consent of governing body, appoints 5-member board of commissioners 	<ul style="list-style-type: none"> Commissioners may be removed for inefficiency, neglect of duty, or misconduct in office
Municipal Housing Authority 7-15-4406	<ul style="list-style-type: none"> Mayor appoints 7 commissioners Successors are appointed and qualified 	<ul style="list-style-type: none"> Mayor may remove for inefficiency, neglect of duty, or misconduct in office after public hearing held
Weed Control District 7-22-2103	<ul style="list-style-type: none"> Board of county commissioners appoints board members 	<ul style="list-style-type: none"> County commission fills vacancies by appointment (7-1-201)
Cemetery District – permanent care and improvement fund 7-35-2133	<ul style="list-style-type: none"> District judge appoints trustees to a board of trustees 	<ul style="list-style-type: none"> Judge appoints trustee to fill vacancy (may allow the board of trustees to provide a list of qualified persons)
County Planning and Zoning Commission 76-2-102	<ul style="list-style-type: none"> Citizen members appointed by board of county commissioners County official appointed by county commissioners 	<ul style="list-style-type: none"> No process provided
Irrigation District 85-7-107	<ul style="list-style-type: none"> Court may appoint one commissioner per division under certain circumstances 	<ul style="list-style-type: none"> Commissioners hold office until successor appointed and qualified
Municipal Airport Authority 67-11-102	<ul style="list-style-type: none"> Governing body of municipality appoints 5 or more commissioners 	<ul style="list-style-type: none"> Governing body fills vacancies by appointment
Regional Airport Authority 67-11-103	<ul style="list-style-type: none"> Two or more municipalities appoint first commissioners by resolution 	<ul style="list-style-type: none"> Vacancies filled by appointment of the governing body

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Table 2: Districts with Appointed and Elected Boards

District Type	Appointment/Election Process	Removals/Vacancies
County Water and/or Sewer Districts 7-13-2231 ; 7-13-2232 ; 7-13-2262	<ul style="list-style-type: none"> • Directors elected (appointment allowed in areas where no qualified electors reside) • If territory includes a municipality, one additional director appointed by mayor • If territory includes unincorporated territory, one additional director appointed by county commissioners • Appointed directors must be subsequently elected 	<ul style="list-style-type: none"> • Vacancies filled by majority vote of remaining directors • Appointed directors must be subsequently elected
Urban Transportation District 7-14-212	<ul style="list-style-type: none"> • County commissioners and governing body of each city or town included determine if board is to be elected or appointed • May be combination of appointed and elected members 	<ul style="list-style-type: none"> • County commissioners and governing body determine process to fill vacancies • If elected board is used, must also include a process if no nominees file for elective office
Port Authority 7-14-1101 ; 7-14-1103	<ul style="list-style-type: none"> • County or municipality may choose to appoint or elect at least 5 commissioners • If no nominees file, the appropriate local governing body may appoint 	<ul style="list-style-type: none"> • Each commissioner holds office until a successor has been appointed or elected
Rural Fire District⁵ 7-33-2104 ; 7-33-2106	<ul style="list-style-type: none"> • County commissioners appoint initial 5 trustees • Successors are either elected or appointed • If no candidate files, county commissioners appoint the position 	<ul style="list-style-type: none"> • County governing body appoints vacancies
Conservation Districts 76-15-301 ; 76-15-303 ; 76-15-311	<ul style="list-style-type: none"> • Supervisors elected at large for each supervisor district (up to 5 districts, 1 supervisor per district) • If there are municipalities within the district, 2 additional supervisors appointed by legislative bodies of the municipalities (after consultation with the elected supervisors) • Appointed supervisors must be elected for subsequent terms 	<ul style="list-style-type: none"> • Vacancy of the office of an elected supervisor: remaining supervisors appoint position until the next election
Drainage District 85-8-301 ; 85-8-302 ; 85-8-307	<ul style="list-style-type: none"> • Initial commissioners appointed by judge • Successors are elected 	<ul style="list-style-type: none"> • Remaining board members elect a replacement for a vacancy • If board fails to fill vacancy,

⁵ [7-33-2106, MCA](#), 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.

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		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
Hospital District 7-34-2115 ; 7-34-2117 ; 7-34-2121	<ul style="list-style-type: none"> • 3 to 5 trustees are elected • If no candidate files, board of county commissioners appoints the trustee 	<ul style="list-style-type: none"> • Vacancies filled by appointment of remaining members
Public Library District 22-1-704 ; 22-1-706	<ul style="list-style-type: none"> • Governing body of each county with territory in district jointly appoints initial board members • Successors are elected 	<ul style="list-style-type: none"> • Vacancies filled by appointment of remaining members
Resort Area District 7-6-1544	<ul style="list-style-type: none"> • 5 elected members • If no candidates file, the existing board appoints members • Appointees must be elected during the next year following the appointment 	<ul style="list-style-type: none"> • Vacancies filled by appointment of remaining directors – must be elected ASAP following the appointment
Regional Resource Authority 7-10-110	<ul style="list-style-type: none"> • Initial members appointed by county commissioners • Subsequent board members are elected 	<ul style="list-style-type: none"> • No process provided

CONCLUSIONS

Findings:

- Public comment often spoke to a lack of clarity in 7-13-2232, MCA, the statute allowing city or county appointees. Statute may not provide adequate language regarding the succession of appointed directors, namely if an appointed director continues to be appointed by the appointing authority and how an appointed director may be removed from the board. Few districts operate with these appointed directors.
- Districts may benefit from additional clarity related to the term of office of a director. Current statute uses antiquated language, leading to various interpretations.

Recommendations:

Statutes should be amended to:

1. clarify appointed directors provide that appointed directors serve at the pleasure of the appointing authority;
2. remove the appointed directors and instead allow county water and/or sewer districts to operate with a 3 member or 5 member elected board only; or
3. remove appointed, voting directors and instead allow for a city or county to appoint a nonvoting ex officio member.

Statutes should also be amended to clarify the term of office of a director.

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Results

The committee moved to introduce PD 2.1 to the 68th Legislature.

PD 2.1 removes appointed directors and instead allows for nonvoting ex officio members to be appointed to a board. Nonvoting ex officio members are allowed in districts whose boundaries include municipalities or unincorporated land. The mayor of a municipality or the board of county commissioners may appoint a nonvoting ex officio member, and the member serves at the pleasure of the appointing authority. A nonvoting ex officio member may not hold office as a presiding officer of the board and is not required to receive compensation from the county water and/or sewer district but may receive compensation from the municipality or county the member represents.

PD 2.1 further clarifies that the term of a director begins the first Monday of the month following the date of the director's election or appointment. The draft also removes the requirement that administrative personnel secure performance bonds since most, if not all, administrative personnel now obtain liability coverage.

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APPENDIX A:

LOCAL GOVERNMENT INTERIM COMMITTEE MEMBERS

Before the close of each legislative session, the House and Senate leadership appoint lawmakers to interim committees. The members of the Local Government Interim Committee, like most other interim committees, serve one 20-month term. Members who are reelected to the Legislature, subject to overall term limits and if appointed, may serve again on an interim committee. This information is included in order to comply with 2-15-155, MCA.

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