

HOUSE BILL NO. 380

INTRODUCED BY M. BLASDEL, MCCHESENEY, OLSON, BELCOURT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WATER AND SEWER LAWS;
5 ~~ELIMINATING SALARY SCHEDULES FOR WATER AND SEWER DISTRICT BOARDS; GRANTING WATER~~
6 ~~AND SEWER DISTRICT BOARDS THE ABILITY TO SET THEIR OWN SALARIES; REVISING THE METHOD~~
7 ~~OF ESTABLISHING THE MONTHLY SALARY FOR A MEMBER OF THE BOARD OF DIRECTORS OF A~~
8 ~~COUNTY WATER AND SEWER DISTRICT; PROVIDING THAT A BOARD MEMBER MAY RECEIVE A CERTAIN~~
9 ~~SALARY IF PROPOSED BY THE PRESIDENT OF THE BOARD AND APPROVED BY THE MEMBERS OF THE~~
10 ~~DISTRICT; CLARIFYING THE DUTIES OF BOARD PRESIDENTS; AUTHORIZING A VOTE ON THE MONTHLY~~
11 ~~SALARY OF BOARD MEMBERS; PROVIDING CRITERIA FOR DETERMINING A VACANCY ON A WATER~~
12 ~~AND SEWER DISTRICT BOARD; ELIMINATING DATE REQUIREMENTS FOR SUBMITTING WATER AND~~
13 ~~SEWER DISTRICT ASSESSMENTS TO THE CLERK AND RECORDER; REPEALING PROCEDURES FOR~~
14 ~~CHALLENGING MUNICIPAL SEWER SYSTEM RATES BY FILING A COMPLAINT WITH THE PUBLIC~~
15 ~~SERVICE COMMISSION; ELIMINATING PUBLIC SERVICE COMMISSION REGULATION OF MUNICIPAL~~
16 ~~SEWER AND WATER SYSTEMS AND RATES; AMENDING SECTIONS 7-3-4302, 7-13-2225, 7-13-2262,~~
17 ~~7-13-2272, 7-13-2273, 7-13-2282, 7-13-4312, 69-3-101, AND 76-3-103, MCA; ~~AND REPEALING SECTIONS~~~~
18 ~~7-13-2273, 7-13-4208; AND 7-13-4310, MCA; AND PROVIDING AN APPLICABILITY DATE."~~

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21
22 ~~NEW SECTION. **Section 1. Compensation of board members.** The board of directors shall determine~~
23 ~~by ordinance or resolution, pursuant to 7-13-2275, the salaries and compensation, if any, of its members.~~

24
25 NEW SECTION. **Section 1. Vacancies.** A vacancy is created when any of the following events occurs
26 before the expiration of the term of the incumbent:

- 27 (1) death;
28 (2) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent is mentally ill;
29 (3) resignation;
30 (4) removal from office;

1 (5) neglect or refusal to perform the duties required by this part for 3 consecutive months, except when
2 prevented by sickness or when absent from the district by permission of the board of directors;

3 (6) conviction of a felony or a violation of official duties; or

4 (7) the decision of a court declaring the incumbent's election or appointment void.

5

6 **Section 2.** Section 7-3-4302, MCA, is amended to read:

7 **"7-3-4302. Construction.** (1) Except as otherwise provided in ~~this part and part 44 and this part~~, all acts,
8 ~~and parts of acts,~~ and all laws ~~now in force or hereafter enacted~~ relative to municipal corporations are hereby
9 continued in full force and effect and ~~shall be considered and construed as~~ are not repealed by ~~this part and part~~
10 44 ~~except insofar as the same may be in and this part unless they conflict or are~~ inconsistent with the provisions
11 of ~~this part and part 44 and this part~~.

12 (2) ~~This part and part Part 44 and this part~~ do not repeal or modify Title 69, chapter 3, or 69-4-101, and
13 ~~this part and part 44 and this part~~ do not curtail or impair the power or authority of the public service commission;
14 ~~and any order made, action taken, or regulation provided by the commission shall supersede and nullify any~~
15 ~~order, regulation, ordinance, or other action authorized by this part or part 44 in conflict with any such order,~~
16 ~~regulation, or action of said public service commission. However, the annual report relating to the operation of~~
17 ~~a public utility owned by a municipality operating under this part and part 44 to be made to the public service~~
18 ~~commission shall conform to the fiscal year of the city or town."~~

19

20 **SECTION 3. SECTION 7-13-2225, MCA, IS AMENDED TO READ:**

21 **"7-13-2225. Combination of elections.** (1) The board of county commissioners in its discretion may
22 combine in one election the election on the formation of the district, the election of directors, ~~and~~ the election on
23 incurring a bonded indebtedness, and, if applicable, the vote on the proposed monthly salary for members of the
24 board of directors so that the electors of the district may vote on all of these matters on the same date and at the
25 same time.

