HOUSE BILL NO. 618

INTRODUCED BY L. HELLEGAARD, S. GUNDERSON, M. MALONE, J. SCHILLINGER, B. MITCHELL, T. MOORE, R. MARSHALL, E. BUTTREY, J. READ, B. USHER, G. HERTZ, K. BOGNER, P. GREEN, T. FALK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SPECIAL DISTRICT LAWS; INCREASING THE PETITION THRESHOLD TO CREATE A SPECIAL DISTRICT; PROHIBITING THE CREATION OF A SPECIAL DISTRICT THAT ENCOMPASSES THE ENTIRE JURISDICTIONAL AREA OF A MUNICIPALITY OR COUNTY; INCREASING THE NUMBER OF REQUIRED PUBLIC HEARINGS; REVISING THE DETERMINATION OF APPROVAL OR REJECTION OF A REFERENDUM TO CREATE A SPECIAL DISTRICT; MANDATING THAT SPECIAL DISTRICTS DISSOLVE AFTER 6 YEARS UNLESS A REFERENDUM IS PASSED TO EXTEND THE DISTRICT; REQUIRING PROPERTY TAX ASSUMPTIONS TO BE PRINTED ON THE PROPOSITION; REPEALING THE PROVISION FOR GRANDFATHERED DISTRICTS TO OPERATE UNDER PAST STATUTES; AMENDING SECTIONS 7-11-1003, 7-11-1006, 7-11-1007, 7-11-1008, 7-11-1011, 7-11-1012, AND 7-11-1029, MCA; REPEALING SECTIONS 7-11-1004 AND 7-11-1009, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 7-11-1003, MCA, is amended to read:

"**7-11-1003. Authorization to create special districts.** (1) Whenever the public convenience and necessity may require:

(a) the governing body may:

(i) create a special district by resolution pursuant to 7-11-1007~~,~~ and 7-11-1008~~, and the provisions of 7-11-1009, if applicable~~; or

(ii) order a referendum on the creation of a special district to serve the inhabitants of the special district as provided in 7-11-1011 ~~and the provisions of 7-11-1009, if applicable~~; or

(b) petitioners may initiate the creation of a special district to serve inhabitants of the special district as provided in subsection (2).

(2) (a) ~~Upon~~ On receipt of a petition to institute the creation of a special district that is signed by at least ~~40%~~ 51% of the registered voters or by the owners of at least ~~40%~~ 51% of the real property within the boundary of the proposed special district and that is submitted to the clerk of the governing body, the governing body shall commence proceedings to create a special district as provided in subsection (1)(a).

(b) The form of the petition may be prescribed by the governing body, and the ~~clerk~~ election administrator of the governing body shall verify the signatures on the petition.

(c) Subject to subsection (2)(b), the petition must:

(i) require the printed name of each signatory;

(ii) specify whether the signatory is a property taxpayer or owner of real property within the proposed special district and either the street address or the legal description, whichever the signatory prefers, of that property;

(iii) describe the type of special district being proposed and the ~~general~~ specific character of any proposed improvements and program to be administered within the special district;

(iv) designate the method of financing any proposed improvements, ~~or~~ maintenance, and operating program within the special district;

(v) include a description of the areas to be included in the proposed special district; and

(vi) specify whether the proposed special district would be administered by the local governing body or an appointed or elected board.

(3) Within 60 days of receipt of a petition to create a special district, the clerk of the governing body shall:

(a) certify that the petition is sufficient under the provisions of subsection (2) and present it to the governing body at its next meeting; or

(b) reject the petition if it is insufficient under the provisions of subsection (2).

(4) A defect in the contents of the petition or in its title, form of notice, or signatures may not invalidate the petition and subsequent proceedings as long as the petition has a sufficient number of qualified signatures attached."

Section 2. Section 7-11-1006, MCA, is amended to read:

"**7-11-1006. Determining special district boundaries.** (1) The boundaries of the proposed special district must be mapped, clearly described, and made available to the public at the time of the publication of the notice of public hearing pursuant to 7-11-1007 before the district may be approved.

(2) The governing body or petitioners shall consult with a professional land surveyor, as defined in 37-67-101, to prepare a legal description of the boundaries for the proposed special district.

(3) The boundaries:

(a) must follow property ownership, precinct, school district, municipal, and county lines as far as practical;

(b) must be specific to the projects, improvements, and services offered by the special district; and

(c) may not encompass the entire jurisdictional area of a municipality ~~or county~~, unless the special district was initiated pursuant to 7-11-1003(1)(a)(ii) or (1)(b)."

