

Special District Presentation Outline

*For the State Administration and Veterans' Affairs Interim Committee
By Sheri Scurr, Research Analyst, LSD
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Different definitions of “special district” for different purposes

- Title 2, ch. 2, part 1 – general government – standards of conduct
- Title 2, ch. 7, part 5 – state audits of political subdivisions
- Title 7, ch. 11, part 10 – 2009 consolidation on creation and governance
 - non-fee districts only
- Title 13, ch. 1, part 5 – elections in general, consolidated part from HB 84 (2015)
 - “special purpose district”

General overview

- 763 special districts in Montana – U.S. Census – 2012
 - some are appointed boards
 - some are elected boards
- 2009 Interim Study – HB 49 Subcommittee of Education and Local Government
 - consolidation of general creation and governance statutes
 - encompassed 15 “non-fee” service districts
 - 23 “fee” districts not included
- HB 84 (2015) by request of SAVA
 - consolidation of election administration deadlines for all “special purpose districts” as defined in Title 13
- Continued questions about HB 84 ripple effects and 2017 session bills or amendments
 - HB 83 – Rep. Bennett, SAVA (amendments)
 - HB 388 – Rep. Greg Hertz
 - HB 405 – Rep. Cook
 - Constitutional provision and Title 13 general qualifications to vote

Types of elections, petitions, and protests involving a qualified elector or signer

- All districts (or at least those covered under T. 7, ch. 11, part 10)
 - Creation (petition and/or election)
 - Protests against creation (if to be created by resolution rather than an election)
 - Board election – if created to have an elected rather than an appointed board
 - Dissolution – petition or election
- Other districts (i.e., fee districts not covered under T. 7, ch. 11, part 10)
 - Election to pass an ordinance/resolution
 - Election repeal an ordinance/resolution of the board
 - Petition to protest an assessment by the board
 - Election approve bonds/indebtedness
 - Election on adding land to the district
 - Election to consolidate districts
 - Petition to exclude land from the district

First step – Districts under T. 7, ch. 11, part 10 – non-fee districts

See Report with Table 1 and Extracts of MCA

Districts not included in this “first step” staff report

business improvement districts
cattle protective districts
conservancy districts
conservation districts
water and sewer districts
planning and zoning districts
drainage districts
grazing districts
hospital districts
irrigation districts
library districts
livestock protective committees
parking districts
resort area districts
rural improvement districts
special improvement districts
lighting districts
rural fire districts
street maintenance districts
tax increment financing districts
urban transportation districts
water conservation and flood control projects
weed management districts

Questions for SAVA

1. Does SAVA want to consider standardizing language on a person's eligibility to petition, vote, and protest under special district laws?

If so:

- a. Would SAVA like to work on these issues as a committee or subcommittee, or authorize staff to work with a stakeholder group to bring recommendations to the committee?
- b. Does SAVA want to look at the non-fee special districts as well as those under T. 7, ch. 11, part 10, MCA?

SPECIAL DISTRICT DEFINITIONS

GENERAL GOVERNMENT - STANDARDS OF CONDUCT

2-2-102. Definitions. As used in this part, the following definitions apply:

... (9) "Special district" means a unit of local government, authorized by law to perform a single function or a limited number of functions. The term includes but is not limited to conservation districts, water districts, weed management districts, irrigation districts, fire districts, community college districts, hospital districts, sewer districts, and transportation districts. The term also includes any district or other entity formed by interlocal agreement.

AUDITS OF POLITICAL SUBDIVISIONS

2-7-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

... (7) (a) "Local government entity" means a county, city, district, or public corporation that:

- (i) has the power to raise revenue or receive, disburse, or expend local, state, or federal government revenue for the purpose of serving the general public;
- (ii) is governed by a board, commission, or individual elected or appointed by the public or representatives of the public; and
- (iii) receives local, state, or federal financial assistance.

(b) Local government entities include but are not limited to:

- (i) airport authority districts;
- (ii) cemetery districts;
- (iii) counties;
- (iv) county housing authorities;
- (v) county road improvement districts;
- (vi) county sewer districts;
- (vii) county water districts;
- (viii) county weed management districts;
- (ix) drainage districts;
- (x) fire companies;
- (xi) fire districts;
- (xii) fire service areas;
- (xiii) hospital districts;
- (xiv) incorporated cities or towns;
- (xv) irrigation districts;
- (xvi) mosquito districts;
- (xvii) municipal fire departments;
- (xviii) municipal housing authority districts;
- (xix) port authorities;
- (xx) solid waste management districts;
- (xxi) rural improvement districts;
- (xxii) school districts, including a district's extracurricular funds;
- (xxiii) soil conservation districts;
- (xxiv) special education or other cooperatives;
- (xxv) television districts;
- (xxvi) urban transportation districts;
- (xxvii) water conservancy districts;
- (xxviii) regional resource authorities; and
- (xxix) other miscellaneous and special districts.

