

March 2018

State Administration and Veterans' Affairs Interim Committee  
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# DETERMINING THE NUMBER OF QUALIFIED ELECTORS FOR WATER & SEWER DISTRICTS

## ISSUE SUMMARY

### Problem

At the March 6, 2018, meeting of the State Administration and Veterans' Affairs Interim Committee, a citizen in Lewis and Clark County submitted public comment about a situation in the North Star residential subdivision. The subdivision contains 272 developed lots and more than 400 registered voters. The citizen leads a small committee that is interested in proposing the formation of a water and sewer district for the subdivision.

Under state statutes, at least 10% of the qualified electors of a proposed district must sign a petition before an election may be held, and at least 40% of the qualified electors in the proposed district (not of votes cast) must vote in favor of the district for the measure to pass. The citizen providing the public comment stated she is encountering difficulty in determining the total number of qualified electors in the proposed district. Under current law, a property owner is a qualified elector and may sign a petition for and vote in the election even if the owner is not a resident and is not a registered voter in the county. The number of property owners can be determined from county records. However, any resident of the proposed district who is a U.S. citizen and at least 18 years of age is also a qualified elector under current law and is not required to own property or to register to vote. In the absence of voter registration information or property ownership records, the election administrator has no way of determining how many non-property owner residents live in the proposed district, and therefore cannot determine the number of people needed to attain the 10% threshold for signatures and the 40% threshold for voting in the election.

An email from the Lewis and Clark County elections supervisor confirmed that the main complication is how to determine the total number of qualified electors in a proposed district.<sup>1</sup>

### Constitution and Statutes

Article IV, Section 2, of the Montana Constitution provides that any citizen who is at least 18 years of age and who meets the registration and residency requirements provided by law is a qualified elector unless the person is serving a felony sentence in prison or in jail or is of unsound mind as determined by a court.

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<sup>1</sup> The written public comment to SAVA on March 6, 2018, and the email from the Lewis and Clark county elections supervisor are available from SAVA's legislative research analyst upon request.

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Section 13-1-111, Montana Code Annotated (MCA), specifies that in addition to the constitutional criteria for voter eligibility, a voter must be a resident of the county for at least 30 days prior to the election and registered "as required by law".

Water and sewer district election laws set special criteria about voter qualifications, including some exemptions from the residency and registration provisions in section 13-1-111, MCA. Section 7-13-2201, MCA, defines the term "qualified elector" as "a person who meets the criteria under 7-13-2212". Section 7-13-2212, MCA, currently reads as follows:

- 7-13-2212. Qualifications 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.

The language "not including 13-1-111(1)(a) and (1)(c)" means that the person does not need to be registered to vote and does not need to be a resident of the county for at least 30 days. The other provisions of section 13-1-111, MCA, do apply, which include the requirement to be a U.S. citizen and at least 18 years of age. The person must then also meet at least one of the criteria listed in (1)(a) through (1)(d) to be considered a qualified elector.

Section 7-13-2204, MCA, specifies that a petition for an election on whether to create a water or sewer district must be signed by at least 10% of the qualified electors of the proposed district. The section reads as follows:

- 7-13-2204. Petition to create water and/or sewer district.** (1) A petition, which may consist of any number of separate instruments, must be presented at a regular meeting of the board of county commissioners of the county in which the proposed district is located, signed by at least 10% of the qualified electors of the territory included in the proposed district.
- (2) When the territory to be included in the proposed district lies in more than one county, a petition must be presented to the board of county commissioners of each county in which the territory lies. Each of the petitions must be signed by at least 10% of the qualified electors of the proposed district.
- (3) A petition to create a water and/or sewer district must set forth and describe the proposed boundaries of the district and require that the district be incorporated under the provisions of part 23 and this part.

March 2018

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Section 7-13-2214, MCA, specifies that in an election to create a water or sewer district, at least 40% of the qualified electors must vote in favor of the measure for the measure to pass. The section reads as follows:

**7-13-2214. Order creating district upon sufficient favorable vote.** (1) If at least 40% of all qualified electors vote in favor of creating a district, the board of county commissioners of each affected county shall, by an order entered on its minutes, declare the territory enclosed within the proposed boundaries duly organized as a county water and/or sewer district under the name designated.

(2) The election administrator of each county in which the district lies shall immediately file with the secretary of state and the office of the clerk and recorder of the county a certificate stating that the proposition was adopted.

## LEGISLATIVE HISTORY

Part of the problem stems from unforeseen ripple effects from recent legislative changes. However, other aspects of the problem originate from older, overlapping, and conflicting statutory language that predated the recent legislative changes. Nevertheless, an examination of how these statutes were changed in 2015 and 2017 may help shed light on how to solve the problem going forward.

### House Bill 84 (2015)

In the 2015 session, House Bill 84, requested by the State Administration and Veterans' Affairs Interim Committee (SAVA), was enacted to standardize and consolidate election laws and to simplify some of the complexities in election administration caused by overlapping and conflicting language. HB 84 also required that special purpose district elections be held on the same day as school trustee elections and be conducted by county election administrators.

