

1 *Senate* BILL NO. *35*  
 2 INTRODUCED BY *Sen. Robbie Flynn Haddock*  
 3 *Manley McCallum*

4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE STATE  
 5 CONSERVATION DISTRICTS LAW PROVIDING FOR EXCLUDING TERRITORY  
 6 FROM EXISTING DISTRICTS; REVISING PROCEDURES FOR ELECTION OF  
 7 DISTRICT SUPERVISORS; AMENDING 76-105, 76-106, AND 76-107,  
 8 R.C.M. 1947."

9  
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 76-105, R.C.M. 1947, is amended to  
 12 read as follows:

13 \*76-105. Creation of conservation districts. (1) Any  
 14 ~~ten--{10}~~ qualified electors within the limits of the  
 15 territory proposed to be organized into a district may file  
 16 a petition with the department asking that the board approve  
 17 the organization of a conservation district to function in  
 18 the territory described in the petition. The petition shall  
 19 set forth:

- 20 (a) ~~The~~ the proposed name of the district;
- 21 (b) ~~That that~~ there is need, in the interest of the  
 22 public health, safety, and welfare, for a conservation  
 23 district to function in the territory described in the  
 24 petition;
- 25 (c) \* a description of the territory proposed to be

1 organized as a district, which description may not be  
 2 required to be given by metes and bounds or by legal  
 3 subdivisions, but shall be considered sufficient if  
 4 generally accurate;

5 (d) \* a request that the board duly define the  
 6 boundaries for the district; that a referendum be held  
 7 within the territory so defined on the question of the  
 8 creation of a conservation district in the territory; and  
 9 that the board determine that a district be created.

10 (2) Where more than one ~~{1}~~ petition is filed covering  
 11 parts of the same territory, the board may consolidate all  
 12 or any part of the petitions.

13 (3) Within ~~thirty--{30}~~ days after a petition has been  
 14 filed with the department, it shall cause due notice to be  
 15 given of a proposed hearing before the department upon the  
 16 question of the desirability and necessity, in the interest  
 17 of the public health, safety, and welfare, of the creation  
 18 of the district; upon the question of the appropriate  
 19 boundaries to be assigned to the district; upon the  
 20 propriety of the petition and other proceedings taken under  
 21 this act; and upon all questions relevant to those  
 22 inquiries. All qualified electors within the limits of the  
 23 territory described in the petition, and of lands within any  
 24 territory considered for addition to the described  
 25 territory, and all other interested parties, are entitled to

1 attend the hearings and be heard. If it appears to the board  
 2 after reviewing the record of the hearing that it may be  
 3 desirable to include within the proposed district territory  
 4 outside of the area within which due notice of the hearing  
 5 has been given, the board shall adjourn the hearing and the  
 6 department shall cause due notice of a further hearing to be  
 7 given throughout the entire area considered for inclusion in  
 8 the district, and the further hearing shall be held by the  
 9 department. After the hearing, if the board determines, upon  
 10 the facts presented at the hearing and upon other relevant  
 11 facts and information as may be available to the department  
 12 or the board, that there is need, in the interest of the  
 13 public health, safety, and welfare, for a conservation  
 14 district to function in the territory considered at the  
 15 hearing, it shall make and record that determination, and  
 16 shall define, by metes and bounds or by legal subdivisions,  
 17 the boundaries of the district. In making the determinations  
 18 and in defining the boundaries, the board shall consider the  
 19 topography of the area considered and of the state, the  
 20 composition of soils therein, the distribution of erosion,  
 21 the prevailing land-use practices, the desirability and  
 22 necessity of including within the boundaries the particular  
 23 lands under consideration and the benefits those lands may  
 24 receive from being included within the boundaries, the  
 25 relation of the proposed area to existing watersheds and

1 agricultural regions, and other conservation districts  
 2 already organized or proposed for organization under this  
 3 act, and such other physical, geographical, and economic  
 4 factors as are relevant, having due regard to the  
 5 legislative determination set forth in section 76-102. The  
 6 territory to be included within the boundaries need not be  
 7 contiguous. If the board determines after the hearing,  
 8 after due consideration of the relevant facts, that there is  
 9 no need for a conservation district to function in the  
 10 territory considered at the hearing, it shall make and  
 11 record that determination and shall deny the petition. After  
 12 six-(6) months have expired from the date of the denial of a  
 13 petition, subsequent petitions covering the same or  
 14 substantially the same territory may be filed and a new  
 15 hearing held and determinations made thereon.

16 (4) After the board has made and recorded a  
 17 determination that there is need, in the interest of the  
 18 public health, safety, and welfare, for the organization of  
 19 a district in a particular territory and has defined the  
 20 boundaries thereof, it shall consider the question whether  
 21 the operation of a district within the boundaries with the  
 22 powers conferred upon conservation districts in this act is  
 23 administratively practicable and feasible. To assist the  
 24 board in the determination of this administrative  
 25 practicability and feasibility, the department shall, within

1 a reasonable time after entry of the board's finding that  
 2 there is need for the organization of the proposed district  
 3 and the determination of the boundaries thereof, hold a  
 4 referendum within the proposed district upon the proposition  
 5 of the creation of the district, and cause due notice of the  
 6 referendum to be given. The question shall be submitted by  
 7 ballots upon which the words "For creation of a conservation  
 8 district of the lands below described and lying in the  
 9 county(ies) of . . . . , . . . . , and . . . ." and "Against creation  
 10 of a conservation district of the lands below described and  
 11 lying in the county(ies) of . . . . and . . . ." shall appear,  
 12 with a square before each proposition and a direction to  
 13 insert an "X" mark in the square before one or the other of  
 14 the propositions as the voter may favor or oppose creation  
 15 of the district. The ballot shall set forth the boundaries  
 16 of the proposed district as determined by the board. All  
 17 qualified electors within the boundaries of the territory,  
 18 as determined by the department, are eligible to vote in the  
 19 referendum.

20 (5) The department shall pay all expenses for the  
 21 issuance of the notices and the conduct of the hearings and  
 22 referenda, and shall supervise the conduct of the hearings  
 23 and referenda. It shall adopt appropriate rules governing  
 24 the conduct of the hearings and referenda, and providing for  
 25 the registration prior to the date of the referendum of all

1 eligible voters, or prescribing some other appropriate  
 2 procedure for the determination of those eligible as voters  
 3 in the referendum. No informalities in the conduct of the  
 4 referendum or in any matters relating thereto shall  
 5 invalidate the referendum or the result thereof if notice  
 6 thereof has been given substantially as herein provided and  
 7 the referendum has been fairly conducted.

8 (6) The department shall publish the result of the  
 9 referendum, and the board shall thereafter consider and  
 10 determine whether the operation of the district within the  
 11 defined boundaries is administratively practicable and  
 12 feasible. If the board determines that the operation of the  
 13 district is not administratively practicable and feasible,  
 14 it shall record that determination and deny the petition. If  
 15 the board determines that the operation of the district is  
 16 administratively practicable and feasible, it shall record  
 17 that determination and shall proceed with the organization  
 18 of the district in the manner hereinafter provided. In  
 19 making its determination, the board shall consider the  
 20 attitudes of the qualified electors within the defined  
 21 boundaries, the number of qualified electors eligible to  
 22 vote in the referendum who voted, the proportion of the  
 23 votes cast in the referendum in favor of the creation of the  
 24 district to the total number of votes cast, the approximate  
 25 wealth and income of the qualified electors of the proposed

1 district, the probable expense of carrying on  
 2 erosion-control operations within the district, and such  
 3 other economic and social factors relevant to the  
 4 determination, having due regard to the legislative  
 5 determinations set forth in section 76-102; however, the  
 6 board may not determine that the operation of the proposed  
 7 district within the defined boundaries is administratively  
 8 practicable and feasible unless a majority of the votes cast  
 9 in the referendum upon the proposition of creation of the  
 10 district have been cast in favor of the creation of the  
 11 district.

12 (7) If the board determines that the operation of the  
 13 proposed district within the defined boundaries is  
 14 administratively practicable and feasible, it shall appoint  
 15 two ~~(2)~~ supervisors to act with the three ~~(3)~~ supervisors  
 16 first elected, as provided hereinafter, as the initial  
 17 governing body of the district. The district is a  
 18 governmental subdivision of this state and a public body,  
 19 corporate and politic, upon the taking of the following  
 20 proceedings:

21 ~~(b)(1)~~ The two ~~(2)~~ appointed supervisors shall present  
 22 to the secretary of state an application signed by them,  
 23 which shall set forth:

24 ~~(c)(1)~~ That ~~that~~ a petition for the creation of the  
 25 district was filed with the department pursuant to this act,

1 that the proceedings specified in this act were taken  
 2 pursuant to the petition, that the application is being  
 3 filed in order to complete the organization of the district  
 4 as a governmental subdivision and a public body, corporate  
 5 and politic, under this act, and that the board has  
 6 appointed them as supervisors;

7 ~~(b)(ii)~~ the name and official residence of each of the  
 8 supervisors, together with a certified copy of the  
 9 appointments evidencing their right to office;

10 ~~(c)(iii)~~ the term of office of each of the supervisors;

11 ~~(d)(iv)~~ the name which is proposed for the district;

12 and

13 ~~(e)(v)~~ the location of the principal offices of the  
 14 supervisors of the district.

15 ~~(b)~~ The application shall be subscribed and sworn to  
 16 by each of the supervisors. The application shall be  
 17 accompanied by a statement by the department, which shall  
 18 certify that a petition was filed, notice issued, and  
 19 hearing held as provided in this act; that the board  
 20 determined that there is need, in the interest of the public  
 21 health, safety, and welfare, for a conservation district to  
 22 function in the proposed territory, and defined the  
 23 boundaries thereof; that notice was given and a referendum  
 24 held on the question of the creation of the district; and  
 25 that the result of the referendum showed a majority of the

1 votes cast in the referendum to be in favor of the creation  
 2 of the district, and that thereafter the board determined  
 3 that the operation of the proposed district is  
 4 administratively practicable and feasible. The statement  
 5 shall also set forth the boundaries of the district as they  
 6 have been defined by the board.

7 ~~(9)~~(8) The secretary of state shall examine the  
 8 application and statement, and if he finds that the name  
 9 proposed for the district is not identical with that of any  
 10 other conservation district of this state or so nearly  
 11 similar as to lead to confusion or uncertainty, he shall  
 12 receive and file them and shall record them in an  
 13 appropriate book of record in his office. If the secretary  
 14 of state finds that the name proposed for the district is  
 15 identical with that of any other conservation district of  
 16 this state, or so nearly similar as to lead to confusion and  
 17 uncertainty, he shall certify that fact to the board, which  
 18 shall thereupon submit to the secretary of state a new name  
 19 for the district, which is not subject to such defects. Upon  
 20 receipt of the new name, free of such defects, the secretary  
 21 of state shall record the application and statement with  
 22 the name so modified in an appropriate book of record in  
 23 his office. When the application and statement have been  
 24 made, filed, and recorded, as herein provided, the district  
 25 is a governmental subdivision of this state and a public

1 body, corporate and politic. The secretary of state shall  
 2 make and issue to the supervisors without cost a  
 3 certificate under the seal of the state of the due  
 4 organization of the district, and shall record the  
 5 certificate with the application and statement. The  
 6 boundaries of the district shall include the territory as  
 7 determined by the board, but they may not include any area  
 8 included within the boundaries of another conservation  
 9 district.

10 ~~(10)~~(9) After ~~six~~(6) months have expired from the  
 11 date of entry of a determination by the board that operation  
 12 of a proposed district is not administratively practicable  
 13 and feasible, and denial of a petition pursuant to the  
 14 determination, subsequent petitions may be filed and action  
 15 taken thereon in accordance with this act.

16 ~~(11)~~(10) Petitions for including additional territory  
 17 within an existing district or excluding part of the  
 18 territory of an existing district may be filed with the  
 19 department, and the proceedings herein provided for in the  
 20 case of petitions to organize a district shall be followed  
 21 in the case of petitions for the inclusion or exclusion. The  
 22 department shall prescribe the form for the petitions, which  
 23 shall be as nearly as may be in the form prescribed in this  
 24 act for petitions to organize a district. Where the total  
 25 number of qualified electors in the area proposed for

1 inclusion ~~are~~ is less than ten-~~(10)~~, the petition may be  
 2 filed when signed by a majority of the qualified electors of  
 3 the area, and in that case no referendum need be held. In  
 4 referenda upon petitions for the inclusion, all qualified  
 5 electors within the proposed additional area are eligible to  
 6 vote.

7 ~~(12)~~(11) In a suit, action, or proceeding involving  
 8 the validity or enforcement of, or relating to, a contract,  
 9 proceeding, or action of the district, the district shall be  
 10 considered to have been established in accordance with this  
 11 act upon proof of the issuance of the certificate by the  
 12 secretary of state. A copy of the certificate, duly  
 13 certified by the secretary of state, is admissible in  
 14 evidence in the suit, action, or proceeding and is proof of  
 15 the filing and contents thereof."