CREATION AND GOVERNANCE OF SPECIAL DISTRICTS

7-11-1002. Definitions. As used in this part, the following definitions apply:

...

(3) (a) "Special district" means a unit of local government that is authorized by law to perform a single function or a limited number of functions.

(b) The term includes but is not limited to cemetery districts, museum districts, park districts, fair districts, solid waste districts, local improvement districts, mosquito control districts, multijurisdictional districts, road districts, rodent control districts, television districts, and districts created for any public or governmental purpose not specifically prohibited by law. The term also includes any district or other entity formed to perform a single or limited number of functions by interlocal agreement.

(c) The term does not include business improvement districts, cattle protective districts, conservancy districts, conservation districts, water and sewer districts, planning and zoning districts, drainage districts, grazing districts, hospital districts, irrigation districts, library districts, livestock protective committees, parking districts, resort area districts, rural improvement districts, special improvement districts, lighting districts, rural fire districts, street maintenance districts, tax increment financing districts, urban transportation districts, water conservation and flood control projects, and weed management districts.

ELECTION LAWS IN GENERAL

13-1-101. Definitions.

...

(47) "Special purpose district" means an area with special boundaries created as authorized by law for a specialized and limited purpose.

Amendments to House Bill No. 83 Bill No. HB83
3rd Reading Copy

Requested by Senator Sue Malek

For the Senate State Administration Committee

Prepared by Sheri Scurr
March 9, 2017 (12:02pm)

1. Title, page 1, line 13.

Following: "ELECTIONS;"

Insert: "CLARIFYING VOTER QUALIFICATIONS FOR WATER AND SEWER DISTRICT ELECTIONS;"

2. Title, page 1, line 14.

Following: "7-5-1504,"

Insert: "7-13-2212,"

3. Page 18.

Following: line 15

Insert: "Section 16. Section 7-13-2212, MCA, is amended to read:

~~"7-13-2212. Qualifications to vote. (1) Except as provided in subsection (2), an individual is not entitled to vote at any election under the provisions of part 23 and this part unless the individual possesses all the qualifications required of electors under the general election laws of the state and is a resident of the proposed district or the owner of taxable real property located within the county in which the individual proposes to vote and situated within the boundaries of the proposed district.~~

~~(2) An individual who is the owner of the real property described in subsection (1) need not possess the qualifications required of an elector in 13-1-111(1)(c), provided that the elector is qualified if registered to vote in any state of the United States and files proof of registration with the election administrator at least 40 days prior to the election in which the individual intends to vote. (1) An individual is qualified to vote in any election under the provisions of part 23 and this part if the individual is a qualified voter pursuant to 13-1-111, not including 13-1-111(1)(a) and (1)(c), and is:~~

- ~~(a) a resident of the proposed or existing district;~~
- ~~(b) an owner of taxable real property within the boundaries of the proposed or existing district or, if the property is owned by more than one person, an agent designated by the owners;~~
- ~~(c) an individual listed in 13-1-506 representing a corporation or company that owns taxable real property within the boundaries of the proposed or existing district; or~~
- ~~(d) a designated agent for a property held in trust within the boundaries of the proposed or existing district.~~

~~(2) An individual qualified to vote pursuant to subsections~~

(1) (b) through (1) (d) shall provide written proof of the individual's qualifications to the election administrator at least 25 days before the election."

{Internal References to 7-13-2212:

x7-13-2201 x75-5-601 *}"

- END -



AN ACT REVISING WHO MAY BE CONSIDERED AN ELECTOR IN AN IRRIGATION DISTRICT ELECTION; REQUIRING OWNERS OF LAND IN A DISTRICT TO NOTIFY THE IRRIGATION DISTRICT OF WHO IS DESIGNATED TO VOTE; REQUIRING THE LIST OF DESIGNEES TO BE PROVIDED TO THE COUNTY ELECTION OFFICE AT LEAST 60 DAYS BEFORE AN ELECTION; AMENDING SECTION 85-7-1710, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 85-7-1710, MCA, is amended to read:

"85-7-1710. Qualification of electors and nature of voting rights. (1) (a) At all elections held under the provisions of this part, except as otherwise expressly provided, the following holders of title or evidence of title to irrigable lands within the district, designated "electors", are entitled to vote:

~~(a) all individuals having the qualifications of if, except as provided in subsection (1)(b), they are qualified electors under the constitution and general election laws of the state; except that registration of electors and county residency may not be required;~~

~~(b)(i)~~ guardians, executors, administrators, and trustees;

~~(c)(ii)~~ domestic corporations, by their duly authorized agents; and

(iii) owners of land described in subsection (3), including but not limited to corporations, limited liability companies, partnerships, and other entities that may vote through their duly authorized agents.

