

1 INTRODUCTION BY *Senators* BILL NO. *143*
2 *Colberg Romney Watt*
3 *Brown*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
5 11-1104, R.C.M. 1947, TO PROVIDE FOR PROMPT JUDICIAL REVIEW
6 OF RESOLUTIONS PROPOSED BY POPULAR INITIATIVE."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Section 11-1104, R.C.M. 1947, is amended to
10 read as follows:

11 "11-1104. Initiative in cities--petition. (1)
12 Ordinances may be proposed by the legal voters of any city
13 or town in this state, in the manner provided in this act.
14 Fifteen per cent (15%) of the legal voters of any city or
15 town may propose to the city or town council an ordinance on
16 the subject within the legislative jurisdiction and powers
17 of such city or town council, or an ordinance amending or
18 repealing any prior ordinance or ordinances. Such petition
19 shall be filed with the city or town clerk. It shall be the
20 duty of the city or town clerk to present the same to the
21 council at its first meeting next following the filing of
22 the petition. The council may, within sixty (60) days after
23 the presentation of the petition to the council, pass an
24 ordinance similar to that proposed in the petition, either
25 in exact terms or with such changes, amendments, or

1 modifications as the council may decide upon. If the
2 ordinance proposed by the petition be passed without change,
3 it shall not be submitted to the people, unless a petition
4 for referendum demanding such submission shall be filed
5 under the provisions of this act.

6 (2) If the council shall have made any change in the
7 proposed ordinance, a suit may be brought in the district
8 court in and for the county in which the city or town is
9 situated, to determine whether or not the change is
10 material. Such suit may be brought in the name of any one or
11 more of the petitioners. The city shall be made the party
12 defendant. Any elector of the city or town may appear in
13 such suit in person or by counsel ~~or~~ at the hearing thereof,
14 but the court shall have the power to limit the number of
15 counsel who shall be heard on either side, and the time to
16 be allowed for argument. It shall only be necessary to
17 state in the complaint that a petition for an ordinance was
18 filed in pursuance of this act; that the city council passed
19 an ordinance on the subject different from that proposed in
20 the petition; and that the plaintiff desires a construction
21 of the ordinance so passed to determine whether or not it
22 ~~differs~~ differs materially from that proposed. The petition
23 and the ordinance proposed thereby, and the ordinance
24 actually passed, may be set out in the complaint, or copies
25 thereof annexed to the complaint. The names to the petition

1 need not be set out. Such cases shall be advanced and
 2 brought to hearing as speedily as possible, and have
 3 precedence over other cases, except criminal and taxation
 4 cases.

5 (3) The court shall have jurisdiction in such cases to
 6 determine whether or not the change made by the city council
 7 is material, and also whether the petition was regular in
 8 form or substance, and shall also have power to decide, if
 9 the fact be put in issue by the defendant, whether or not
 10 the petition was signed by a sufficient number of voters and
 11 was regular in form. If the court shall decide that the
 12 change was material and that the petition was regular in
 13 form and signed by a sufficient number of legal voters, then
 14 the ordinance proposed by the petition shall be submitted to
 15 the people as provided in this act. If the court shall
 16 decide that the ordinance passed by the council was not
 17 materially different from that proposed in the petition, or
 18 the petition was not regular in form, or not signed by a
 19 sufficient number of legal voters, the ordinance shall not
 20 be submitted to the people. If the court shall decide that
 21 the changes made by the council were material, but that the
 22 petition was irregular for some reason, or not properly or
 23 sufficiently signed, a new petition, regular in form, may be
 24 presented by the required number of legal voters, asking the
 25 council to submit such ordinance to the people, and

1 thereupon the same shall be so submitted as provided in this
 2 act.