16 Section 2. Section 76-106, R.C.M. 1947, is amended to  
 17 read as follows:

18 "76-106. Election of supervisors for each district.  
 19 (1) Within thirty-~~(30)~~ days after the date of issuance by  
 20 the secretary of state of a certificate of organization of a  
 21 conservation district, nominating petitions may be filed  
 22 with the department to nominate candidates for supervisors  
 23 of the district. The department may extend the time within  
 24 which nominating petitions may be filed. A nominating  
 25 petition may not be accepted by the department unless it is

1 subscribed by ten-~~(10)~~ or more qualified electors within the  
 2 boundaries of the district. Qualified electors may sign more  
 3 than one ~~(1)~~ nominating petition to nominate more than one  
 4 ~~(1)~~ candidate for supervisor. the ~~If more than six~~  
 5 ~~candidates are nominated, the~~ department shall give due  
 6 notice of ~~an a~~ a ~~nominating~~ election to be held for ~~the~~  
 7 selection of six candidates for supervisor to appear on the  
 8 next general election ballot. This nominating election may  
 9 be held in conjunction with the state primary election, the  
 10 ~~election of three (3) supervisors for the district. The~~  
 11 ~~names of all nominees on behalf of whom the nominating~~  
 12 ~~petitions have been filed within the time herein designated,~~  
 13 in the general election, the names of all persons nominated  
 14 by petition (if six or fewer) or by election shall be  
 15 printed, arranged in the ~~alphabetical~~ a rotating order of  
 16 the surnames, as provided under 23-3511, upon ballots, with  
 17 a square before each name and a direction to insert an "X"  
 18 mark in the square before any three ~~(3)~~ names to indicate  
 19 the voter's preference. All qualified electors within the  
 20 district are eligible to vote in the election. The three ~~(3)~~  
 21 candidates who receive the largest number, respectively, of  
 22 the votes cast in the election are the elected supervisors  
 23 for the district. ~~The department shall pay all the expenses~~  
 24 ~~of the election, shall supervise the conduct thereof, shall~~  
 25 ~~prescribe rules governing the conduct of the election and~~

1 ~~the determination of the eligibility of votes therein, and~~  
 2 ~~shall publish the results thereof. The supervisors in each~~  
 3 ~~county shall have prepared at department cost suitable~~  
 4 ~~ballots for the election of supervisors, which ballots shall~~  
 5 ~~be delivered to the election judges in those precincts which~~  
 6 ~~contain eligible voters prior to each general election and~~  
 7 ~~each primary election in which more than four candidates are~~  
 8 ~~nominated. The election judges, clerks, and other election~~  
 9 ~~officials in such precincts shall submit such ballots to~~  
 10 ~~qualified electors; conduct the election and tabulate the~~  
 11 ~~results of such election in the manner provided for by the~~  
 12 ~~general election laws of the state.~~

13 ~~(2) Two supervisors shall be elected at the second~~  
 14 ~~general election following the organization or~~  
 15 ~~reorganization of the district and shall replace the two~~  
 16 ~~supervisors appointed by the department. Thereafter, a~~  
 17 ~~district shall alternately elect three and two supervisors~~  
 18 ~~at succeeding general elections. Nominations for the~~  
 19 ~~election of supervisors shall be made as provided under~~  
 20 ~~subsection (1) except that a nominating election shall be~~  
 21 ~~held if more than four candidates are nominated by petition~~  
 22 ~~when two supervisors are to be elected."~~

23 Section 3. Section 76-107, R.C.M. 1947, is amended to  
 24 read as follows:

25 "76-107. Appointment, qualifications, and tenure of

1 supervisors. (1) The governing body of the district shall,  
 2 if there are no incorporated municipalities within the  
 3 boundaries of said district, consist of five ~~(5)~~ or seven  
 4 ~~(7)~~ supervisors, elected or appointed as provided herein.

5 (2) In all cases where the boundaries of such  
 6 conservation district include any incorporated municipality  
 7 or municipalities, ~~said the~~ board of supervisors, in  
 8 addition to ~~said the~~ five ~~(5)~~ elected supervisors, shall  
 9 consist of two ~~(2)~~ appointed supervisors, making a total of  
 10 seven ~~(7)~~ supervisors in such districts. The two ~~(2)~~  
 11 appointed supervisors must be residents of the  
 12 municipalities within the district. The legislative bodies  
 13 of the incorporated municipalities within the district  
 14 shall, after consultation with the elected supervisors,  
 15 appoint the two ~~(2)~~ additional supervisors. The term of  
 16 office of the appointed supervisors shall be three-~~(3)~~  
 17 years.

18 (3) Where there are more than two ~~(2)~~ incorporated  
 19 municipalities within a district, then the two ~~(2)~~ appointed  
 20 supervisors shall represent all the municipalities and urban  
 21 interests in the district, and no municipality shall have  
 22 more than one ~~(1)~~ appointed supervisor residing therein.

23 (4) The supervisors shall annually elect a chairman  
 24 from their members. The term of office of each supervisor  
 25 shall be three-~~(3)~~  $\frac{1}{2}$  years, except that the supervisors who

1 are first appointed by the department shall be designated to  
 2 serve for terms of ~~one (1) and two (2)~~ years, ~~respectively~~  
 3 from the date of their appointment. An elected supervisor  
 4 shall hold office until his successor has been elected and  
 5 has qualified. Any vacancy occurring in the office of an  
 6 elected supervisor shall be filled by appointment by the  
 7 remaining supervisors until the next regular election, when  
 8 a successor shall be elected to serve the unexpired term. A  
 9 majority of the supervisors constitute a quorum, and the  
 10 concurrence of a majority in any matter within their duties  
 11 is required for its determination. A supervisor may not  
 12 receive compensation for his services, but he is entitled to  
 13 expenses, including travel expenses, as provided for in  
 14 sections 59-538, 59-539, and 59-801, incurred in the  
 15 discharge of his duties.

16 (5) The supervisors may employ a secretary and such  
 17 other officers, agents, and employees, permanent and  
 18 temporary, as they may require, and shall determine their  
 19 qualifications, duties, and compensation. The supervisors  
 20 may call upon the attorney general of the state for such  
 21 legal services as they may require, or may employ their own  
 22 counsel and legal staff. The supervisors may delegate to  
 23 their chairman, to one (1) or more supervisors, or to one  
 24 (1) or more agents or employees, such powers and duties as  
 25 they consider proper. The supervisors shall furnish to the

1 department copies of such ordinances, rules, regulations,  
 2 orders, contracts, forms, and other documents as they adopt  
 3 or employ, and such other information concerning their  
 4 activities as may be required in the performance of their  
 5 duties under this act.

6 (6) The supervisors shall provide for the execution of  
 7 surety bonds for all employees and officers who are  
 8 entrusted with funds or property; shall provide for the  
 9 keeping of a full and accurate record of all proceedings,  
 10 and of all resolutions, regulations, and orders issued or  
 11 adopted; and shall provide for an annual audit of the  
 12 accounts of receipts and disbursements. A supervisor may be  
 13 removed by the board, upon notice and hearing, for neglect  
 14 of duty or malfeasance in office, but for no other reason.

15 (7) The supervisors may invite the legislative  
 16 governing body of any municipality or county located near  
 17 the territory comprised within the district to designate a  
 18 representative to advise and consult with the supervisors of  
 19 the district on all questions of program and policy which  
 20 may affect the property, water supply, or other interests of  
 21 the municipality or county."

22 Section 4. Compliance period. For the purposes of  
 23 bringing existing districts into compliance with this act by  
 24 the time of the 1978 general elections and of allowing these  
 25 districts sufficient time for their reorganization when



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1 necessary, no action or undertaking of a district may be  
2 invalidated or voided for failure to comply with the  
3 amendatory provisions of this act prior to January 1, 1979.

-End-

Approved by Committee  
on Agriculture Livestock  
& Irrigation

1 SENATE BILL NO. 35

2 INTRODUCED BY GALT, ROSKIE,

3 FLYNN, HAZELBAKER, MANLEY, McCALLUM

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE STATE  
6 CONSERVATION DISTRICTS LAW PROVIDING FOR EXCLUDING TERRITORY  
7 FROM EXISTING DISTRICTS; REVISING PROCEDURES FOR ELECTION OF  
8 DISTRICT SUPERVISORS; AMENDING 76-105, 76-106, ~~AND~~ 76-107,  
9 AND 76-114, R.C.M. 1947."

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

12 Section 1. Section 76-105, R.C.M. 1947, is amended to  
13 read as follows:

14 "76-105. Creation of conservation districts. (1) Any  
15 ~~ten~~ {10} qualified electors within the limits of the  
16 territory proposed to be organized into a district may file  
17 a petition with the department asking that the board approve  
18 the organization of a conservation district to function in  
19 the territory described in the petition. The petition shall  
20 set forth:

21 (a) ~~The~~ the proposed name of the district;

22 (b) ~~That that~~ that there is need, in the interest of the  
23 public health, safety, and welfare, for a conservation  
24 district to function in the territory described in the  
25 petition;

1 (c) ~~A~~ a description of the territory proposed to be  
2 organized as a district, which description may not be  
3 required to be given by metes and bounds or by legal  
4 subdivisions, but shall be considered sufficient if  
5 generally accurate;

6 (d) ~~A~~ a request that the board duly define the  
7 boundaries for the district; that a referendum be held  
8 within the territory so defined on the question of the  
9 creation of a conservation district in the territory; and  
10 that the board determine that a district be created.

11 (2) Where more than one ~~four~~ petition is filed covering  
12 parts of the same territory, the board may consolidate all  
13 or any part of the petitions.

14 (3) Within ~~thirty~~ {30} days after a petition has been  
15 filed with the department, it shall cause due notice to be  
16 given of a proposed hearing before the department upon the  
17 question of the desirability and necessity, in the interest  
18 of the public health, safety, and welfare, of the creation  
19 of the district, ; upon the question of the appropriate  
20 boundaries to be assigned to the district, ; upon the  
21 propriety of the petition and other proceedings taken under  
22 this act, ; and upon all questions relevant to those  
23 inquiries. All qualified electors within the limits of the  
24 territory described in the petition, and of lands within any  
25 territory considered for addition to the described

1 territory, and all other interested parties, are entitled to  
 2 attend the hearings and be heard. If it appears to the board  
 3 after reviewing the record of the hearing that it may be  
 4 desirable to include within the proposed district territory  
 5 outside of the area within which due notice of the hearing  
 6 has been given, the board shall adjourn the hearing and the  
 7 department shall cause due notice of a further hearing to be  
 8 given throughout the entire area considered for inclusion in  
 9 the district, and the further hearing shall be held by the  
 10 department. After the hearing, if the board determines, upon  
 11 the facts presented at the hearing and upon other relevant  
 12 facts and information as may be available to the department  
 13 or the board, that there is need, in the interest of the  
 14 public health, safety, and welfare, for a conservation  
 15 district to function in the territory considered at the  
 16 hearing, it shall make and record that determination, and  
 17 shall define, by metes and bounds or by legal subdivisions,  
 18 the boundaries of the district. In making the determinations  
 19 and in defining the boundaries, the board shall consider the  
 20 topography of the area considered and of the state, the  
 21 composition of soils therein, the distribution of erosion,  
 22 the prevailing land-use practices, the desirability and  
 23 necessity of including within the boundaries the particular  
 24 lands under consideration and the benefits those lands may  
 25 receive from being included within the boundaries, the

1 relation of the proposed area to existing watersheds and  
 2 agricultural regions, and other conservation districts  
 3 already organized or proposed for organization under this  
 4 act, and such other physical, geographical, and economic  
 5 factors as are relevant, having due regard to the  
 6 legislative determination set forth in ~~section~~ 76-102. The  
 7 territory to be included within the boundaries need not be  
 8 contiguous. If the board determines after the hearing,  
 9 after due consideration of the relevant facts, that there is  
 10 no need for a conservation district to function in the  
 11 territory considered at the hearing, it shall make and  
 12 record that determination and shall deny the petition. After  
 13 ~~six~~(6) months have expired from the date of the denial of a  
 14 petition, subsequent petitions covering the same or  
 15 substantially the same territory may be filed and a new  
 16 hearing held and determinations made thereon.