(b) Electors under this section are not subject to state residency or registration requirements.

(2) In all elections held under this part, each elector is permitted to cast one vote for each acre of irrigable land or major fraction of an acre owned by the elector within the district, irrespective of the location of the irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within congressional subdivisions, platted lots or blocks except as otherwise provided for, election precincts, or district divisions, but any elector owning any less than 1 acre of irrigable land is entitled to one vote. Until the irrigable area under the proposed plan of reclamation is determined, all land included within the boundaries of the district

must be considered irrigable land for election purposes.

(3) Whenever land is owned by co-owners, the owners ~~may~~ shall designate one of their number or an agent to cast the vote for the owners. Whenever the land is owned by a single owner, the owner at the owner's discretion may designate an agent to cast the vote. Only one vote may be cast for each acre of irrigable land or major fraction of an acre by the voting ~~co-owner or by an agent~~ individual. Whenever land is under contract of sale to a purchaser ~~residing within the state~~, the purchaser may vote on behalf of the owner of the land. When voting, the agent of a corporation, of a single owner or co-owners, of the co-owner designated for the purpose of voting, or of the purchaser of land under contract of sale shall file with the secretary of the district ~~or with the election officials~~ a written instrument of the agent's authority, executed and acknowledged by the proper officers of the corporation, by the single owner or co-owners, or by the owner of land under contract of sale, and upon filing, the agent or co-owner or purchaser is an elector within the meaning of this part.

(4) The board of commissioners shall choose one of the following methods of balloting:

(a) for 10 votes or less, separate ballots must be used, and for more than 10 votes, the elector shall vote in blocks of 10 using one ballot for each 10 votes and separate ballots for odd votes over multiples of 10; or

(b) the elector shall submit a ballot that includes the number of acres owned and the number of votes being cast.

(5) (a) Each holder of the title or evidence of title to irrigable land within the district who is qualified as an elector under subsection (1)(a) shall provide notice to the irrigation district in which the land is located designating the individual who will be voting in the election with respect to the irrigable land. If there is a change in the designation, a new notice must be provided to the irrigation district.

(b) The list of designated voters compiled under subsection (5)(a) and maintained and certified by the irrigation district must be provided to the county election office not less than 60 days before the election."

Section 2. One-time notification requirement. By December 31, 2017, the district shall notify each holder of a title or evidence of title to irrigable land within the district concerning the requirements under 85-7-1710(5)(a).

Section 3. Effective date. [This act] is effective on passage and approval.

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2017

- (i) administer local ordinances as appropriate;
- (j) establish district capital improvement funds pursuant to 7-6-616, maintenance funds, and debt service funds; and
- (k) borrow money by the issuance of:
 - (i) general obligation bonds as authorized by the governing body pursuant to Title 7, chapter 6, part 40, and the appropriate provisions of Title 7, chapter 7, part 22 or 42; or
 - (ii) revenue bonds for the lease, purchase, and maintenance of land, facilities, and buildings and the funding of projects in the manner and subject to the appropriate provisions of Title 7, chapter 7, part 25 or 44.
- (4) If the special district is administered by a separate board, the board shall submit annual budget and work plans to the governing body for review and approval.
- (5) The right to exercise eminent domain pursuant to 70-30-102 is limited to cemetery districts."



Section 5. Section 7-11-1029, MCA, is amended to read:

"7-11-1029. Dissolution of special district. (1) A special district may be dissolved if it is considered to be in the best interest of a local government or the inhabitants of the local government or if the purpose for creating the special district has been fulfilled and the special district is not needed in perpetuity.

(2) The governing body may pass a resolution of intention to dissolve a special district upon its own request or upon request of the separate board administering the special district.

(3) After the passage of the resolution provided for in subsection (2), the clerk of the local government that established the special district shall publish a notice, as provided in 7-1-2121 or 7-1-4127, of the intention to dissolve the district.

(4) (a) The notice must specify the boundaries of the special district to be dissolved, the date of the passage of the resolution of intention to dissolve, the date set for the passage of the resolution of dissolution, and that the resolution will be passed unless the clerk of the local government receives written protest in advance from:

- ~~(a) 40% of registered voters or 40% of the owners of real property in the district; or~~
 - ~~(b) 40% of registered voters or 40% of the property taxpayers in the district if the district program or improvements have been financed through a mill levy; the owners of property in the district who are assessed~~
- for:

- (i) 50% or more of the cost of the program or improvements; or
- (ii) more than 10% but less than 50% of the cost of the program or improvements.

(b) If the governing body receives the protest as provided in subsection (4)(a)(i), further dissolution proceedings may not be taken by the governing body for at least 12 months.

(c) If the governing body receives the protest as provided in subsection (4)(a)(ii), the governing body shall order a referendum on the dissolution in accordance with 7-11-1011.

