

Senate BILL NO. *163*

INTRODUCED BY

Colby

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 11-1104 (1) AND SECTION 37-301 (1) R.C.M. 1947, TO AUTHORIZE THE USE OF COUNTY AND CITY INITIATIVE AND REFERENDUM PROCEDURES FOR THE TAKING OF STRAW VOTES."

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

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

"11-1104. Initiative in cities--petition. (1) Ordinances may be proposed by the legal voters of any city or town in this state, in the manner provided in this act. Fifteen per cent (15%) of the legal voters of any city or town may propose to the city or town council an ordinance on the subject within the legislative jurisdiction and powers of such city or town council, or an ordinance amending or repealing any prior ordinance or ordinances, or a resolution expressing the opinion of the people on any issue whether or not within the legislative jurisdiction of the council.

Such petition shall be filed with the city or town clerk. It shall be the duty of the city or town clerk to present the same to the council at its first meeting next following the filing of the petition. The council may, within sixty (60)

days after the presentation of the petition to the council, pass an ordinance similar to that proposed in the petition, either in exact terms or with such changes, amendments, or modifications as the council may decide upon. If the ordinance proposed by the petition be passed without change, it shall not be submitted to the people, unless a petition for referendum demanding such submission shall be filed under the provisions of this act.

(2) If the council shall have made any change in the proposed ordinance, a suit may be brought in the district court in and for the county in which the city or town is situated, to determine whether or not the change is material. Such suit may be brought in the name of any one or more of the petitioners. The city shall be made the party defendant. Any elector of the city or town may appear in such suit in person or by counsel or the hearing thereof, but the court shall have the power to limit the number of counsel who shall be heard on either side, and the time to be allowed for argument. It shall only be necessary to state in the complaint that a petition for an ordinance was filed in pursuance of this act; that the city council passed an ordinance on the subject different from that proposed in the petition; and that the plaintiff desires a construction of the ordinance so passed to determine whether or not it differ materially from that proposed. The petition and the

1 ordinance proposed thereby, and the ordinance actually
 2 passed, may be set out in the complaint, or copies thereof
 3 annexed to the complaint. The names to the petition need not
 4 be set out. Such cases shall be advanced and brought to
 5 hearing as speedily as possible, and have precedence over
 6 other cases, except criminal and taxation cases.

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

1 presented by the required number of legal voters, asking the
 2 council to submit such ordinance to the people, and
 3 thereupon the same shall be so submitted as provided in this
 4 act.

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

25 (5) In all suits brought under this section the

1 decision of the district court shall be final except in
 2 cases where it shall decide that the proposed ordinance
 3 would be unconstitutional or invalid as being beyond the
 4 powers of the city or town council, and in such excepted
 5 cases the petitioners, or any of them, may appeal to the
 6 supreme court as in other cases, but shall not be required
 7 to give any bond for costs. The decision of the district
 8 court holding such ordinance valid or constitutional shall
 9 not, however, prevent the question being raised
 10 subsequently, if the ordinance shall be passed and go into
 11 effect, by anyone affected by the ordinance. No costs shall
 12 be allowed to either side in suits or appeals under this
 13 section.

14 (6) If an ordinance shall be repealed pursuant to a
 15 proposal initiated by the legal voters of a city or town, as
 16 in this section provided, the city or town council may not,
 17 within a period of two (2) years thereafter, re-enact such
 18 ordinance or any ordinance so similar thereto as not to be
 19 materially different therefrom. If during such two (2) year
 20 period the council shall enact an ordinance similar to the
 21 one repealed pursuant to initiative of the voters, a suit
 22 may be brought to determine whether such new ordinance be a
 23 re-enactment without material change of the one so repealed,
 24 and the provisions of subsections (2) and (3) hereof shall
 25 apply to such suit and determination of the issues arising

1 thereon. Nothing herein contained shall prevent exercise of
 2 the initiative herein provided for, at any time, to procure
 3 a re-enactment of an ordinance repealed pursuant to
 4 initiative of the voters."

5 Section 2. Section 37-301(1), R.C.M. 1947, is amended
 6 to read as follows:

7 "37-301. Petition to initiate county
 8 resolution--adoption by board--submission to people--waiting
 9 period before re-enactment of resolution repealed by people.
 10 (1) Resolutions may be proposed by the legal voters of any
 11 county in this state, in the manner provided in this act.
 12 Fifteen percent (15%) of the legal voters of any county may
 13 propose to the board of county commissioners a resolution on
 14 a subject within the legislative jurisdiction and powers of
 15 such county commissioners, or a resolution amending or
 16 repealing any prior resolution or resolutions, or a
 17 resolution expressing the opinion of the people on any issue
 18 whether or not within the legislative jurisdiction of the
 19 board of county commissioners. Petitions shall be filed with
 20 the county clerk. The county clerk shall present the same to
 21 the board at its first meeting next following the filing of
 22 the petition. The board may, within sixty (60) days after
 23 the presentation of the petition to the board, adopt the
 24 resolution as set forth in the petition. If the resolution
 25 proposed by the petition is passed without change, it shall

1 not be submitted to the people, unless a petition for
 2 referendum demanding such submission is filed under the
 3 provisions of this act.

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

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

1 contained shall prevent exercise of the initiative herein
 2 provided for, at any time, to procure a re-enactment of a
 3 resolution repealed pursuant to initiative of the voters."

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