17 (4) After the board has made and recorded a  
 18 determination that there is need, in the interest of the  
 19 public health, safety, and welfare, for the organization of  
 20 a district in a particular territory and has defined the  
 21 boundaries thereof, it shall consider the question whether  
 22 the operation of a district within the boundaries with the  
 23 powers conferred upon conservation districts in this act is  
 24 administratively practicable and feasible. To assist the  
 25 board in the determination of this administrative

1 practicability and feasibility, the department shall, within  
 2 a reasonable time after entry of the board's finding that  
 3 there is need for the organization of the proposed district  
 4 and the determination of the boundaries thereof, hold a  
 5 referendum within the proposed district upon the proposition  
 6 of the creation of the district, and cause due notice of the  
 7 referendum to be given. The question shall be submitted by  
 8 ballots upon which the words "For creation of a conservation  
 9 district of the lands below described and lying in the  
 10 county(ies) of ....., ....., and ....." and "Against creation  
 11 of a conservation district of the lands below described and  
 12 lying in the county(ies) of .... and ....." shall appear,  
 13 with a square before each proposition and a direction to  
 14 insert an "X" mark in the square before one or the other of  
 15 the propositions as the voter may favor or oppose creation  
 16 of the district. The ballot shall set forth the boundaries  
 17 of the proposed district as determined by the board. All  
 18 qualified electors within the boundaries of the territory,  
 19 as determined by the department, are eligible to vote in the  
 20 referendum.

21 (5) The department shall pay all expenses for the  
 22 issuance of the notices and the conduct of the hearings and  
 23 referenda, and shall supervise the conduct of the hearings  
 24 and referenda. It shall adopt appropriate rules governing  
 25 the conduct of the hearings and referenda, and providing for

1 the registration prior to the date of the referendum of all  
 2 eligible voters, or prescribing some other appropriate  
 3 procedure for the determination of those eligible as voters  
 4 in the referendum. No informalities in the conduct of the  
 5 referendum or in any matters relating thereto shall  
 6 invalidate the referendum or the result thereof if notice  
 7 thereof has been given substantially as herein provided and  
 8 the referendum has been fairly conducted.

9 (6) The department shall publish the result of the  
 10 referendum, and the board shall thereafter consider and  
 11 determine whether the operation of the district within the  
 12 defined boundaries is administratively practicable and  
 13 feasible. If the board determines that the operation of the  
 14 district is not administratively practicable and feasible,  
 15 it shall record that determination and deny the petition. If  
 16 the board determines that the operation of the district is  
 17 administratively practicable and feasible, it shall record  
 18 that determination and shall proceed with the organization  
 19 of the district in the manner hereinafter provided. In  
 20 making its determination, the board shall consider the  
 21 attitudes of the qualified electors within the defined  
 22 boundaries, the number of qualified electors eligible to  
 23 vote in the referendum who voted, the proportion of the  
 24 votes cast in the referendum in favor of the creation of the  
 25 district to the total number of votes cast, the approximate

1 wealth and income of the qualified electors of the proposed  
 2 district, the probable expense of carrying on  
 3 erosion-control operations within the district, and such  
 4 other economic and social factors relevant to the  
 5 determination, having due regard to the legislative  
 6 determinations set forth in ~~section~~ 76-102; however, the  
 7 board may not determine that the operation of the proposed  
 8 district within the defined boundaries is administratively  
 9 practicable and feasible unless a majority of the votes cast  
 10 in the referendum upon the proposition of creation of the  
 11 district have been cast in favor of the creation of the  
 12 district.

13 (7) If the board determines that the operation of the  
 14 proposed district within the defined boundaries is  
 15 administratively practicable and feasible, it shall appoint  
 16 two ~~(2)~~ supervisors to act with the three ~~(3)~~ supervisors  
 17 first elected, as provided hereinafter, as the initial  
 18 governing body of the district. The district is a  
 19 governmental subdivision of this state and a public body,  
 20 corporate and politic, upon the taking of the following  
 21 proceedings:

22 ~~(8)~~ (a) The two ~~(2)~~ appointed supervisors shall present  
 23 to the secretary of state an application signed by them,  
 24 which shall set forth:

25 ~~(a)~~ (i) ~~that~~ that a petition for the creation of the

1 district was filed with the department pursuant to this act,  
 2 that the proceedings specified in this act were taken  
 3 pursuant to the petition, that the application is being  
 4 filed in order to complete the organization of the district  
 5 as a governmental subdivision and a public body, corporate  
 6 and politic, under this act, and that the board has  
 7 appointed them as supervisors;

8 ~~(b)~~ (ii) the name and official residence of each of the  
 9 supervisors, together with a certified copy of the  
 10 appointments evidencing their right to office;

11 ~~(c)~~ (iii) the term of office of each of the supervisors;

12 ~~(d)~~ (iv) the name which is proposed for the district;

13 and

14 ~~(e)~~ (v) the location of the principal offices of the  
 15 supervisors of the district.

16 (b) The application shall be subscribed and sworn to  
 17 by each of the supervisors. The application shall be  
 18 accompanied by a statement by the department, which shall  
 19 certify that a petition was filed, notice issued, and  
 20 hearing held as provided in this act; that the board  
 21 determined that there is need, in the interest of the public  
 22 health, safety, and welfare, for a conservation district to  
 23 function in the proposed territory, and defined the  
 24 boundaries thereof; that notice was given and a referendum  
 25 held on the question of the creation of the district; and

1 that the result of the referendum showed a majority of the  
 2 votes cast in the referendum to be in favor of the creation  
 3 of the district, and that thereafter the board determined  
 4 that the operation of the proposed district is  
 5 administratively practicable and feasible. The statement  
 6 shall also set forth the boundaries of the district as they  
 7 have been defined by the board.

8 ~~(9)~~ (8) The secretary of state shall examine the  
 9 application and statement, and, if he finds that the name  
 10 proposed for the district is not identical with that of any  
 11 other conservation district of this state or so nearly  
 12 similar as to lead to confusion or uncertainty, he shall  
 13 receive and file them and shall record them in an  
 14 appropriate book of record in his office. If the secretary  
 15 of state finds that the name proposed for the district is  
 16 identical with that of any other conservation district of  
 17 this state, or so nearly similar as to lead to confusion and  
 18 uncertainty, he shall certify that fact to the board, which  
 19 shall thereupon submit to the secretary of state a new name  
 20 for the district, which is not subject to such defects. Upon  
 21 receipt of the new name, free of such defects, the secretary  
 22 of state shall record the application and statement, with  
 23 the name so modified, in an appropriate book of record in  
 24 his office. When the application and statement have been  
 25 made, filed, and recorded, as herein provided, the district

1 is a governmental subdivision of this state and a public  
 2 body, corporate and politic. The secretary of state shall  
 3 make and issue to the supervisors without cost a  
 4 certificate, under the seal of the state, of the due  
 5 organization of the district, and shall record the  
 6 certificate with the application and statement. The  
 7 boundaries of the district shall include the territory as  
 8 determined by the board, but they may not include any area  
 9 included within the boundaries of another conservation  
 10 district.

11 ~~(10)~~ (9) After ~~six~~ (6) months have expired from the  
 12 date of entry of a determination by the board that operation  
 13 of a proposed district is not administratively practicable  
 14 and feasible, and denial of a petition pursuant to the  
 15 determination, subsequent petitions may be filed and action  
 16 taken thereon in accordance with this act.

17 ~~(11)~~ (10) Petitions for including additional territory  
 18 within an existing district ~~or excluding part of the~~  
 19 ~~territory of an existing district~~ may be filed with the  
 20 department, and the proceedings herein provided for in the  
 21 case of petitions to organize a district shall be followed  
 22 in the case of petitions for the inclusion ~~or exclusion~~. The  
 23 department shall prescribe the form for the petitions, which  
 24 shall be as nearly as may be in the form prescribed in this  
 25 act for petitions to organize a district. Where the total

1 number of qualified electors in the area proposed for  
 2 inclusion ~~are~~ is less than ~~ten~~ (10), the petition may be  
 3 filed when signed by a majority of the qualified electors of  
 4 the area, and in that case no referendum need be held. In  
 5 referenda upon petitions for the inclusion, all qualified  
 6 electors within the proposed additional area are eligible to  
 7 vote.

8 ~~(12)~~ (11) In a suit, action, or proceeding involving  
 9 the validity or enforcement of, or relating to, a contract,  
 10 proceeding, or action of the district, the district shall be  
 11 considered to have been established in accordance with this  
 12 act upon proof of the issuance of the certificate by the  
 13 secretary of state. A copy of the certificate, duly  
 14 certified by the secretary of state, is admissible in  
 15 evidence in the suit, action, or proceeding and is proof of  
 16 the filing and contents thereof."

17 Section 2. Section 76-106, R.C.M. 1947, is amended to  
 18 read as follows:

19 "76-106. Election of supervisors for each district.

20 (1) Within ~~thirty~~ (30) days after the date of issuance by  
 21 the secretary of state of a certificate of organization of a  
 22 conservation district, nominating petitions may be filed  
 23 with the ~~department~~ REGISTRAR, AS DEFINED IN TITLE 23,  
 24 R.C.M. 1947, to nominate candidates for supervisors of the  
 25 district. ~~The department may extend the time within which~~

1 ~~nominating petitions may be filed.~~ A nominating petition may  
 2 not be accepted by the ~~department~~ REGISTRAR unless it is  
 3 subscribed by ~~ten~~ (10) or more qualified electors within the  
 4 boundaries of the district. Qualified electors may sign more  
 5 than one ~~(1)~~ nominating petition to nominate more than one  
 6 ~~(1)~~ candidate for supervisor. ~~The~~ If more than six  
 7 candidates are nominated, the department REGISTRAR shall  
 8 give due notice of an a nominating election to be held for  
 9 the selection of six candidates for supervisor to appear on  
 10 the next general election ballot. This nominating election  
 11 may be held in conjunction with the state primary election.  
 12 ~~the election of three (3) supervisors for the district. The~~  
 13 ~~names of all nominees on behalf of whom the nominating~~  
 14 ~~petitions have been filed within the time herein designated,~~  
 15 In the general election, the names of all persons nominated  
 16 by petition (if six or fewer) or by election shall be  
 17 printed, arranged in the alphabetical a rotating order of  
 18 the surnames, as provided under 23-3511, upon ballots, with  
 19 a square before each name and a direction to insert an "X"  
 20 mark in the square before any three (3) names to indicate  
 21 the voter's preference. All qualified electors within the  
 22 district are eligible to vote in the election. The three (3)  
 23 candidates who receive the largest number, respectively, of  
 24 the votes cast in the election are the elected supervisors  
 25 for the district. ~~The department shall pay all the expenses~~

1 ~~of the election, shall supervise the conduct thereof, shall~~  
 2 ~~prescribe rules governing the conduct of the election and~~  
 3 ~~the determination of the eligibility of votes therein, and~~  
 4 ~~shall publish the results thereof. The supervisors REGISTER~~  
 5 ~~in each county shall have prepared at department cost~~  
 6 PREPARE suitable ballots for the election of supervisors,  
 7 which ballots shall be delivered to the election judges in  
 8 those precincts which contain eligible voters prior to each  
 9 general election and each primary election in which more  
 10 than four candidates are nominated. The election judges,  
 11 clerks, and other election officials in such precincts shall  
 12 submit such ballots to qualified electors, conduct the  
 13 election and tabulate the results of such election in the  
 14 manner provided for by the general election laws of the  
 15 state.

16 (2) Two supervisors shall be elected at the second  
 17 general election following the organization or  
 18 reorganization of the district and shall replace the two  
 19 supervisors appointed by the department. Thereafter, a  
 20 district shall alternately elect three and two supervisors  
 21 at succeeding general elections. Nominations for the  
 22 election of supervisors shall be made as provided under  
 23 subsection (1) except that a nominating election shall be  
 24 held if more than four candidates are nominated by petition  
 25 when two supervisors are to be elected."

1 Section 3. Section 76-107, R.C.M. 1947, is amended to  
 2 read as follows:

3 "76-107. Appointment, qualifications, and tenure of  
 4 supervisors. (1) The governing body of the district shall,  
 5 if there are no incorporated municipalities within the  
 6 boundaries of said district, consist of five ~~(5)~~ or seven  
 7 ~~(7)~~ supervisors, elected or appointed as provided herein.

8 (2) In all cases where the boundaries of such  
 9 conservation district include any incorporated municipality  
 10 or municipalities, ~~said the~~ board of supervisors, in  
 11 addition to ~~said the~~ five ~~(5)~~ elected supervisors, shall  
 12 consist of two ~~(2)~~ appointed supervisors, making a total of  
 13 seven ~~(7)~~ supervisors in such districts. The two ~~(2)~~  
 14 appointed supervisors must be residents of the  
 15 municipalities within the district. The legislative bodies  
 16 of the incorporated municipalities within the district  
 17 shall, after consultation with the elected supervisors,  
 18 appoint the two ~~(2)~~ additional supervisors. The term of  
 19 office of the appointed supervisors shall be ~~three (3)~~  
 20 years.

21 (3) Where there are more than two ~~(2)~~ incorporated  
 22 municipalities within a district, ~~then~~ the two ~~(2)~~ appointed  
 23 supervisors shall represent all the municipalities and urban  
 24 interests in the district, and no municipality shall have  
 25 more than one ~~(1)~~ appointed supervisor residing therein.