3 (4) If the council shall not, within sixty (60) days,
 4 pass an ordinance on the subject of the ordinance proposed
 5 in the petition, then the ordinance proposed by the petition
 6 shall be submitted to the people. Before submitting such
 7 ordinance to the people, the mayor or city or town council
 8 may direct that a suit be brought in the district court in
 9 and for the county, in the name of the city or town, to
 10 determine whether the petition and ordinance are regular in
 11 form, and whether the ordinance so proposed would be valid
 12 and constitutional. If such suit is not commenced at least
 13 thirty-five (35) days prior to the next regular election the
 14 right to bring such suit is waived until after the results
 15 of the election are known. The complaint shall name as
 16 defendants not less than ten (10) nor more than twenty (20)
 17 of the petitioners. In addition to the names of such
 18 defendants, in the caption of the complaint, there shall be
 19 added the words, "and all petitioners whose names appear on
 20 the petition for an ordinance filed on the day of,
 21 in the year," stating the date of filing. The summons
 22 shall be similarly directed and shall be served on the
 23 defendants named therein, and in addition thereto shall be
 24 published at least once, at the expense of the city, in at
 25 least one (1) newspaper published in the city or town.

1 (5) In all suits brought under this section the
 2 decision of the district court shall be final except in
 3 cases where it shall decide that the proposed ordinance
 4 would be unconstitutional or invalid as being beyond the
 5 powers of the city or town council, and in such excepted
 6 cases the petitioners, or any of them, may appeal to the
 7 supreme court as in other cases, but shall not be required
 8 to give any bond for costs. The decision of the district
 9 court holding such ordinance valid or constitutional shall
 10 not, however, prevent the question being raised
 11 subsequently, if the ordinance shall be passed and go into
 12 effect, by anyone affected by the ordinance. Actions
 13 brought under this section shall have precedence over any
 14 civil cause of a different nature pending in the court. The
 15 court shall always be deemed open for the trial thereof and
 16 shall reach its decision as promptly as is practicable. No
 17 costs shall be allowed to either side in suits or appeals
 18 under this section.

19 (6) If an ordinance shall be repealed pursuant to a
 20 proposal initiated by the legal voters of a city or town, as
 21 in this section provided, the city or town council may not,
 22 within a period of two (2) years thereafter, re-enact such
 23 ordinance or any ordinance so similar thereto as not to be
 24 materially different therefrom. If during such two (2) year
 25 period the council shall enact an ordinance similar to the

1 one repealed pursuant to initiative of the voters, a suit
 2 may be brought to determine whether such new ordinance be a
 3 re-enactment without material change of the one so repealed,
 4 and the provisions of subsections (2) and (3) hereof shall
 5 apply to such suit and determination of the issues arising
 6 thereon. Nothing herein contained shall prevent exercise of
 7 the initiative herein provided for, at any time, to procure
 8 a re-enactment of an ordinance repealed pursuant to
 9 initiative of the voters."

-End-

Approved by Committee
on Judiciary

1 SENATE BILL NO. 143
2 INTRODUCED BY COLBERG, ROMNEY, WATT, BROWN
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
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17 of such city or town council, or an ordinance amending or
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20 duty of the city or town clerk to present the same to the
21 council at its first meeting next following the filing of
22 the petition. The council may, within sixty (60) days after
23 the presentation of the petition to the council, pass an
24 ordinance similar to that proposed in the petition, either
25 in exact terms or with such changes, amendments, or

1 modifications as the council may decide upon. If the
2 ordinance proposed by the petition be passed without change,
3 it shall not be submitted to the people, unless a petition
4 for referendum demanding such submission shall be filed
5 under the provisions of this act.
6 (2) If the council shall have made any change in the
7 proposed ordinance, a suit may be brought in the district
8 court in and for the county in which the city or town is
9 situated, to determine whether or not the change is
10 material. Such suit may be brought in the name of any one or
11 more of the petitioners. The city shall be made the party
12 defendant. Any elector of the city or town may appear in
13 such suit in person or by counsel ~~or~~ at the hearing thereof,
14 but the court shall have the power to limit the number of
15 counsel who shall be heard on either side, and the time to
16 be allowed for argument. It shall only be necessary to
17 state in the complaint that a petition for an ordinance was
18 filed in pursuance of this act; that the city council passed
19 an ordinance on the subject different from that proposed in
20 the petition; and that the plaintiff desires a construction
21 of the ordinance so passed to determine whether or not it
22 differs materially from that proposed. The petition
23 and the ordinance proposed thereby, and the ordinance
24 actually passed, may be set out in the complaint, or copies
25 thereof annexed to the complaint. The names to the petition