(d) In determining whether or not sufficient protests have been filed, property owned by a governmental entity must be considered the same as any other property in the district.

(e) The decision of the governing body is final and conclusive.

(5) If the special district is dissolved, the clerk of the local government shall immediately send written notice to:

(a) the secretary of state; and

(b) the department of revenue, providing the same information required in 7-11-1014 when a district is created. The department of revenue and the state library shall respond to the dissolution in the same manner as they respond to the creation of a district, as described in 7-11-1014.

(6) The dissolution of a special district may not relieve the property owners from the assessment and payment of a sufficient amount to liquidate all charges existing against the special district prior to the date of dissolution.

(7) Any assets remaining after all debts and obligations of the special district have been paid, discharged, or irrevocably settled must be:

(a) deposited in the general fund of the local government;

(b) in the case of multiple local governments, divided in accordance with their interlocal agreement and deposited in the general fund of each local government; or

(c) transferred to a new special district that has been created to provide substantially the same service as provided by the dissolved special district.

(8) If the remaining assets are derived from private grants or gifts that restrict the use of those funds, the funds must be returned to the grantor or donor."

Section 6. Section 7-13-2233, MCA, is amended to read:

"7-13-2233. Qualifications of directors. ~~Any director so elected or appointed shall be an owner or lessee of real property within said district or a resident therein~~ (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;

QUALIFIED ELECTOR DEFINITIONS – IN GENERAL

**Special district statutes vary widely on who is considered eligible to vote in the district*

THE CONSTITUTION OF THE STATE OF MONTANA

ARTICLE IV. SUFFRAGE AND ELECTIONS

Part IV. SUFFRAGE AND ELECTIONS

Section 2. Qualified elector. Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

TITLE 13. ELECTIONS

CHAPTER 1. GENERAL PROVISIONS

Part 1. General Provisions

13-1-111. Qualifications of voter. (1) A person may not vote at elections unless the person is:

- (a) registered as required by law;
 - (b) 18 years of age or older;
 - (c) a resident of the state of Montana and of the county in which the person offers to vote for at least 30 days, except as provided in 13-2-514; and
 - (d) a citizen of the United States.
- (2) A person convicted of a felony does not have the right to vote while the person is serving a sentence in a penal institution.
- (3) A person adjudicated to be of unsound mind does not have the right to vote unless the person has been restored to capacity as provided by law.

TITLE 13. ELECTIONS

CHAPTER 1. GENERAL PROVISIONS

Part 5. Special District Elections

13-1-506. Provision for vote by corporate or company property owner. If a corporation or company is a property owner entitled to vote under the specific laws governing a special district, the chief executive officer, president, vice president, authorized agent, or secretary of the corporation or company may exercise the right on behalf of the corporation or company.

Part 5. Transfer of Registration

CHAPTER 2. REGISTRATION OF ELECTORS

13-2-514. Change of residence to another county. (1) Except as provided in subsection (2)(a), an elector who changes residence to a different county within this state shall register in the new county of residence in order to vote in any election.

(2) An elector who changes residence to a different county 30 days or less before an election may:

(a) vote in person or by absentee ballot in the precinct and county where previously registered; or

(b) update the elector's registration information and vote in the elector's new county of residence, subject to the regular registration provisions of 13-2-301 or the late registration provisions of 13-2-304.

(3) The registration information of an elector whose information is changed pursuant to this section must be updated in the statewide voter registration list pursuant to rules adopted under 13-2-108.

CHAPTER 2. REGISTRATION OF ELECTORS

Part 3. Close of Registration

Late Registration -- Late Changes

13-2-304. Late registration -- late changes. (1) Except as provided in subsection (2), the following provisions apply:

(a) An elector may register or change the elector's voter registration information after the close of regular registration as provided in 13-2-301 and vote in the election if the election administrator in the county where the elector resides receives and verifies the elector's voter registration information prior to the close of the polls on election day.

(b) Late registration is closed from noon to 5 p.m. on the day before the election.

(c) Except as provided in 13-2-514(2)(a) and subsection (1)(d) of this section, an elector who registers or changes the elector's voter information pursuant to this section may vote in the election only if the elector obtains the ballot from and returns it to the location designated by the county election administrator.

(d) With respect to an elector who registers late pursuant to this section for a school election conducted by a school clerk, the elector may vote in the election only if the elector obtains from the county election administrator a document, in a form prescribed by the secretary of state, verifying the elector's late registration. The elector shall provide the verification document to the school clerk, who shall issue the ballot to the elector and enter the verification document as part of the official register.

(2) If an elector has already been issued a ballot for the election, the elector may change the elector's voter registration information only if the original voted ballot has not been received at the county election office, or received by the school district if the district is administering the election, and if the original ballot that was issued is marked by the issuing county as void in the statewide voter registration system, or by the school district if the district is administering the election, prior to the change.