1 (4) The supervisors shall annually elect a chairman  
 2 from their members. The term of office of each supervisor  
 3 shall be ~~three (3)~~ 4 years, except that the supervisors who  
 4 are first appointed by the department shall be designated to  
 5 serve for terms of ~~one (1) and two (2)~~ years, ~~respectively,~~  
 6 from the date of their appointment. An elected supervisor  
 7 shall hold office until his successor has been elected and  
 8 has qualified. Any vacancy occurring in the office of an  
 9 elected supervisor shall be filled by appointment by the  
 10 remaining supervisors until the next regular election, when  
 11 a successor shall be elected to serve the unexpired term. A  
 12 majority of the supervisors constitute a quorum, and the  
 13 concurrence of a majority in any matter within their duties  
 14 is required for its determination. A supervisor may not  
 15 receive compensation for his services, but he is entitled to  
 16 expenses, including travel expenses, as provided for in  
 17 ~~sections~~ 59-538, 59-539, and 59-801, incurred in the  
 18 discharge of his duties.

19 (5) The supervisors may employ a secretary and such  
 20 other officers, agents, and employees, permanent and  
 21 temporary, as they may require, and shall determine their  
 22 qualifications, duties, and compensation. The supervisors  
 23 may call upon the attorney general of the state for such  
 24 legal services as they may require, or may employ their own  
 25 counsel and legal staff. The supervisors may delegate to

1 their chairman, to one ~~(1)~~ or more supervisors, or to one  
 2 ~~(1)~~ or more agents or employees, such powers and duties as  
 3 they consider proper. The supervisors shall furnish to the  
 4 department copies of such ordinances, rules, regulations,  
 5 orders, contracts, forms, and other documents as they adopt  
 6 or employ, and such other information concerning their  
 7 activities as may be required in the performance of their  
 8 duties under this act.

9 (6) The supervisors shall provide for the execution of  
 10 surety bonds for all employees and officers who are  
 11 entrusted with funds or property; shall provide for the  
 12 keeping of a full and accurate record of all proceedings,  
 13 and of all resolutions, regulations, and orders issued or  
 14 adopted; and shall provide for an annual audit of the  
 15 accounts of receipts and disbursements. A supervisor may be  
 16 removed by the board, upon notice and hearing, for neglect  
 17 of duty or malfeasance in office, but for no other reason.

18 (7) The supervisors may invite the legislative  
 19 governing body of any municipality or county located near  
 20 the territory comprised within the district to designate a  
 21 representative to advise and consult with the supervisors of  
 22 the district on all questions of program and policy which  
 23 may affect the property, water supply, or other interests of  
 24 the municipality or county."

25 Section 4. Compliance ~~period~~. For the purposes of

1 bringing existing districts into compliance with this act by  
 2 the time of the 1978 general elections ~~and of allowing these~~  
 3 ~~districts sufficient time for their reorganization when~~  
 4 ~~necessary, so~~ THE TERMS OF OFFICE FOR ALL SUPERVISORS SHALL  
 5 EXPIRE UPON PASSAGE AND APPROVAL OF THIS ACT; PROVIDED,  
 6 HOWEVER, THAT EACH SUPERVISOR SHALL REMAIN IN OFFICE UNTIL  
 7 HIS SUCCESSOR HAS BEEN ELECTED AND HAS QUALIFIED IN  
 8 ACCORDANCE WITH THIS ACT; PROVIDED, FURTHER THAT FOR  
 9 PURPOSES OF THE 1978 GENERAL ELECTION THREE SUPERVISORS  
 10 SHALL BE ELECTED FOR A 4-YEAR TERM AND THE REMAINING TWO  
 11 SUPERVISORS ELECTED FOR A 2-YEAR TERM. NO action or  
 12 undertaking of a district may be invalidated or voided for  
 13 failure to comply with the amendatory provisions of this act  
 14 prior to January 1, 1979.

15 SECTION 5. SECTION 76-114, R.C.M. 1947, IS AMENDED TO  
 16 READ AS FOLLOWS:

17 "76-114. Discontinuance of districts or a part of the  
 18 district. (1) At any time after ~~five~~ (5) years after the  
 19 organization of a district under this act, any ~~ten~~ (10)  
 20 qualified electors within the boundaries of the district may  
 21 file a petition with the department, praying that the board  
 22 terminate the operations of the district or a part of the  
 23 district and discontinue the existence of the district or  
 24 that part of the district. The department may conduct such  
 25 public meetings and public hearings upon the petition as are

1 necessary to assist it and the board in the consideration  
 2 thereof.

3 (2) Within ~~sixty~~ (60) days after the petition has been  
 4 received by the department it shall give due notice of the  
 5 holding of a referendum, and shall supervise the referendum,  
 6 and issue appropriate regulations governing the conduct  
 7 thereof, the question to be submitted by ballots upon which  
 8 the words "For terminating the existence of the .... (name  
 9 of the conservation district or part of the district to be  
 10 here inserted)" and "Against terminating the existence of  
 11 the .... (name of the conservation district or part of the  
 12 district to be here inserted)" shall appear, with the square  
 13 before each proposition and a direction to insert an "x"  
 14 mark in the square before one or the other of the  
 15 propositions as the voter may favor or oppose discontinuance  
 16 of the district or a part of the district. All qualified  
 17 electors within the boundaries of the district are eligible  
 18 to vote in the referendum. No informalities in the conduct  
 19 of the referendum or in any matters relative thereto shall  
 20 invalidate the referendum or the result thereof if notice  
 21 thereof is given substantially as herein provided and the  
 22 referendum is fairly conducted.

23 (3) The department shall publish the result of the  
 24 referendum and the board shall thereafter consider and  
 25 determine whether the continued operation of the district or

1 part of the district within the defined boundaries is  
 2 administratively practicable and feasible. If the board  
 3 determines that the continued operation of the district or  
 4 part of the district is administratively practicable and  
 5 feasible, it shall record that determination and deny the  
 6 petition. If the board determines that the continued  
 7 operation of the district or part of the district is not  
 8 administratively practicable and feasible, it shall record  
 9 that determination and shall certify the determination to  
 10 the supervisors of the district.

11 (4) In making the determination the board shall give  
 12 due regard and weight to the attitudes of the qualified  
 13 electors lying within the district, the number of qualified  
 14 electors eligible to vote in the referendum who voted, the  
 15 proportion of the votes cast in the referendum in favor of  
 16 the discontinuance of the district or part of the district  
 17 to the total number of votes cast, the approximate wealth  
 18 and income of the qualified electors of the district, the  
 19 probable expense of carrying on erosion control operations  
 20 within the district, and such other economic and social  
 21 factors as may be relevant to the determination, having due  
 22 regard to the legislative findings set forth in section  
 23 76-102; however, the board may not determine that the  
 24 continued operation of the district or part of the district  
 25 is administratively practicable and feasible unless at least

1 a majority of the votes cast in the referendum are cast in  
 2 favor of the continuance of the district or part of the  
 3 district.

4 (5) Upon receipt from the department of a  
 5 certification of the board that the board has determined  
 6 that the continued operation of the district or part of the  
 7 district is not administratively practicable and feasible,  
 8 pursuant to this section, the supervisors shall immediately  
 9 proceed to terminate the affairs of the district or part of  
 10 the district. The supervisors shall dispose of all property  
 11 belonging to the district or part of the district at public  
 12 auction and shall pay over the proceeds of the sale to be  
 13 covered into the state treasury. The supervisors shall  
 14 thereupon file an application, duly verified, with the  
 15 secretary of state for the discontinuance of the district or  
 16 part of the district, and shall transmit with the  
 17 application the certificate of the board, setting forth the  
 18 determination of the board that the continued operation of  
 19 the district or part of the district is not administratively  
 20 practicable and feasible. The application shall recite that  
 21 the property of the district or part of the district has  
 22 been disposed of and the proceeds paid over as in this  
 23 section provided, and shall set forth a full accounting of  
 24 the properties and proceeds of the sale. The secretary of  
 25 state shall issue to the supervisors a certificate of

1 dissolution and shall record the certificate in an  
2 appropriate book of record in his office.

3 (6) Upon issuance of a certificate of dissolution  
4 under this section, all ordinances and regulations  
5 theretofore adopted and in force within the district or in  
6 that part of the district are void. All contracts previously  
7 entered into, to which the district or supervisors are  
8 parties, remain in effect for the period provided in those  
9 contracts. The department shall be substituted for the  
10 district or supervisors as party to the contracts if the  
11 total district is discontinued. The In this case the  
12 department is entitled to all benefits and subject to all  
13 liabilities under the contracts and has the same right and  
14 liability to perform, to require performance, to sue and be  
15 sued thereon, and to modify or terminate the contracts by  
16 mutual consent or otherwise, as the supervisors of the  
17 district would have had. The dissolution does not affect the  
18 lien of any judgment entered under section 76-110, nor the  
19 pendency of an action instituted under that section, and the  
20 department succeeds to all rights and obligations of the  
21 district or supervisors as to those liens and actions."

-End-

1                   SENATE BILL NO. 35  
 2                   INTRODUCED BY GALT, ROSKIE,  
 3                   PLYNN, HAZELBAKER, MANLEY, MCCALLUM  
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE STATE  
 6 CONSERVATION DISTRICTS LAW PROVIDING FOR EXCLUDING TERRITORY  
 7 FROM EXISTING DISTRICTS; REVISING PROCEDURES FOR ELECTION OF  
 8 DISTRICT SUPERVISORS; AMENDING 76-105, 76-106, ~~AND~~ 76-107,  
 9 AND 76-114, R.C.M. 1947."  
 10

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

12       Section 1. Section 76-105, R.C.M. 1947, is amended to  
 13 read as follows:

14       "76-105. Creation of conservation districts. (1) Any  
 15 ~~ten~~-(10) qualified electors within the limits of the  
 16 territory proposed to be organized into a district may file  
 17 a petition with the department asking that the board approve  
 18 the organization of a conservation district to function in  
 19 the territory described in the petition. The petition shall  
 20 set forth:

- 21       (a) ~~the~~ the proposed name of the district;
- 22       (b) ~~that that~~ there is need, in the interest of the  
 23 public health, safety, and welfare, for a conservation  
 24 district to function in the territory described in the  
 25 petition;

THIRD READING

1                   (c) ~~a~~ a description of the territory proposed to be  
 2 organized as a district, which description may not be  
 3 required to be given by metes and bounds or by legal  
 4 subdivisions, but shall be considered sufficient if  
 5 generally accurate;

6                   (d) ~~a~~ a request that the board duly define the  
 7 boundaries for the district; that a referendum be held  
 8 within the territory so defined on the question of the  
 9 creation of a conservation district in the territory; and  
 10 that the board determine that a district be created.

11                   (2) Where more than one ~~44~~ petition is filed covering  
 12 parts of the same territory, the board may consolidate all  
 13 or any part of the petitions.

14                   (3) Within ~~thirty~~-(30) days after a petition has been  
 15 filed with the department, it shall cause due notice to be  
 16 given of a proposed hearing before the department upon the  
 17 question of the desirability and necessity, in the interest  
 18 of the public health, safety, and welfare, of the creation  
 19 of the district; upon the question of the appropriate  
 20 boundaries to be assigned to the district; upon the  
 21 propriety of the petition and other proceedings taken under  
 22 this act; and upon all questions relevant to those  
 23 inquiries. All qualified electors within the limits of the  
 24 territory described in the petition, and of lands within any  
 25 territory considered for addition to the described

1 territory, and all other interested parties, are entitled to  
 2 attend the hearings and be heard. If it appears to the board  
 3 after reviewing the record of the hearing that it may be  
 4 desirable to include within the proposed district territory  
 5 outside of the area within which due notice of the hearing  
 6 has been given, the board shall adjourn the hearing and the  
 7 department shall cause due notice of a further hearing to be  
 8 given throughout the entire area considered for inclusion in  
 9 the district, and the further hearing shall be held by the  
 10 department. After the hearing, if the board determines, upon  
 11 the facts presented at the hearing and upon other relevant  
 12 facts and information as may be available to the department  
 13 or the board, that there is need, in the interest of the  
 14 public health, safety, and welfare, for a conservation  
 15 district to function in the territory considered at the  
 16 hearing, it shall make and record that determination, and  
 17 shall define, by metes and bounds or by legal subdivisions,  
 18 the boundaries of the district. In making the determinations  
 19 and in defining the boundaries, the board shall consider the  
 20 topography of the area considered and of the state, the  
 21 composition of soils therein, the distribution of erosion,  
 22 the prevailing land-use practices, the desirability and  
 23 necessity of including within the boundaries the particular  
 24 lands under consideration and the benefits those lands may  
 25 receive from being included within the boundaries, the

1 relation of the proposed area to existing watersheds and  
 2 agricultural regions, and other conservation districts  
 3 already organized or proposed for organization under this  
 4 act, and such other physical, geographical, and economic  
 5 factors as are relevant, having due regard to the  
 6 legislative determination set forth in ~~section~~ 76-102. The  
 7 territory to be included within the boundaries need not be  
 8 contiguous. If the board determines after the hearing,  
 9 after due consideration of the relevant facts, that there is  
 10 no need for a conservation district to function in the  
 11 territory considered at the hearing, it shall make and  
 12 record that determination and shall deny the petition. After  
 13 ~~six~~(6) months have expired from the date of the denial of a  
 14 petition, subsequent petitions covering the same or  
 15 substantially the same territory may be filed and a new  
 16 hearing held and determinations made thereon.