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 2 brought to hearing as speedily as possible, and have
 3 precedence over other cases, except criminal and taxation
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 6 determine whether or not the change made by the city council
 7 is material, and also whether the petition was regular in
 8 form or substance, and shall also have power to decide, if
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 10 the petition was signed by a sufficient number of voters and
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 12 change was material and that the petition was regular in
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 22 petition was irregular for some reason, or not properly or
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 7 ordinance to the people, the mayor or city or town council
 8 may direct that a suit be brought in the district court in
 9 and for the county, in the name of the city or town, to
 10 determine whether the petition and ordinance are regular in
 11 form, and whether the ordinance so proposed would be valid
 12 and constitutional. If such suit is not commenced at least
 13 thirty-five (35) days prior to the next regular election the
 14 right-to-bring-such suit is-waived SHALL NOT BE COMMENCED
 15 until after the results of the election are known. The
 16 complaint shall name as defendants not less than ten (10)
 17 nor more than twenty (20) of the petitioners. In addition to
 18 the names of such defendants, in the caption of the
 19 complaint, there shall be added the words, "and all
 20 petitioners whose names appear on the petition for an
 21 ordinance filed on the day of, in the year,"
 22 stating the date of filing. The summons shall be similarly
 23 directed and shall be served on the defendants named
 24 therein, and in addition thereto shall be published at least
 25 once, at the expense of the city, in at least one (1)

1 newspaper published in the city or town.

2 (5) In all suits brought under this section the
3 decision of the district court shall be final except in
4 cases where it shall decide that the proposed ordinance
5 would be unconstitutional or invalid as being beyond the
6 powers of the city or town council, and in such excepted
7 cases the petitioners, or any of them, may appeal to the
8 supreme court as in other cases, but shall not be required
9 to give any bond for costs. The decision of the district
10 court holding such ordinance valid or constitutional shall
11 not, however, prevent the question being raised
12 subsequently, if the ordinance shall be passed and go into
13 effect, by anyone affected by the ordinance. Actions
14 brought under this section shall have precedence over any
15 civil cause of a different nature pending in the court. The
16 court shall always be deemed open for the trial thereof and
17 shall reach its decision as promptly as is practicable. No
18 costs shall be allowed to either side in suits or appeals
19 under this section.

20 (6) If an ordinance shall be repealed pursuant to a
21 proposal initiated by the legal voters of a city or town, as
22 in this section provided, the city or town council may not,
23 within a period of two (2) years thereafter, re-enact such
24 ordinance or any ordinance so similar thereto as not to be
25 materially different therefrom. If during such two (2) year

1 period the council shall enact an ordinance similar to the
2 one repealed pursuant to initiative of the voters, a suit
3 may be brought to determine whether such new ordinance be a
4 re-enactment without material change of the one so repealed,
5 and the provisions of subsections (2) and (3) hereof shall
6 apply to such suit and determination of the issues arising
7 thereon. Nothing herein contained shall prevent exercise of
8 the initiative herein provided for, at any time, to procure
9 a re-enactment of an ordinance repealed pursuant to
10 initiative of the voters."

-End-

THIRD READING

MISSING

HOUSE OF REPRESENTATIVES

Date: March 21, 1975

HOUSE COMMITTEE ON JUDICIARY AMENDMENT TO SENATE BILL 143

Be amended in the third reading bill as follows:

1. Amend title, page 1, line 5.

Strike: "11-1104"

Insert: "37-301"

2. Amend page 1, following line 8.

Strike: Everything after the enacting clause.

Insert: "Section 1. Section 37-301, R.C.M. 1947, is amended to read as follows:

"37-301. Petition to initiate county resolution--adoption by board--submission to people--waiting period before re-enactment of resolution repealed by people. (1) Resolutions may be proposed by the legal voters of any county in this state, in the manner provided in this act. Fifteen per cent (15%) of the legal voters of any county may propose to the board of county commissioners a resolution on a subject within the legislative jurisdiction and powers of such county commissioners, or a resolution amending or repealing any prior resolution or resolutions. Petitions shall be filed with the county clerk. The county clerk shall present the same to the board at its first meeting next following the filing of the petition. The board may, within sixty (60) days after the presentation of the petition to the board, adopt the resolution as set forth in the petition. If the resolution proposed by the petition is passed without change, it shall not be submitted to the people, unless a petition for referendum demanding such submission is filed under the provisions of this act.