Section 3. Section 7-11-1007, MCA, is amended to read:

"**7-11-1007. Public hearing -- resolution of intention to create special district.** (1) The governing body shall hold at least ~~one~~ two public ~~hearing~~ hearings concerning the creation of a proposed special district prior to the passage of a resolution of intention to create the special district. A resolution of intention to create a special district may be based upon a decision of the governing body as provided in 7-11-1003(1)(a) or upon a petition that contains the required number of signatures as provided in 7-11-1003(1)(b).

(2) The resolution must designate, consistent with the requirements of ~~7-11-1009 and~~ 7-11-1024:

(a) the proposed name of the special district;

(b) the necessity for the proposed special district;

(c) a ~~general~~ specific description of the territory or lands to be included within the proposed special district, giving the boundaries of the proposed special district;

(d) the general character of any proposed improvements and the proposed location for the proposed program or improvements;

(e) the maximum rate or amount of the initial proposed assessments or fees that would be imposed;

(f) the method of financing the proposed program or improvements;

(g) any requirements specifically applicable to the type of special district;

(h) whether the proposed special district would be administered by the governing body or an appointed or elected board; and

(i) the duration of the proposed special district, which may not be more than 6 years from the date of the order creating the district as provided in 7-10-1013 unless the duration of the special district is extended by referendum as allowed in 7-11-1029(9).

(3) (a) The governing body shall publish notice of passage of the resolution of intention to create a special district as provided in 7-1-2121 and 7-1-2122 or 7-1-4127 and 7-1-4129, as applicable. The notice must contain a notice of a hearing and the time and place where the hearing will be held.

(b) At the same time that notice is published pursuant to subsection (3)(a), the governing body shall provide a list of those properties subject to potential assessment, fees, or taxation under the creation of the proposed special district. The list may not be distributed or sold for use as a distribution list in accordance with 2-6-1017.

(c) A copy of the notice described in subsection (3)(a) must be mailed to each owner or purchaser under contract for deed of the property included on the list referred to in subsection (3)(b) as shown by the current property tax record maintained by the department of revenue for the county."

Section 4. Section 7-11-1008, MCA, is amended to read:

"**7-11-1008. Right to protest -- procedure -- hearing.** (1) An owner of property that is liable to be assessed for the program or improvements in the proposed special district has 60 days from either the date of the first publication of the notice of passage of the resolution of intention or the date the protest form provided for in subsection (2)(c) was sent to property owners, whichever is later, to make a written protest against the proposed program or improvements.

(2) (a) A property owner may register a written protest under either subsection (2)(b) or (2)(c).

(b) A property owner may register a written protest in any format in conformity with this section. The protest must identify the property in the district owned by the protestor by either its street address or its legal description, whichever the property owner prefers, be signed by a majority of the owners of that property, and be delivered to the clerk of the governing body, who shall endorse on the protest the date of receipt.

(c) The governing body shall send each person referred to in 7-11-1007(3)(c) a protest form with space for any information required under subsection (2)(b) of this section, mailing instructions, and the date the form must be returned to the governing body. The form must allow a property owner to select either support for or opposition against the creation of the district. The forms returned with an indication of either support for or opposition against the creation of the district may be used, along with written protests submitted under subsection (2)(b), in determining whether sufficient protest has been filed to prevent further proceedings.

(3) (a) For purposes of this section, "owner" means, as of the date a protest is filed, a record owner of fee simple title to the property or a contract buyer on file with the county clerk and recorder.

(b) The term does not include a tenant of or other holder of a leasehold interest in the property.

(4) An owner of property created as a condominium may protest pursuant to the provisions in 7-11-1027.

(5) (a) At the ~~hearing~~ hearings provided for in 7-11-1007, the governing body shall consider all protests.

(b) If the protest is made by the owners of property in the proposed district to be assessed for:

(i) 50% or more of the cost of the proposed program or improvements, in accordance with the method or methods of assessment, further proceedings may not be taken by the governing body for at least 12 months; or

(ii) more than 10% but less than 50% of the cost of the proposed program or improvements, in accordance with the method or methods of assessment, and if the governing body decides to proceed with proposing the district, the governing body shall order a referendum in accordance with 7-11-1011.

(c) In determining whether or not sufficient protests have been filed in the proposed special district to prevent further proceedings, property owned by a governmental entity must be considered the same as any other property in the district.