17 (4) After the board has made and recorded a  
 18 determination that there is need, in the interest of the  
 19 public health, safety, and welfare, for the organization of  
 20 a district in a particular territory and has defined the  
 21 boundaries thereof, it shall consider the question whether  
 22 the operation of a district within the boundaries with the  
 23 powers conferred upon conservation districts in this act is  
 24 administratively practicable and feasible. To assist the  
 25 board in the determination of this administrative

1 practicability and feasibility, the department shall, within  
 2 a reasonable time after entry of the board's finding that  
 3 there is need for the organization of the proposed district  
 4 and the determination of the boundaries thereof, hold a  
 5 referendum within the proposed district upon the proposition  
 6 of the creation of the district, and cause due notice of the  
 7 referendum to be given. The question shall be submitted by  
 8 ballots upon which the words "For creation of a conservation  
 9 district of the lands below described and lying in the  
 10 county(ies) of . . . ., . . . ., and . . . ." and "Against creation  
 11 of a conservation district of the lands below described and  
 12 lying in the county(ies) of . . . . and . . . ." shall appear,  
 13 with a square before each proposition and a direction to  
 14 insert an "X" mark in the square before one or the other of  
 15 the propositions as the voter may favor or oppose creation  
 16 of the district. The ballot shall set forth the boundaries  
 17 of the proposed district as determined by the board. All  
 18 qualified electors within the boundaries of the territory,  
 19 as determined by the department, are eligible to vote in the  
 20 referendum.

21 (5) The department shall pay all expenses for the  
 22 issuance of the notices and the conduct of the hearings and  
 23 referenda, and shall supervise the conduct of the hearings  
 24 and referenda. It shall adopt appropriate rules governing  
 25 the conduct of the hearings and referenda, and providing for

1 the registration prior to the date of the referendum of all  
 2 eligible voters, or prescribing some other appropriate  
 3 procedure for the determination of those eligible as voters  
 4 in the referendum. No informalities in the conduct of the  
 5 referendum or in any matters relating thereto shall  
 6 invalidate the referendum or the result thereof if notice  
 7 thereof has been given substantially as herein provided and  
 8 the referendum has been fairly conducted.

9 (6) The department shall publish the result of the  
 10 referendum, and the board shall thereafter consider and  
 11 determine whether the operation of the district within the  
 12 defined boundaries is administratively practicable and  
 13 feasible. If the board determines that the operation of the  
 14 district is not administratively practicable and feasible,  
 15 it shall record that determination and deny the petition. If  
 16 the board determines that the operation of the district is  
 17 administratively practicable and feasible, it shall record  
 18 that determination and shall proceed with the organization  
 19 of the district in the manner hereinafter provided. In  
 20 making its determination, the board shall consider the  
 21 attitudes of the qualified electors within the defined  
 22 boundaries, the number of qualified electors eligible to  
 23 vote in the referendum who voted, the proportion of the  
 24 votes cast in the referendum in favor of the creation of the  
 25 district to the total number of votes cast, the approximate

1 wealth and income of the qualified electors of the proposed  
 2 district, the probable expense of carrying on  
 3 erosion-control operations within the district, and such  
 4 other economic and social factors relevant to the  
 5 determination, having due regard to the legislative  
 6 determinations set forth in ~~sections~~ 76-102; however, the  
 7 board may not determine that the operation of the proposed  
 8 district within the defined boundaries is administratively  
 9 practicable and feasible unless a majority of the votes cast  
 10 in the referendum upon the proposition of creation of the  
 11 district have been cast in favor of the creation of the  
 12 district.

13 (7) If the board determines that the operation of the  
 14 proposed district within the defined boundaries is  
 15 administratively practicable and feasible, it shall appoint  
 16 two ~~(2)~~ supervisors to act with the three ~~(3)~~ supervisors  
 17 first elected, as provided hereinafter, as the initial  
 18 governing body of the district. The district is a  
 19 governmental subdivision of this state and a public body,  
 20 corporate and politic, upon the taking of the following  
 21 proceedings:

22 ~~(a)~~ (a) The two ~~(2)~~ appointed supervisors shall present  
 23 to the secretary of state an application signed by them,  
 24 which shall set forth:

25 ~~(a)~~ (i) ~~That~~ that a petition for the creation of the

1 district was filed with the department pursuant to this act,  
 2 that the proceedings specified in this act were taken  
 3 pursuant to the petition, that the application is being  
 4 filed in order to complete the organization of the district  
 5 as a governmental subdivision and a public body, corporate  
 6 and politic, under this act, and that the board has  
 7 appointed them as supervisors;

8 ~~(b)~~ (ii) the name and official residence of each of the  
 9 supervisors, together with a certified copy of the  
 10 appointments evidencing their right to office;

11 ~~(c)~~ (iii) the term of office of each of the supervisors;

12 ~~(d)~~ (iv) the name which is proposed for the district;

13 and

14 ~~(e)~~ (v) the location of the principal offices of the  
 15 supervisors of the district.

16 (b) The application shall be subscribed and sworn to  
 17 by each of the supervisors. The application shall be  
 18 accompanied by a statement by the department, which shall  
 19 certify that a petition was filed, notice issued, and  
 20 hearing held as provided in this act; that the board  
 21 determined that there is need, in the interest of the public  
 22 health, safety, and welfare, for a conservation district to  
 23 function in the proposed territory, and defined the  
 24 boundaries thereof; that notice was given and a referendum  
 25 held on the question of the creation of the district; and



1 that the result of the referendum showed a majority of the  
 2 votes cast in the referendum to be in favor of the creation  
 3 of the district, and that thereafter the board determined  
 4 that the operation of the proposed district is  
 5 administratively practicable and feasible. The statement  
 6 shall also set forth the boundaries of the district as they  
 7 have been defined by the board.

8 ~~(9)~~ (9) The secretary of state shall examine the  
 9 application and statement, and, if he finds that the name  
 10 proposed for the district is not identical with that of any  
 11 other conservation district of this state or so nearly  
 12 similar as to lead to confusion or uncertainty, he shall  
 13 receive and file them and shall record them in an  
 14 appropriate book of record in his office. If the secretary  
 15 of state finds that the name proposed for the district is  
 16 identical with that of any other conservation district of  
 17 this state, or so nearly similar as to lead to confusion and  
 18 uncertainty, he shall certify that fact to the board, which  
 19 shall thereupon submit to the secretary of state a new name  
 20 for the district, which is not subject to such defects. Upon  
 21 receipt of the new name, free of such defects, the secretary  
 22 of state shall record the application and statement, with  
 23 the name so modified, in an appropriate book of record in  
 24 his office. When the application and statement have been  
 25 made, filed, and recorded, as herein provided, the district

1 is a governmental subdivision of this state and a public  
 2 body, corporate and politic. The secretary of state shall  
 3 make and issue to the supervisors without cost a  
 4 certificate, under the seal of the state, of the due  
 5 organization of the district, and shall record the  
 6 certificate with the application and statement. The  
 7 boundaries of the district shall include the territory as  
 8 determined by the board, but they may not include any area  
 9 included within the boundaries of another conservation  
 10 district.

11 ~~(10)~~ (9) After six (6) months have expired from the  
 12 date of entry of a determination by the board that operation  
 13 of a proposed district is not administratively practicable  
 14 and feasible, and denial of a petition pursuant to the  
 15 determination, subsequent petitions may be filed and action  
 16 taken thereon in accordance with this act.

17 ~~(11)~~ (10) Petitions for including additional territory  
 18 within an existing district ~~or excluding part of the~~  
 19 ~~territory of an existing district~~ may be filed with the  
 20 department, and the proceedings herein provided for in the  
 21 case of petitions to organize a district shall be followed  
 22 in the case of petitions for the inclusion ~~or exclusion~~. The  
 23 department shall prescribe the form for the petitions, which  
 24 shall be as nearly as may be in the form prescribed in this  
 25 act for petitions to organize a district. Where the total

1 number of qualified electors in the area proposed for  
 2 inclusion ~~are~~ is less than ~~ten~~ (10), the petition may be  
 3 filed when signed by a majority of the qualified electors of  
 4 the area, and in that case no referendum need be held. In  
 5 referenda upon petitions for the inclusion, all qualified  
 6 electors within the proposed additional area are eligible to  
 7 vote.

8 ~~(12)~~ (11) In a suit, action, or proceeding involving  
 9 the validity or enforcement of, or relating to, a contract,  
 10 proceeding, or action of the district, the district shall be  
 11 considered to have been established in accordance with this  
 12 act upon proof of the issuance of the certificate by the  
 13 secretary of state. A copy of the certificate, duly  
 14 certified by the secretary of state, is admissible in  
 15 evidence in the suit, action, or proceeding and is proof of  
 16 the filing and contents thereof."

17 Section 2. Section 76-106, R.C.M. 1947, is amended to  
 18 read as follows:

19 "76-106. Election of supervisors for each district.  
 20 (1) Within ~~thirty~~ (30) days after the date of issuance by  
 21 the secretary of state of a certificate of organization of a  
 22 conservation district, nominating petitions may be filed  
 23 with the ~~department~~ REGISTRAR, AS DEFINED IN TITLE 23,  
 24 R.C.M. 1947, to nominate candidates for supervisors of the  
 25 district. ~~The department may extend the time within which~~

1 ~~nominating petitions may be filed.~~ A nominating petition may  
 2 not be accepted by the ~~department~~ REGISTRAR unless it is  
 3 subscribed by ~~ten~~ (10) or more qualified electors within the  
 4 boundaries of the district. Qualified electors may sign more  
 5 than one (1) nominating petition to nominate more than one  
 6 (1) candidate for supervisor. ~~The~~ If more than six  
 7 candidates are nominated, the department REGISTRAR shall  
 8 give due notice of an a nominating election to be held for  
 9 the selection of six candidates for supervisor to appear on  
 10 the next general election ballot. This nominating election  
 11 may be held in conjunction with the state primary election.  
 12 ~~the election of three (3) supervisors for the district. The~~  
 13 ~~names of all persons on behalf of whom the nominating~~  
 14 ~~petitions have been filed within the time herein designated,~~  
 15 In the general election, the names of all persons nominated  
 16 by petition (if six or fewer) or by election shall be  
 17 printed, arranged in the alphabetical a rotating order of  
 18 the surnames, as provided under 23-3511, upon ballots, with  
 19 a square before each name and a direction to insert an "X"  
 20 mark in the square before any three (3) names to indicate  
 21 the voter's preference. All qualified electors within the  
 22 district are eligible to vote in the election. The three (3)  
 23 candidates who receive the largest number, respectively, of  
 24 the votes cast in the election are the elected supervisors  
 25 for the district. The department shall pay all the expenses

1 ~~of the election, shall supervise the conduct thereof, shall~~  
 2 ~~prescribe rules governing the conduct of the election and~~  
 3 ~~the determination of the eligibility of votes therein, and~~  
 4 ~~shall publish the results thereof. The supervisors REGISTER~~  
 5 ~~in each county shall have prepared at department cost~~  
 6 ~~PREPARE suitable ballots for the election of supervisors,~~  
 7 ~~which ballots shall be delivered to the election judges in~~  
 8 ~~those precincts which contain eligible voters prior to each~~  
 9 ~~general election and each primary election in which more~~  
 10 ~~than four candidates are nominated. The election judges,~~  
 11 ~~clerks, and other election officials in such precincts shall~~  
 12 ~~submit such ballots to qualified electors, conduct the~~  
 13 ~~election and tabulate the results of such election in the~~  
 14 ~~manner provided for by the general election laws of the~~  
 15 ~~state.~~

16 (2) Two supervisors shall be elected at the second  
 17 general election following the organization or  
 18 reorganization of the district and shall replace the two  
 19 supervisors appointed by the department. Thereafter, a  
 20 district shall alternately elect three and two supervisors  
 21 at succeeding general elections. Nominations for the  
 22 election of supervisors shall be made as provided under  
 23 subsection (1) except that a nominating election shall be  
 24 held if more than four candidates are nominated by petition  
 25 when two supervisors are to be elected."

1 Section 3. Section 76-107, R.C.M. 1947, is amended to  
 2 read as follows:

3 "76-107. Appointment, qualifications, and tenure of  
 4 supervisors. (1) The governing body of the district shall,  
 5 if there are no incorporated municipalities within the  
 6 boundaries of said district, consist of five ~~(5)~~ or seven  
 7 ~~(7)~~ supervisors, elected or appointed as provided herein.