26 (2) If the elections are combined, the board of county commissioners shall so declare by resolution
27 containing the provisions required by 7-13-2321. If the elections are combined, the notice of the election ~~shall~~
28 must contain the names of the candidates, ~~and~~ the details concerning the bonded indebtedness, and, if
29 applicable, the proposed monthly salary for members of the board of directors as provided in 7-13-2273.

30 (3) Candidates for the office of director shall be nominated in the manner required by 7-13-2241 and

1 7-13-2246."

2

3 **Section 4.** Section 7-13-2262, MCA, is amended to read:

4 **"7-13-2262. Insufficient candidates -- vacancies on board of directors -- appointment of entire**
 5 **board.** (1) If the number of candidates is equal to or less than the number of positions to be elected, the election
 6 administrator may cancel the election in accordance with 13-1-304. If an election is not held, the board of
 7 directors shall declare elected by acclamation the candidate who filed a nominating petition for the position. If no
 8 candidate filed a nominating petition for the position, the board of directors shall make an appointment to fill the
 9 position and the term is the same as if the director were elected.

10 (2) (a) Except as provided in subsections (3) and (4), any vacancy in the board of directors, whether the
 11 vacant office is elective or appointive, must be filled by the remaining directors.

12 (b) A vacancy must be determined in accordance with [section 2 1].

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

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

20 (5) Following the appointment of a board in accordance with subsection (3), the directors must be elected
 21 as provided in this part."

22

23 **SECTION 5. SECTION 7-13-2272, MCA, IS AMENDED TO READ:**

24 **"7-13-2272. Duties of board president.** (1) The president shall sign all contracts on behalf of the district
 25 and perform ~~such~~ other duties as may be imposed by the board of directors.

26 (2) The president may propose a monthly salary IN EXCESS OF THE AMOUNTS PROVIDED IN 7-13-2273(2) for
 27 the members of the board of directors. The proposed monthly salary must be approved by the voters in the district
 28 pursuant to 7-13-2273."

29

30 **SECTION 6. SECTION 7-13-2273, MCA, IS AMENDED TO READ:**

1 **"7-13-2273. Compensation of members of board -- approval by voters of district.** (1) Each of the
 2 members of the board of directors ~~shall~~ must ~~MAY~~ receive a monthly salary, ~~that may not exceed the following~~
 3 ~~amounts:~~

4 ~~—— (1) \$60 in districts with a population of no more than 500 persons;~~

5 ~~—— (2) \$80 in districts with a population that exceeds 500 but is no more than 5,000 persons; and~~

6 ~~—— (3) \$100 in districts with a population of more than 5,000 persons. in an amount proposed by the~~
 7 ~~president of the board and approved by a majority of the qualified voters of the district by one of the following~~
 8 ~~methods:~~

9 ~~—— (a) a vote by mail ballot, as provided in Title 13, chapter 19;~~

10 ~~—— (b) a vote held in conjunction with a regular or primary election; or~~

11 ~~—— (c) a vote at an annual organizational meeting of the district.~~

12 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), A SALARY MAY NOT EXCEED THE FOLLOWING AMOUNTS:

13 (A) \$60 IN DISTRICTS WITH A POPULATION OF NO MORE THAN 500 PERSONS;

14 (B) \$80 IN DISTRICTS WITH A POPULATION THAT EXCEEDS 500 BUT IS NO MORE THAN 5,000 PERSONS; AND

15 (C) \$100 IN DISTRICTS WITH A POPULATION OF MORE THAN 5,000 PERSONS.

16 (3) A SALARY MAY EXCEED THE AMOUNTS PROVIDED UNDER SUBSECTION (2) IF THE SALARY IS IN AN AMOUNT
 17 PROPOSED BY THE PRESIDENT OF THE BOARD AND APPROVED BY ONE OF THE FOLLOWING METHODS:

18 (A) AN AFFIRMATIVE VOTE OF THE MAJORITY OF THE VOTES CAST BY THE QUALIFIED VOTERS OF THE DISTRICT
 19 IN AN ELECTION HELD EITHER BY MAIL BALLOT, AS PROVIDED IN TITLE 13, CHAPTER 19, OR IN CONJUNCTION WITH A
 20 REGULAR OR PRIMARY ELECTION; OR

21 (B) AN AFFIRMATIVE VOTE OF THE MAJORITY OF THE QUALIFIED VOTERS OF THE DISTRICT WHO ARE PRESENT AND
 22 VOTING AT AN ANNUAL ORGANIZATIONAL MEETING OF THE DISTRICT.