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

(e) The governing body may adjourn the hearing from time to time."

Section 5. Section 7-11-1011, MCA, is amended to read:

"**7-11-1011. Referendum -- conduct of election on creating special district.** (1) The governing

body may order a referendum on the creation of the proposed special district.

(2) The resolution ordering the referendum must state, consistent with the requirements of 7-11-1007~~, 7-11-1009,~~ and 7-11-1024:

(a) the maximum rate or amount of the ~~initial~~ proposed assessments or fees that would be imposed;

(b) the type of activities proposed to be financed, including a ~~general~~ specific description of the program or improvements;

(c) a description of the specific areas included in the proposed special district;

(d) whether the proposed special district would be administered by the governing body or an appointed or elected board;

(e) the method of financing the proposed program or improvements; and

(f) the duration of the proposed special district, which may not exceed 6 years.

(3) The election must be conducted in accordance with Title 13, chapter 1, part 5.

(4) (a) The proposition to be submitted to the electorate must read: "Shall the proposition to organize (name of proposed special district) be adopted?"

(b) The proposition to be submitted to the electorate must include:

(i) a statement of impact of the election on a home or commercial property valued at $100,000, a home or commercial property valued at $300,000, and a home or commercial property valued at $600,000 in terms of actual dollars in additional assessments that would be imposed if the proposition were to pass; and

(ii) a list of expected operating and maintenance expenses for the duration of the district.

(5) An individual is entitled to vote on the proposition if the individual:

(a) is a qualified ~~registered~~ elector of the state; and

(b) is a resident of or owner of taxable real property in the area subject to the proposed special district.

(6) (a) Except as provided in subsection (6)(c), for an election to create a special district pursuant to this section, the governing body shall:

(i) determine the total number of qualified electors of the proposed special district who are qualified to vote on the creation of the special district;

(ii) determine the total number of qualified electors voting on the creation of the special district from the tally sheets for the election; and

(iii) calculate the percentage of qualified electors voting on the creation of the special district by dividing the amount determined in subsection (6)(a)(ii) by the amount determined in subsection (6)(a)(i).

(b) When the calculated percentage in subsection (6)(a)(iii) is:

(i) 40% or more, the creation of the special district is approved and adopted if a majority of the votes were cast in favor of the creation of the special district, otherwise it is rejected;

(ii) more than 30% but less than 40%, the creation of the special district is approved and adopted if 60% or more of the votes were cast in favor of the mill levy, otherwise it is rejected; or

(iii) 30% or less, the creation of the special district is rejected.

(c) If the election to create the special district is held in conjunction with an election that is conducted by mail ballot as provided in Title 13, chapter 19, the determination of the approval or rejection of the election to create the special district is made by a majority of the votes cast on the issue.

~~(6)~~(7) If the proposition is approved, the election administrator of each county shall:

(a) immediately file with the secretary of state a certificate stating that the proposition was adopted;

(b) record the certificate in the office of the clerk and recorder of the county or counties in which the special district is situated; and

(c) notify any municipalities lying within the boundaries of the special district."

Section 6. Section 7-11-1012, MCA, is amended to read:

"**7-11-1012. Certificate of establishment.** (1) On receipt of the certificate referred to in 7-11-1011~~(6)~~(7), the secretary of state shall, within 10 days, issue a certificate reciting that the specified district has been established according to the laws of the state of Montana. A copy of the certificate must be transmitted to and filed with the clerk and recorder of the county or counties in which the district is situated.

(2) When the certificate is issued by the secretary of state, the district named in the certificate is established with all the rights, privileges, and powers set forth in 7-11-1021."

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

"**7-11-1029. Dissolution of special district.** (1) A special district:

(a) must be dissolved after 6 years from the date of the order creating the district as provided in 7-11-1013 unless the duration of the district is extended for an additional 6 years as allowed in subsection (9); or

(b) may be dissolved prior to 6 years 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 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~~ may not 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.

(9) Prior to the dissolution of a special district, the governing body may extend the duration of the district by an additional 6 years by following the same procedures set forth in 7-11-1003(1)(a)(ii) and 7-11-1011."

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

7-11-1004. Applicability of part -- grandfathered special districts.

7-11-1009. Provisions applicable to jurisdictionwide special districts.

NEW SECTION. **Section 9. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 11. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to special districts created before [the effective date of this act].

- END -

AMEND