8 (2) In all cases where the boundaries of such  
 9 conservation district include any incorporated municipality  
 10 or municipalities, ~~said the~~ board of supervisors, in  
 11 addition to ~~said the~~ five ~~(5)~~ elected supervisors, shall  
 12 consist of two ~~(2)~~ appointed supervisors, making a total of  
 13 seven ~~(7)~~ supervisors in such districts. The two ~~(2)~~  
 14 appointed supervisors must be residents of the  
 15 municipalities within the district. The legislative bodies  
 16 of the incorporated municipalities within the district  
 17 shall, after consultation with the elected supervisors,  
 18 appoint the two ~~(2)~~ additional supervisors. The term of  
 19 office of the appointed supervisors shall be ~~three (3)~~  
 20 years.

21 (3) Where there are more than two ~~(2)~~ incorporated  
 22 municipalities within a district, ~~then~~ the two ~~(2)~~ appointed  
 23 supervisors shall represent all the municipalities and urban  
 24 interests in the district, and no municipality shall have  
 25 more than one ~~(1)~~ appointed supervisor residing therein.

1 (4) The supervisors shall annually elect a chairman  
 2 from their members. The term of office of each supervisor  
 3 shall be ~~three-(3)~~ 4 years, except that the supervisors who  
 4 are first appointed by the department shall be designated to  
 5 serve for terms of ~~one-(1)~~ and ~~two-(2)~~ years, ~~respectively,~~  
 6 from the date of their appointment. An elected supervisor  
 7 shall hold office until his successor has been elected and  
 8 has qualified. Any vacancy occurring in the office of an  
 9 elected supervisor shall be filled by appointment by the  
 10 remaining supervisors until the next regular election, when  
 11 a successor shall be elected to serve the unexpired term. A  
 12 majority of the supervisors constitute a quorum, and the  
 13 concurrence of a majority in any matter within their duties  
 14 is required for its determination. A supervisor may not  
 15 receive compensation for his services, but he is entitled to  
 16 expenses, including travel expenses, as provided for in  
 17 sections 59-538, 59-539, and 59-801, incurred in the  
 18 discharge of his duties.

19 (5) The supervisors may employ a secretary and such  
 20 other officers, agents, and employees, permanent and  
 21 temporary, as they may require, and shall determine their  
 22 qualifications, duties, and compensation. The supervisors  
 23 may call upon the attorney general of the state for such  
 24 legal services as they may require, or may employ their own  
 25 counsel and legal staff. The supervisors may delegate to

1 their chairman, to one ~~(1)~~ or more supervisors, or to one  
 2 ~~(1)~~ or more agents or employees, such powers and duties as  
 3 they consider proper. The supervisors shall furnish to the  
 4 department copies of such ordinances, rules, regulations,  
 5 orders, contracts, forms, and other documents as they adopt  
 6 or employ, and such other information concerning their  
 7 activities as may be required in the performance of their  
 8 duties under this act.

9 (6) The supervisors shall provide for the execution of  
 10 surety bonds for all employees and officers who are  
 11 entrusted with funds or property; shall provide for the  
 12 keeping of a full and accurate record of all proceedings,  
 13 and of all resolutions, regulations, and orders issued or  
 14 adopted; and shall provide for an annual audit of the  
 15 accounts of receipts and disbursements. A supervisor may be  
 16 removed by the board, upon notice and hearing, for neglect  
 17 of duty or malfeasance in office, but for no other reason.

18 (7) The supervisors may invite the legislative  
 19 governing body of any municipality or county located near  
 20 the territory comprised within the district to designate a  
 21 representative to advise and consult with the supervisors of  
 22 the district on all questions of program and policy which  
 23 may affect the property, water supply, or other interests of  
 24 the municipality or county."

25 Section 4. Compliance period. For the purposes of

1 bringing existing districts into compliance with this act by  
 2 the time of the 1978 general elections ~~and of allowing these~~  
 3 ~~districts sufficient time for their reorganization when~~  
 4 ~~necessary, no~~ THE TERMS OF OFFICE FOR ALL SUPERVISORS SHALL  
 5 EXPIRE UPON PASSAGE AND APPROVAL OF THIS ACT; PROVIDED,  
 6 HOWEVER, THAT EACH SUPERVISOR SHALL REMAIN IN OFFICE UNTIL  
 7 HIS SUCCESSOR HAS BEEN ELECTED AND HAS QUALIFIED IN  
 8 ACCORDANCE WITH THIS ACT; PROVIDED, FURTHER THAT FOR  
 9 PURPOSES OF THE 1978 GENERAL ELECTION THREE SUPERVISORS  
 10 SHALL BE ELECTED FOR A 4-YEAR TERM AND THE REMAINING TWO  
 11 SUPERVISORS ELECTED FOR A 2-YEAR TERM. NO action or  
 12 undertaking of a district may be invalidated or voided for  
 13 failure to comply with the amendatory provisions of this act  
 14 prior to January 1, 1979.

15 SECTION 5. SECTION 76-114, R.C.M. 1947, IS AMENDED TO  
 16 READ AS FOLLOWS:

17 "76-114. Discontinuance of districts or a part of the  
 18 district. (1) At any time after ~~five~~ (5) years after the  
 19 organization of a district under this act, any ~~ten~~ (10)  
 20 qualified electors within the boundaries of the district may  
 21 file a petition with the department, praying that the board  
 22 terminate the operations of the district or a part of the  
 23 district and discontinue the existence of the district or  
 24 that part of the district. The department may conduct such  
 25 public meetings and public hearings upon the petition as are

1 necessary to assist it and the board in the consideration  
 2 thereof.

3 (2) Within ~~sixty~~ (60) days after the petition has been  
 4 received by the department it shall give due notice of the  
 5 holding of a referendum, and shall supervise the referendum,  
 6 and issue appropriate regulations governing the conduct  
 7 thereof, the question to be submitted by ballots upon which  
 8 the words "For terminating the existence of the .... (name  
 9 of the conservation district or part of the district to be  
 10 here inserted)" and "Against terminating the existence of  
 11 the .... (name of the conservation district or part of the  
 12 district to be here inserted)" shall appear, with the square  
 13 before each proposition and a direction to insert an "X"  
 14 mark in the square before one or the other of the  
 15 propositions as the voter may favor or oppose discontinuance  
 16 of the district or a part of the district. All qualified  
 17 electors within the boundaries of the district are eligible  
 18 to vote in the referendum. No informalities in the conduct  
 19 of the referendum or in any matters relative thereto shall  
 20 invalidate the referendum or the result thereof if notice  
 21 thereof is given substantially as herein provided and the  
 22 referendum is fairly conducted.

23 (3) ~~The~~ (A) IN THE CASE OF PETITIONS FOR  
 24 DISCONTINUANCE OF A DISTRICT, THE department shall publish  
 25 the result of the referendum and the board shall thereafter

1 consider and determine whether the continued operation of  
 2 the district ~~or part of the district~~ within the defined  
 3 boundaries is administratively practicable and feasible. If  
 4 the board determines that the continued operation of the  
 5 district ~~or part of the district~~ is administratively  
 6 practicable and feasible, it shall record that determination  
 7 and deny the petition. If the board determines that the  
 8 continued operation of the district ~~or part of the district~~  
 9 is not administratively practicable and feasible, it shall  
 10 record that determination and shall certify the  
 11 determination to the supervisors of the district.

12 (B) IN THE CASE OF PETITIONS FOR DISCONTINUANCE OF  
 13 PART OF A DISTRICT, THE DEPARTMENT SHALL PUBLISH THE RESULT  
 14 OF THE REFERENDUM AND THE BOARD SHALL THEREAFTER CONSIDER  
 15 AND DETERMINE WHETHER THE CONTINUED OPERATION OF A PART OF  
 16 THE DISTRICT WITHIN THE DEFINED BOUNDARIES IS  
 17 ADMINISTRATIVELY PRACTICABLE AND FEASIBLE. IF THE BOARD  
 18 DETERMINES THAT THE CONTINUED OPERATION OF THE DISTRICT IS  
 19 NOT ADMINISTRATIVELY PRACTICABLE AND FEASIBLE WITH A PART OF  
 20 THE DISTRICT DISCONTINUED, IT SHALL RECORD THAT  
 21 DETERMINATION AND DENY THE PETITION. IF THE BOARD DETERMINES  
 22 THAT THE CONTINUED OPERATION OF THE DISTRICT IS  
 23 ADMINISTRATIVELY PRACTICABLE AND FEASIBLE WITH A PART OF THE  
 24 DISTRICT DISCONTINUED IT SHALL RECORD THAT DETERMINATION AND  
 25 SHALL CERTIFY THE DETERMINATION TO THE SUPERVISORS OF THE

1 DISTRICT.

2 (4) In making the determination the board shall give  
 3 due regard and weight to the attitudes of the qualified  
 4 electors lying within the district, the number of qualified  
 5 electors eligible to vote in the referendum who voted, the  
 6 proportion of the votes cast in the referendum in favor of  
 7 the discontinuance of the district ~~or part of the district~~  
 8 to the total number of votes cast, the approximate wealth  
 9 and income of the qualified electors of the district, the  
 10 probable expense of carrying on erosion control operations  
 11 within the district, and such other economic and social  
 12 factors as may be relevant to the determination, having due  
 13 regard to the legislative findings set forth in section  
 14 76-102; however, the board may not determine that the  
 15 continued operation of the district ~~or part of the district~~  
 16 is administratively practicable and feasible unless at least  
 17 a majority of the votes cast in the referendum are cast in  
 18 favor of the continuance of the district ~~or part of the~~  
 19 ~~district.~~

20 (5) Upon receipt from the department of a  
 21 certification of the board that the board has determined  
 22 that the continued operation of the district ~~or part of the~~  
 23 ~~district~~ is not administratively practicable and feasible,  
 24 pursuant to this section, the supervisors shall immediately  
 25 proceed to terminate the affairs of the district ~~or part of~~

1 the district. The supervisors shall dispose of all property  
 2 belonging to the district or part of the district at public  
 3 auction and shall pay over the proceeds of the sale to be  
 4 covered into the state treasury. The supervisors shall  
 5 thereupon file an application, duly verified, with the  
 6 secretary of state for the discontinuance of the district or  
 7 part of the district, and shall transmit with the  
 8 application the certificate of the board, setting forth the  
 9 determination of the board that the continued operation of  
 10 the district or part of the district is not administratively  
 11 practicable and feasible. The application shall recite that  
 12 the property of the district or part of the district has  
 13 been disposed of and the proceeds paid over as in this  
 14 section provided, and shall set forth a full accounting of  
 15 the properties and proceeds of the sale. The secretary of  
 16 state shall issue to the supervisors a certificate of  
 17 dissolution and shall record the certificate in an  
 18 appropriate book of record in his office.

19 (6) Upon issuance of a certificate of dissolution  
 20 under this section, all ordinances and regulations  
 21 theretofore adopted and in force within the district or in  
 22 that part of the district are void. All contracts previously  
 23 entered into, to which the district or supervisors are  
 24 parties, remain in effect for the period provided in those  
 25 contracts. The department shall be substituted for the

1 district or supervisors as party to the contracts if the  
 2 total district is discontinued. ~~The~~ In this case the  
 3 department is entitled to all benefits and subject to all  
 4 liabilities under the contracts and has the same right and  
 5 liability to perform, to require performance, to sue and be  
 6 sued thereon, and to modify or terminate the contracts by  
 7 mutual consent or otherwise, as the supervisors of the  
 8 district would have had. The dissolution does not affect the  
 9 lien of any judgment entered under section 76-110, nor the  
 10 pendency of an action instituted under that section, and the  
 11 department succeeds to all rights and obligations of the  
 12 district or supervisors as to those liens and actions."

-End-

HOUSE AGRICULTURE, LIVESTOCK AND IRRIGATION COMMITTEE  
AMENDMENTS TO SENATE BILL 35  
February 1, 1977

1. Amend page 11, section 1.  
Following: line 16.  
Insert: "(12) The conservation district is authorized to divide the unincorporated area of the district into five supervisor areas."
2. Amend page 12, section 2, line 4.  
Following: "district"  
Insert: ", or supervisor areas thereof, wherein the nominee resides"
3. Amend page 13, section 2, line 6.  
Following: "suitable"  
Insert: "non-partisan"  
Following: "ballots"  
Insert: "and polling lists"
4. Amend page 13, section 2, line 7.  
Following: "ballots"  
Insert: "and polling lists"
5. Amend page 17, section 4, line 5.  
Following: "ACT"  
Strike: "; PROVIDED,"  
Insert: "."
6. Amend page 17, section 4, line 6.  
Following: "HOWEVER,"  
Strike: "THAT"
7. Amend page 17, section 4, line 8.  
Following: "ACT"  
Strike: "; PROVIDED, FURTHER THAT"  
Insert: "."