With respect to the water and sewer district election statutes, HB 84 sought to sort out complex differences and overlapping statutes that used the terms "electors" in some sections and the term "registered electors" in other sections and that outlined different qualifications for signing a petition for an election than for voting in the election.

To provide the same criteria for electors whether signing a petition or voting, HB 84 inserted a definition in section 7-13-2201, MCA, to define the term "qualified elector" as "a person who meets the criteria under 7-13-2212" and then replaced the term "elector" and "registered elector" with the term "qualified elector" in each section where those terms were used. However, HB 84 did not change the voter qualifications outlined in section 7-13-2212, MCA, which were as follows:

**7-13-2212. Qualifications to vote on question of creating district.** (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

March 2018

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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.

Thus, to vote the person had to be a resident or a property owner. If the person was a resident, whether the person was a property owner or not, the person also had to be registered to vote in the county. If the person was a non-resident property owner, the person needed to be registered to vote in any state and provide proof of that registration to the election administrator at least 40 days before an election.

HB 84 also repealed the following section:

**7-13-2254. Provision for vote by corporate property owner.** Where a corporation owns real property within the boundaries of the district, the president, vice-president, or secretary of such corporation shall be entitled to cast a vote on behalf of the corporation.

However, also during the 2015 session, SB 119 provided for a new section that was codified in the consolidated election laws for special purpose district elections contained in Title 13, chapter 1, part 5. This new section specified who could vote on behalf of a corporation or company if that corporation or company is a property owner entitled to vote under the specific laws of that special district. The section currently reads as follows:

**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.

HB 84 also amended section 7-13-2204, MCA, as follows:

**7-13-2204. Petition to create water and/or sewer district.** (1) A petition, which may consist of any number of separate instruments, must be presented at a regular meeting of the board of county commissioners of the county in which the proposed district is located, signed by ~~either at least 10% of the registered voters~~ qualified electors of the territory included in the proposed district ~~or by the owners of all of the real property in the district.~~

(2) When the territory to be included in the proposed district lies in more than one county, a petition must be presented to the board of county commissioners of each county in which the territory lies. Each of the petitions must be signed by at least 10% of the ~~registered voters of the territory within the county to be included within~~ qualified electors of the proposed district ~~or by the owners of all of the real property included in the proposed district.~~

(3) A petition to create a water and/or sewer district must set forth and describe the proposed boundaries of the district and require that the district be incorporated under the provisions of part 23 and this part.

In addition, section 7-13-2214, MCA, was amended by HB 84 as follows:

**7-13-2214. Order creating district upon sufficient favorable vote.** (1) If at least 40% of all ~~registered voters residing within the proposed district have voted and if a majority of the votes cast at such election in each municipal corporation or part thereof and in the unincorporated territory of each county included in such proposed district shall be in favor of organizing such county district, said~~ qualified electors vote in favor of creating a district, the board of county commissioners of each such county shall, by an order entered on its minutes, declare the

March 2018

## Determining the Number of Qualified Electors for Water & Sewer Districts

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territory enclosed within the proposed boundaries duly organized as a county water and/or sewer district under the name ~~heretofore~~ designated.

(2) The election administrator of each such county ~~in which the district lies~~ shall immediately ~~cause to be filed~~ file with the secretary of state and ~~shall cause to be recorded in~~ the office of the clerk and recorder of the county ~~or each county in which such district is situated~~ a certificate stating that ~~such a~~ the proposition was adopted

Thus, HB 84 struck the complex language about needing 40% of the qualified electors to vote and then a majority of those voting for the measure to pass and simply provided that that 40% of qualified electors must vote in favor.

As mentioned previously, HB 84 did not change the actual qualifications for voting in the election.

## House Bill 83 (2017)

During the 2017 session, HB 83 was introduced by request of SAVA to clean up miscellaneous statutes affected by HB 84. An amendment offered and adopted during executive action in the Senate State Administration Committee pulled in and revised section 7-13-2212, MCA, and the actual qualifications to vote in the election. The amendment addressed questions and concerns about water and sewer district elections and corporate property owners, joint ownership, and when a property was held in trust. To accomplish these changes, all of the old language was stricken and all new language was inserted. In this rewrite of 7-13-2212, MCA, the voter registration requirement for residents was dropped. The new language is now the current language of the statute provided on page 2 of this brief.

## OPTIONS

With respect to the narrow issue of how to determine the total number of qualified electors, one option is for a committee bill to revise section 7-13-2212, MCA, on voter qualifications to simply add that a resident must be registered to vote.

However, if the committee wishes to consider policy issues beyond the narrow question of how to determine the total number of electors in the district, the committee could:

1. Consider other changes to voter qualifications, such as allowing only property owners to vote.
2. Consider revising section 7-13-2204, MCA, on the 10% threshold for signatures on a petition for an election.
3. Consider revising section 7-13-2214, MCA, on how many votes must be cast in favor for the measure to pass – for example:
  - a. Require a simple majority of the *votes cast* in the election;
  - b. Require that at least 40% of the qualified electors vote in the election and a majority to vote in favor; or
  - c. Set some other threshold.