- (2) If the board does not, within sixty (60) days, pass the

HOUSE OF REPRESENTATIVES

Date: March 21, 1975

HOUSE COMMITTEE ON JUDICIARY AMENDMENT TO SENATE BILL 143

resolution proposed in the petition, then the resolution proposed by the petition shall be submitted to the people. Before submitting such resolution to the people, the board may direct that a suit be brought in the district court in and for the county to determine whether the petition and ordinance are regular in form, and whether the ordinance so proposed would be valid and constitutional. If the board determines that a suit must be brought, the suit shall be filed within fifteen (15) days after presentation of the petition to the board. The procedure for judicial review shall be the same as that provided for the cities in section 11-1104 (4) and (5).

(3) If a resolution is repealed pursuant to a proposal initiated by the qualified electors of a county as provided in this act, the board of commissioners may not, within a period of two (2) years thereafter, re-enact such resolution or any resolution so similar thereto as not to be materially different therefrom. If during such two (2) year period the board enacts a resolution similar to the one repealed pursuant to initiative of the voters, a suit may be brought to determine whether the new resolution is a re-enactment without material change of the one so repealed. The same procedures set forth for cities shall apply to such suit and determination of the issues arising thereon. Nothing herein contained shall prevent exercise of the initiative herein provided for, at any time, to procure a re-enactment of a resolution repealed pursuant to initiative of the voters."

1 SENATE BILL NO. 143

2 INTRODUCED BY COLBERG, ROMNEY, WATT, BROWN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
5 ~~11-1104~~ 37-301, R.C.M. 1947, TO PROVIDE FOR PROMPT JUDICIAL
6 REVIEW OF RESOLUTIONS PROPOSED BY POPULAR INITIATIVE."

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9 (Strike everything after the enacting clause and insert:)

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13 adoption by board -- submission to people -- waiting period
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15 (1) Resolutions may be proposed by the legal voters of any
16 county in this state, in the manner provided in this act.
17 Fifteen percent (15%) of the legal voters of any county may
18 propose to the board of county commissioners a resolution on
19 a subject within the legislative jurisdiction and powers of
20 such county commissioners, or a resolution amending or
21 repealing any prior resolution or resolutions. Petitions
22 shall be filed with the county clerk. The county clerk shall
23 present the same to the board at its first meeting next
24 following the filing of the petition. The board may, within
25 sixty (60) days after the presentation of the petition to

1 the board, adopt the resolution as set forth in the
2 petition. If the resolution proposed by the petition is
3 passed without change, it shall not be submitted to the
4 people, unless a petition for referendum demanding such
5 submission is filed under the provisions of this act.

6 (2) If the board does not, within sixty (60) days,
7 pass the resolution proposed in the petition, then the
8 resolution proposed by the petition shall be submitted to
9 the people. Before submitting such resolution to the people,
10 the board may direct that a suit be brought in the district
11 court in and for the county to determine whether the
12 petition and ordinance are regular in form, and whether the
13 ordinance so proposed would be valid and constitutional. If
14 the board determines that a suit must be brought, the suit
15 shall be filed within fifteen (15) days after presentation
16 of the petition to the board. The procedure for judicial
17 review shall be the same as that provided for the cities in
18 section 11-1104 (4) and (5).

19 (3) If a resolution is repealed pursuant to a proposal
20 initiated by the qualified electors of a county as provided
21 in this act, the board of commissioners may not, within a
22 period of two (2) years thereafter, re-enact such resolution
23 or any resolution so similar thereto as not to be materially
24 different therefrom. If during such two (2) year period the
25 board enacts a resolution similar to the one repealed

1 pursuant to initiative of the voters, a suit may be brought
2 to determine whether the new resolution is a re-enactment
3 without material change of the one so repealed. The same
4 procedures set forth for cities shall apply to such suit and
5 determination of the issues arising thereon. Nothing herein
6 contained shall prevent exercise of the initiative herein
7 provided for, at any time, to procure a re-enactment of a
8 resolution repealed pursuant to initiative of the voters."

-End-