AND AS SO AMENDED

BE CONCURRED IN



SENATE BILL NO. 35

INTRODUCED BY GALT, ROSKIE,

FLYNN, HAZELBAKER, MANLEY, McCALLUM

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE STATE CONSERVATION DISTRICTS LAW PROVIDING FOR EXCLUDING TERRITORY FROM EXISTING DISTRICTS; REVISING PROCEDURES FOR ELECTION OF DISTRICT SUPERVISORS; AMENDING 76-105, 76-106, AND 76-107, AND 76-114, R.C.M. 1947."

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

Section 1. Section 76-105, R.C.M. 1947, is amended to read as follows:

"76-105. Creation of conservation districts. (1) Any ~~ten~~ qualified electors within the limits of the territory proposed to be organized into a district may file a petition with the department asking that the board approve the organization of a conservation district to function in the territory described in the petition. The petition shall set forth:

- (a) ~~The~~ the proposed name of the district;
(b) ~~That~~ that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the territory described in the petition;

(c) a description of the territory proposed to be organized as a district, which description may not be required to be given by metes and bounds or by legal subdivisions, but shall be considered sufficient if generally accurate;

(d) a request that the board duly define the boundaries for the district; that a referendum be held within the territory so defined on the question of the creation of a conservation district in the territory; and that the board determine that a district be created.

(2) Where more than one ~~+~~ petition is filed covering parts of the same territory, the board may consolidate all or any part of the petitions.

(3) Within ~~thirty~~ 30 days after a petition has been filed with the department, it shall cause due notice to be given of a proposed hearing before the department upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of the district; upon the question of the appropriate boundaries to be assigned to the district; upon the propriety of the petition and other proceedings taken under this act; and upon all questions relevant to those inquiries. All qualified electors within the limits of the territory described in the petition, and of lands within any territory considered for addition to the described

1 territory, and all other interested parties, are entitled to  
 2 attend the hearings and be heard. If it appears to the board  
 3 after reviewing the record of the hearing that it may be  
 4 desirable to include within the proposed district territory  
 5 outside of the area within which due notice of the hearing  
 6 has been given, the board shall adjourn the hearing and the  
 7 department shall cause due notice of a further hearing to be  
 8 given throughout the entire area considered for inclusion in  
 9 the district, and the further hearing shall be held by the  
 10 department. After the hearing, if the board determines, upon  
 11 the facts presented at the hearing and upon other relevant  
 12 facts and information as may be available to the department  
 13 or the board, that there is need, in the interest of the  
 14 public health, safety, and welfare, for a conservation  
 15 district to function in the territory considered at the  
 16 hearing, it shall make and record that determination, and  
 17 shall define, by metes and bounds or by legal subdivisions,  
 18 the boundaries of the district. In making the determinations  
 19 and in defining the boundaries, the board shall consider the  
 20 topography of the area considered and of the state, the  
 21 composition of soils therein, the distribution of erosion,  
 22 the prevailing land-use practices, the desirability and  
 23 necessity of including within the boundaries the particular  
 24 lands under consideration and the benefits those lands may  
 25 receive from being included within the boundaries, the

1 relation of the proposed area to existing watersheds and  
 2 agricultural regions, and other conservation districts  
 3 already organized or proposed for organization under this  
 4 act, and such other physical, geographical, and economic  
 5 factors as are relevant, having due regard to the  
 6 legislative determination set forth in ~~section~~ 76-102. The  
 7 territory to be included within the boundaries need not be  
 8 contiguous. If the board determines after the hearing,  
 9 after due consideration of the relevant facts, that there is  
 10 no need for a conservation district to function in the  
 11 territory considered at the hearing, it shall make and  
 12 record that determination and shall deny the petition. After  
 13 ~~six~~(6) months have expired from the date of the denial of a  
 14 petition, subsequent petitions covering the same or  
 15 substantially the same territory may be filed and a new  
 16 hearing held and determinations made thereon.

17 (4) After the board has made and recorded a  
 18 determination that there is need, in the interest of the  
 19 public health, safety, and welfare, for the organization of  
 20 a district in a particular territory and has defined the  
 21 boundaries thereof, it shall consider the question whether  
 22 the operation of a district within the boundaries with the  
 23 powers conferred upon conservation districts in this act is  
 24 administratively practicable and feasible. To assist the  
 25 board in the determination of this administrative

1 practicability and feasibility, the department shall, within  
 2 a reasonable time after entry of the board's finding that  
 3 there is need for the organization of the proposed district  
 4 and the determination of the boundaries thereof, hold a  
 5 referendum within the proposed district upon the proposition  
 6 of the creation of the district, and cause due notice of the  
 7 referendum to be given. The question shall be submitted by  
 8 ballots upon which the words "For creation of a conservation  
 9 district of the lands below described and lying in the  
 10 county(ies) of ....., ....., and ....." and "Against creation  
 11 of a conservation district of the lands below described and  
 12 lying in the county(ies) of .... and ....." shall appear,  
 13 with a square before each proposition and a direction to  
 14 insert an "X" mark in the square before one or the other of  
 15 the propositions as the voter may favor or oppose creation  
 16 of the district. The ballot shall set forth the boundaries  
 17 of the proposed district as determined by the board. All  
 18 qualified electors within the boundaries of the territory,  
 19 as determined by the department, are eligible to vote in the  
 20 referendum.

21 (5) The department shall pay all expenses for the  
 22 issuance of the notices and the conduct of the hearings and  
 23 referenda, and shall supervise the conduct of the hearings  
 24 and referenda. It shall adopt appropriate rules governing  
 25 the conduct of the hearings and referenda, and providing for

1 the registration prior to the date of the referendum of all  
 2 eligible voters, or prescribing some other appropriate  
 3 procedure for the determination of those eligible as voters  
 4 in the referendum. No informalities in the conduct of the  
 5 referendum or in any matters relating thereto shall  
 6 invalidate the referendum or the result thereof if notice  
 7 thereof has been given substantially as herein provided and  
 8 the referendum has been fairly conducted.

9 (6) The department shall publish the result of the  
 10 referendum, and the board shall thereafter consider and  
 11 determine whether the operation of the district within the  
 12 defined boundaries is administratively practicable and  
 13 feasible. If the board determines that the operation of the  
 14 district is not administratively practicable and feasible,  
 15 it shall record that determination and deny the petition. If  
 16 the board determines that the operation of the district is  
 17 administratively practicable and feasible, it shall record  
 18 that determination and shall proceed with the organization  
 19 of the district in the manner hereinafter provided. In  
 20 making its determination, the board shall consider the  
 21 attitudes of the qualified electors within the defined  
 22 boundaries, the number of qualified electors eligible to  
 23 vote in the referendum who voted, the proportion of the  
 24 votes cast in the referendum in favor of the creation of the  
 25 district to the total number of votes cast, the approximate

1 wealth and income of the qualified electors of the proposed  
 2 district, the probable expense of carrying on  
 3 erosion-control operations within the district, and such  
 4 other economic and social factors relevant to the  
 5 determination, having due regard to the legislative  
 6 determinations set forth in ~~sections~~ 76-102; however, the  
 7 board may not determine that the operation of the proposed  
 8 district within the defined boundaries is administratively  
 9 practicable and feasible unless a majority of the votes cast  
 10 in the referendum upon the proposition of creation of the  
 11 district have been cast in favor of the creation of the  
 12 district.

13 (7) If the board determines that the operation of the  
 14 proposed district within the defined boundaries is  
 15 administratively practicable and feasible, it shall appoint  
 16 two ~~(2)~~ supervisors to act with the three ~~(3)~~ supervisors  
 17 first elected, as provided hereinafter, as the initial  
 18 governing body of the district. The district is a  
 19 governmental subdivision of this state and a public body,  
 20 corporate and politic, upon the taking of the following  
 21 proceedings:

22 ~~(a)~~ (a) The two ~~(2)~~ appointed supervisors shall present  
 23 to the secretary of state an application signed by them,  
 24 which shall set forth:

25 ~~(i)~~ (i) ~~That~~ that a petition for the creation of the

1 district was filed with the department pursuant to this act,  
 2 that the proceedings specified in this act were taken  
 3 pursuant to the petition, that the application is being  
 4 filed in order to complete the organization of the district  
 5 as a governmental subdivision and a public body, corporate  
 6 and politic, under this act, and that the board has  
 7 appointed them as supervisors;

8 ~~(b)~~ (ii) the name and official residence of each of the  
 9 supervisors, together with a certified copy of the  
 10 appointments evidencing their right to office;

11 ~~(c)~~ (iii) the term of office of each of the supervisors;

12 ~~(d)~~ (iv) the name which is proposed for the district;  
 13 and

14 ~~(e)~~ (v) the location of the principal offices of the  
 15 supervisors of the district.

16 (b) The application shall be subscribed and sworn to  
 17 by each of the supervisors. The application shall be  
 18 accompanied by a statement by the department, which shall  
 19 certify that a petition was filed, notice issued, and  
 20 hearing held as provided in this act; that the board  
 21 determined that there is need, in the interest of the public  
 22 health, safety, and welfare, for a conservation district to  
 23 function in the proposed territory, and defined the  
 24 boundaries thereof; that notice was given and a referendum  
 25 held on the question of the creation of the district, and

1 that the result of the referendum showed a majority of the  
 2 votes cast in the referendum to be in favor of the creation  
 3 of the district, and that thereafter the board determined  
 4 that the operation of the proposed district is  
 5 administratively practicable and feasible. The statement  
 6 shall also set forth the boundaries of the district as they  
 7 have been defined by the board.

8 ~~(9)~~(8) The secretary of state shall examine the  
 9 application and statement, and if he finds that the name  
 10 proposed for the district is not identical with that of any  
 11 other conservation district of this state or so nearly  
 12 similar as to lead to confusion or uncertainty, he shall  
 13 receive and file them and shall record them in an  
 14 appropriate book of record in his office. If the secretary  
 15 of state finds that the name proposed for the district is  
 16 identical with that of any other conservation district of  
 17 this state, or so nearly similar as to lead to confusion and  
 18 uncertainty, he shall certify that fact to the board, which  
 19 shall thereupon submit to the secretary of state a new name  
 20 for the district, which is not subject to such defects. Upon  
 21 receipt of the new name, free of such defects, the secretary  
 22 of state shall record the application and statement, with  
 23 the name so modified, in an appropriate book of record in  
 24 his office. When the application and statement have been  
 25 made, filed, and recorded, as herein provided, the district

1 is a governmental subdivision of this state and a public  
 2 body, corporate and politic. The secretary of state shall  
 3 make and issue to the supervisors without cost a  
 4 certificate, under the seal of the state, of the due  
 5 organization of the district, and shall record the  
 6 certificate with the application and statement. The  
 7 boundaries of the district shall include the territory as  
 8 determined by the board, but they may not include any area  
 9 included within the boundaries of another conservation  
 10 district.

11 ~~(10)~~(9) After ~~six~~(6) months have expired from the  
 12 date of entry of a determination by the board that operation  
 13 of a proposed district is not administratively practicable  
 14 and feasible, and denial of a petition pursuant to the  
 15 determination, subsequent petitions may be filed and action  
 16 taken thereon in accordance with this act.

17 ~~(11)~~(10) Petitions for including additional territory  
 18 within an existing district ~~or excluding part of the~~  
 19 ~~territory of an existing district~~ may be filed with the  
 20 department, and the proceedings herein provided for in the  
 21 case of petitions to organize a district shall be followed  
 22 in the case of petitions for the inclusion ~~or exclusion~~. The  
 23 department shall prescribe the form for the petitions, which  
 24 shall be as nearly as may be in the form prescribed in this  
 25 act for petitions to organize a district. Where the total

1 number of qualified electors in the area proposed for  
 2 inclusion ~~are~~ is less than ~~ten~~ (10), the petition may be  
 3 filed when signed by a majority of the qualified electors of  
 4 the area, and in that case no referendum need be held. In  
 5 referenda upon petitions for the inclusion, all qualified  
 6 electors within the proposed additional area are eligible to  
 7 vote.

8 ~~(42)~~ (11) In a suit, action, or proceeding involving  
 9 the validity or enforcement of, or relating to, a contract,  
 10 proceeding, or action of the district, the district shall be  
 11 considered to have been established in accordance with this  
 12 act upon proof of the issuance of the certificate by the  
 13 secretary of state. A copy of the certificate, duly  
 14 certified by the secretary of state, is admissible in  
 15 evidence in the suit, action, or proceeding and is proof of  
 16 the filing and contents thereof.

17 (12) THE CONSERVATION DISTRICT IS AUTHORIZED TO DIVIDE  
 18 THE UNINCORPORATED AREA OF THE DISTRICT INTO FIVE SUPERVISOR  
 19 AREAS."