23 ~~(2)(4) A newly elected member of the board of directors must receive a THE monthly salary, IF ANY, equal~~
 24 ~~to the most recent amount approved by the qualified voters of the district pursuant to this section ESTABLISHED~~
 25 ~~FOR THE BOARD MEMBER POSITION AT THE TIME THAT THE MEMBER WAS ELECTED.~~

26 ~~(3)(5) A vote on the question of the proposed salary for members of the board of directors may be held~~
 27 ~~in combination with the elections provided in 7-13-2225 if the vote is conducted by mail ballot or held in~~
 28 ~~conjunction with a regular or primary election.~~

29 ~~(4)(6) (a) Notice of the vote on the proposed monthly salary for the members of the board of directors~~
 30 ~~must be provided to the members of the district and state the following:~~

1 (i) the date on which the vote will be held;

2 (ii) the manner in which the vote will be held;

3 (iii) the amount of the proposed monthly salary for the members of the board of directors; and

4 (iv) any other information regarding the vote that may be necessary.

5 (b) The notice must be published as provided in 13-1-108.

6 (5)(7) For purposes of this section, "qualified voters of the district" means the voters qualified to vote on
 7 the question of the creation of the district as provided in 7-13-2212."

8
 9 **Section 7.** Section 7-13-2282, MCA, is amended to read:

10 **"7-13-2282. Hearing on assessment.** (1) At the time fixed, the board of directors shall meet and hear
 11 all objections and for that purpose may adjourn from day to day.

12 (2) The board of directors may by resolution modify the assessment in whole or in part. A copy of the
 13 resolution, certified by the secretary, must be delivered to the county clerk and recorder of the county in which
 14 the lot, tract, or parcel is located within 2 days after passage of the resolution ~~and not later than July 15 preceding~~
 15 ~~the county's next fiscal year.~~

16 (3) At any time within 30 days after the date of the first publication of the notice of proposed
 17 assessments, any owner of property to be assessed for the costs of making the improvements may make written
 18 protest against the levy of assessments. The protest must be in writing, identify the property in the district owned
 19 by the protestor, and be signed by all owners of the property except as provided in 7-13-2290. The protest must
 20 be delivered to the secretary of the district not later than 5 p.m. of the last day of the 30-day period provided for
 21 in this subsection. The secretary shall endorse the date and hour of receipt on the protest.

22 (4) If the board of directors finds that a protest with respect to the method or methods of assessment
 23 described in the resolution is made by the owners of property in the district to be assessed for more than 50%
 24 of the cost of improvements, the board of directors may not use the method or methods of assessment described
 25 in the resolution. A protest does not bar the board of directors from adopting subsequent resolutions pursuant
 26 to 7-13-2280, using a different method of assessment, and levying the assessments following notice and hearing
 27 as provided in 7-13-2281 and this section or, not less than 6 months after the receipt of sufficient protests,
 28 instituting proceedings under 7-13-2280, 7-13-2281, and this section proposing the same method of assessment."
 29

30 **Section 8.** Section 7-13-4312, MCA, is amended to read:

1 **"7-13-4312. Authorization to furnish water and sewer services to persons located outside**
 2 **municipality.** ~~The city council of any city within Montana~~ A city council that owns and operates a municipal water
 3 system, ~~and/or~~ a municipal sewer system, or both, to furnish water and sewer services to the inhabitants of ~~such~~
 4 a city as a public utility ~~shall, in addition to all other powers, have power to~~ may furnish water from ~~such~~ the water
 5 system and sewage services from ~~such~~ the sewer system to the inhabitants or to any person, factory, industry,
 6 or producer of farm or other products located outside of the corporate limits of ~~such~~ the city at reasonable rates
 7 filed by the city or town council ~~and approved, when otherwise required by statute, by the public service~~
 8 ~~commission.~~ Such The city council is further empowered to may make collections for ~~furnishing~~ to provide water
 9 and sewer services in the same manner as collections are made within the corporate limits."

10
 11 **Section 9.** Section 69-3-101, MCA, is amended to read:

12 **"69-3-101. Meaning of term "public utility".** (1) The term "public utility", within the meaning of this
 13 chapter, ~~shall embrace~~ includes every corporation, both public and private, company, individual, association of
 14 individuals, and their lessees, trustees, or receivers appointed by any court ~~whatsoever~~, that ~~now or hereafter~~
 15 ~~may own, operate, or control~~ own, operate, or control any plant or equipment, any part of a plant or equipment,
 16 or any water right within the state for the production, delivery, or furnishing for or to other persons, firms,
 17 associations, or corporations, private or municipal:

- 18 (a) heat;
 19 (b) street-railway service;
 20 (c) light;
 21 (d) power in any form or by any agency;
 22 (e) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage
 23 service, whether within the limits of municipalities; ~~or towns, and villages~~ or elsewhere;
 24 (f) regulated telecommunications service.

- 25 (2) The term ~~"public utility"~~ does not include:
 26 (a) privately owned and operated water, sewer, or ~~combination~~ water and sewer systems that do not
 27 serve the public;
 28 (b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter 13, parts
 29 22 and 23;
 30 (c) except as provided in chapter 7, municipal sewer or water systems and municipal water supply

1 systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44;

2 or

3 ~~(e)~~(d) a person exempted from regulation as a public utility as provided in 69-3-111."

4

5 **Section 10.** Section 76-3-103, MCA, is amended to read:

6 **"76-3-103. Definitions.** As used in this chapter, unless the context or subject matter clearly requires
7 otherwise, the following definitions apply:

8 (1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the
9 purpose of disclosing facts pertaining to boundary locations.

10 (2) "Cluster development" means a subdivision with lots clustered in a group of five or more lots that is
11 designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for
12 infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain
13 undeveloped.

14 (3) "Dedication" means the deliberate appropriation of land by an owner for any general and public use,
15 reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use
16 to which the property has been devoted.

17 (4) "Division of land" means the segregation of one or more parcels of land from a larger tract held in
18 single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the
19 tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels
20 pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a
21 previous division of land is not a division of land.

22 (5) "Examining land surveyor" means a registered land surveyor appointed by the governing body to
23 review surveys and plats submitted for filing.

24 (6) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be
25 prepared for filing for record with the county clerk and recorder and containing all elements and requirements set
26 forth in this chapter and in regulations adopted pursuant to this chapter.

27 (7) "Governing body" means a board of county commissioners or the governing authority of a city or town
28 organized pursuant to law.

29 (8) "Immediate family" means a spouse, children by blood or adoption, and parents.

30 (9) "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.

1 (10) "Planned unit development" means a land development project consisting of residential clusters,
2 industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in
3 a prearranged relationship to each other and having open space and community facilities in common ownership
4 or use.

5 (11) "Plat" means a graphical representation of a subdivision showing the division of land into lots,
6 parcels, blocks, streets, alleys, and other divisions and dedications.

7 (12) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout
8 of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing
9 body.

10 (13) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter,
11 the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter
12 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by
13 the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

14 (14) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of
15 land.

16 (15) "Subdivision" means a division of land or land so divided that it creates one or more parcels
17 containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States
18 government section, exclusive of public roadways, in order that the title to or possession of the parcels may be
19 sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium
20 or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or
21 mobile homes.

22 (16) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be
23 identified by legal description, independent of any other parcel of land, using documents on file in the records of
24 the county clerk and recorder's office.

25 (b) Each individual tract of record continues to be an individual parcel of land unless the owner of the
26 parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

27 (i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description
28 that describes the resulting single parcel and in which the owner expressly declares the owner's intention that
29 the tracts be merged; or

30 (ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have

1 been expunged and depicts the boundaries of the larger aggregate parcel.

2 (c) An instrument of conveyance does not merge parcels of land under subsection (16)(b)(i) unless the
3 instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s)
4 described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels,
5 clearly expressing the owner's intent to effect a merger of parcels."
6

7 NEW SECTION. Section 11. Repealer. The following sections of the Montana Code Annotated are
8 repealed:

9 ~~7-13-2273. Compensation of members of board.~~

10 7-13-4208. Procedure to challenge rates.

11 7-13-4310. Role of public service commission unaffected.
12

13 NEW SECTION. Section 12. Codification instruction. ~~[Sections 1 and 2] are [SECTION 1]~~ IS intended
14 to be codified as an integral part of Title 7, chapter 13, part 22, and the provisions of Title 7, chapter 13, part 22,
15 apply to ~~[sections 1 and 2]~~ [SECTION 1].
16

17 NEW SECTION. SECTION 13. SAVING CLAUSE. ~~[THIS ACT] DOES NOT AFFECT RIGHTS AND DUTIES THAT~~
18 ~~MATURED, PENALTIES THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS~~
19 ~~ACT].~~
20

21 NEW SECTION. Section 14. Severability. If a part of [this act] is invalid, all valid parts that are
22 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
23 the part remains in effect in all valid applications that are severable from the invalid applications.
24

25 NEW SECTION. SECTION 15. APPLICABILITY. ~~THE PROVISIONS OF [SECTION 6] APPLY TO A CHANGE IN SALARY~~
26 ~~OCCURRING AFTER [THE EFFECTIVE DATE OF THIS ACT].~~
27

- END -