20 Section 2. Section 76-106, R.C.M. 1947, is amended to  
 21 read as follows:

22 "76-106. Election of supervisors for each district.  
 23 (1) Within ~~thirty~~ (30) days after the date of issuance by  
 24 the secretary of state of a certificate of organization of a  
 25 conservation district, nominating petitions may be filed

1 with the department REGISTRAR, AS DEFINED IN TITLE 23,  
 2 R.C.M. 1947, to nominate candidates for supervisors of the  
 3 district. ~~The department may extend the time within which~~  
 4 ~~nominating petitions may be filed.~~ A nominating petition may  
 5 not be accepted by the department REGISTRAR unless it is  
 6 subscribed by ~~ten~~ (10) or more qualified electors within the  
 7 boundaries of the district, OR SUPERVISOR AREAS THEREOF,  
 8 WHEREIN THE NOMINEE RESIDES. Qualified electors may sign  
 9 more than one ~~(4)~~ nominating petition to nominate more than  
 10 one ~~(4)~~ candidate for supervisor. ~~The~~ If more than six  
 11 candidates are nominated, the department REGISTRAR shall  
 12 give due notice of ~~as a nominating~~ election to be held for  
 13 the selection of six candidates for supervisor to appear on  
 14 the next general election ballot. This nominating election  
 15 may be held in conjunction with the state primary election.  
 16 ~~the election of three (3) supervisors for the district. The~~  
 17 ~~names of all nominees on behalf of whom the nominating~~  
 18 ~~petitions have been filed within the time herein designated,~~  
 19 In the general election, the names of all persons nominated  
 20 by petition (if six or fewer) or by election shall be  
 21 printed, arranged in ~~the alphabetical~~ a rotating order of  
 22 the surnames, as provided under 23-3511, upon ballots, with  
 23 a square before each name and a direction to insert an "X"  
 24 mark in the square before any three ~~(3)~~ names to indicate  
 25 the voter's preference. All qualified electors within the

1 district are eligible to vote in the election. The three ~~(3)~~  
 2 candidates who receive the largest number, respectively, of  
 3 the votes cast in the election are the elected supervisors  
 4 for the district. ~~The department shall pay all the expenses~~  
 5 ~~of the election, shall supervise the conduct thereof, shall~~  
 6 ~~prescribe rules governing the conduct of the election and~~  
 7 ~~the determination of the eligibility of votes therein, and~~  
 8 ~~shall publish the results thereof. The supervisors REGISTAR~~  
 9 in each county shall have prepared at department cost  
 10 PREPARE suitable NONPARTISAN ballots AND POLLING LISTS for  
 11 the election of supervisors, which ballots AND POLLING LISTS  
 12 shall be delivered to the election judges in those precincts  
 13 which contain eligible voters prior to each general election  
 14 and each primary election in which more than four candidates  
 15 are nominated. The election judges, clerks, and other  
 16 election officials in such precincts shall submit such  
 17 ballots to qualified electors, conduct the election and  
 18 tabulate the results of such election in the manner provided  
 19 for by the general election laws of the state.

20 (2) Two supervisors shall be elected at the second  
 21 general election following the organization or  
 22 reorganization of the district and shall replace the two  
 23 supervisors appointed by the department. Thereafter, a  
 24 district shall alternately elect three and two supervisors  
 25 at succeeding general elections. Nominations for the

1 election of supervisors shall be made as provided under  
 2 subsection (1) except that a nominating election shall be  
 3 held if more than four candidates are nominated by petition  
 4 when two supervisors are to be elected."

5 Section 3. Section 76-107, R.C.M. 1947, is amended to  
 6 read as follows:

7 "76-107. Appointment, qualifications, and tenure of  
 8 supervisors. (1) The governing body of the district shall,  
 9 if there are no incorporated municipalities within the  
 10 boundaries of said district, consist of five ~~(5)~~ or seven  
 11 ~~(7)~~ supervisors, elected or appointed as provided herein.

12 (2) In all cases where the boundaries of such  
 13 conservation district include any incorporated municipality  
 14 or municipalities, ~~said the~~ board of supervisors, in  
 15 addition to ~~said the~~ five ~~(5)~~ elected supervisors, shall  
 16 consist of two ~~(2)~~ appointed supervisors, making a total of  
 17 seven ~~(7)~~ supervisors in such districts. The two ~~(2)~~  
 18 appointed supervisors must be residents of the  
 19 municipalities within the district. The legislative bodies  
 20 of the incorporated municipalities within the district  
 21 shall, after consultation with the elected supervisors,  
 22 appoint the two ~~(2)~~ additional supervisors. The term of  
 23 office of the appointed supervisors shall be ~~three (3)~~  
 24 years.

25 (3) Where there are more than two ~~(2)~~ incorporated

1 municipalities within a district, ~~then~~ the two ~~(2)~~ appointed  
 2 supervisors shall represent all the municipalities and urban  
 3 interests in the district, and no municipality shall have  
 4 more than one ~~(4)~~ appointed supervisor residing therein.

5 (4) The supervisors shall annually elect a chairman  
 6 from their members. The term of office of each supervisor  
 7 shall be ~~three (3)~~ 4 years, except that the supervisors who  
 8 are first appointed by the department shall be designated to  
 9 serve for terms of ~~one (1) and two (2)~~ years, ~~respectively,~~  
 10 from the date of their appointment. An elected supervisor  
 11 shall hold office until his successor has been elected and  
 12 has qualified. Any vacancy occurring in the office of an  
 13 elected supervisor shall be filled by appointment by the  
 14 remaining supervisors until the next regular election, when  
 15 a successor shall be elected to serve the unexpired term. A  
 16 majority of the supervisors constitute a quorum, and the  
 17 concurrence of a majority in any matter within their duties  
 18 is required for its determination. A supervisor may not  
 19 receive compensation for his services, but he is entitled to  
 20 expenses, including travel expenses, as provided for in  
 21 ~~sections~~ 59-538, 59-539, and 59-801, incurred in the  
 22 discharge of his duties.

23 (5) The supervisors may employ a secretary and such  
 24 other officers, agents, and employees, permanent and  
 25 temporary, as they may require, and shall determine their

1 qualifications, duties, and compensation. The supervisors  
 2 may call upon the attorney general of the state for such  
 3 legal services as they may require, or may employ their own  
 4 counsel and legal staff. The supervisors may delegate to  
 5 their chairman, to one ~~(4)~~ or more supervisors, or to one  
 6 ~~(4)~~ or more agents or employees, such powers and duties as  
 7 they consider proper. The supervisors shall furnish to the  
 8 department copies of such ordinances, rules, regulations,  
 9 orders, contracts, forms, and other documents as they adopt  
 10 or employ, and such other information concerning their  
 11 activities as may be required in the performance of their  
 12 duties under this act.

13 (6) The supervisors shall provide for the execution of  
 14 surety bonds for all employees and officers who are  
 15 entrusted with funds or property; shall provide for the  
 16 keeping of a full and accurate record of all proceedings,  
 17 and of all resolutions, regulations, and orders issued or  
 18 adopted; and shall provide for an annual audit of the  
 19 accounts of receipts and disbursements. A supervisor may be  
 20 removed by the board, upon notice and hearing, for neglect  
 21 of duty or malfeasance in office, but for no other reason.

22 (7) The supervisors may invite the legislative  
 23 governing body of any municipality or county located near  
 24 the territory comprised within the district to designate a  
 25 representative to advise and consult with the supervisors of



1 the district on all questions of program and policy which  
2 may affect the property, water supply, or other interests of  
3 the municipality or county."

4 Section 4. Compliance period. For the purposes of  
5 bringing existing districts into compliance with this act by  
6 the time of the 1978 general elections ~~and of allowing these~~  
7 ~~districts sufficient time for their reorganization when~~  
8 ~~necessary, no~~ THE TERMS OF OFFICE FOR ALL SUPERVISORS SHALL  
9 EXPIRE UPON PASSAGE AND APPROVAL OF THIS ACT; PROVIDED,  
10 HOWEVER, THAT EACH SUPERVISOR SHALL REMAIN IN OFFICE UNTIL  
11 HIS SUCCESSOR HAS BEEN ELECTED AND HAS QUALIFIED IN  
12 ACCORDANCE WITH THIS ACT; PROVIDED, FURTHER THAT, FOR  
13 PURPOSES OF THE 1978 GENERAL ELECTION THREE SUPERVISORS  
14 SHALL BE ELECTED FOR A 4-YEAR TERM AND THE REMAINING TWO  
15 SUPERVISORS ELECTED FOR A 2-YEAR TERM. NO action or  
16 undertaking of a district may be invalidated or voided for  
17 failure to comply with the amendatory provisions of this act  
18 prior to January 1, 1979.

19 SECTION 5, SECTION 76-114, R.C.M. 1947, IS AMENDED TO  
20 READ AS FOLLOWS:

21 "76-114. Discontinuance of districts or a part of the  
22 district. (1) At any time after ~~five~~ (5) years after the  
23 organization of a district under this act, any ~~ten~~ (10)  
24 qualified electors within the boundaries of the district may  
25 file a petition with the department, praying that the board

1 terminate the operations of the district or a part of the  
2 district and discontinue the existence of the district or  
3 that part of the district. The department may conduct such  
4 public meetings and public hearings upon the petition as are  
5 necessary to assist it and the board in the consideration  
6 thereof.

7 (2) Within ~~sixty~~ (60) days after the petition has been  
8 received by the department it shall give due notice of the  
9 holding of a referendum, and shall supervise the referendum,  
10 and issue appropriate regulations governing the conduct  
11 thereof, the question to be submitted by ballots upon which  
12 the words "For terminating the existence of the .... (name  
13 of the conservation district or part of the district to be  
14 here inserted)" and "against terminating the existence of  
15 the .... (name of the conservation district or part of the  
16 district to be here inserted)" shall appear, with the square  
17 before each proposition and a direction to insert an "X"  
18 mark in the square before one or the other of the  
19 propositions as the voter may favor or oppose discontinuance  
20 of the district or a part of the district. All qualified  
21 electors within the boundaries of the district are eligible  
22 to vote in the referendum. No informalities in the conduct  
23 of the referendum or in any matters relative thereto shall  
24 invalidate the referendum or the result thereof if notice  
25 thereof is given substantially as herein provided and the

1 referendum is fairly conducted.

2 (3) ~~The (A) IN THE CASE OF PETITIONS FOR~~  
 3 ~~DISCONTINUANCE OF A DISTRICT, THE~~ department shall publish  
 4 the result of the referendum and the board shall thereafter  
 5 consider and determine whether the continued operation of  
 6 the district ~~or part of the district~~ within the defined  
 7 boundaries is administratively practicable and feasible. If  
 8 the board determines that the continued operation of the  
 9 district ~~or part of the district~~ is administratively  
 10 practicable and feasible, it shall record that determination  
 11 and deny the petition. If the board determines that the  
 12 continued operation of the district ~~or part of the district~~  
 13 is not administratively practicable and feasible, it shall  
 14 record that determination and shall certify the  
 15 determination to the supervisors of the district.

16 ~~(B) IN THE CASE OF PETITIONS FOR DISCONTINUANCE OF~~  
 17 ~~PART OF A DISTRICT, THE DEPARTMENT SHALL PUBLISH THE RESULT~~  
 18 ~~OF THE REFERENDUM AND THE BOARD SHALL THEREAFTER CONSIDER~~  
 19 ~~AND DETERMINE WHETHER THE CONTINUED OPERATION OF A PART OF~~  
 20 ~~THE DISTRICT WITHIN THE DEFINED BOUNDARIES IS~~  
 21 ~~ADMINISTRATIVELY PRACTICABLE AND FEASIBLE. IF THE BOARD~~  
 22 ~~DETERMINES THAT THE CONTINUED OPERATION OF THE DISTRICT IS~~  
 23 ~~NOT ADMINISTRATIVELY PRACTICABLE AND FEASIBLE WITH A PART OF~~  
 24 ~~THE DISTRICT DISCONTINUED, IT SHALL RECORD THAT~~  
 25 ~~DETERMINATION AND DENY THE PETITION, IF THE BOARD DETERMINES~~

1 ~~THAT THE CONTINUED OPERATION OF THE DISTRICT IS~~  
 2 ~~ADMINISTRATIVELY PRACTICABLE AND FEASIBLE WITH A PART OF THE~~  
 3 ~~DISTRICT DISCONTINUED IT SHALL RECORD THAT DETERMINATION AND~~  
 4 ~~SHALL CERTIFY THE DETERMINATION TO THE SUPERVISORS OF THE~~  
 5 ~~DISTRICT.~~

6 (4) In making the determination the board shall give  
 7 due regard and weight to the attitudes of the qualified  
 8 electors lying within the district, the number of qualified  
 9 electors eligible to vote in the referendum who voted, the  
 10 proportion of the votes cast in the referendum in favor of  
 11 the discontinuance of the district ~~or part of the district~~  
 12 to the total number of votes cast, the approximate wealth  
 13 and income of the qualified electors of the district, the  
 14 probable expense of carrying on erosion control operations  
 15 within the district, and such other economic and social  
 16 factors as may be relevant to the determination, having due  
 17 regard to the legislative findings set forth in section  
 18 76-102; however, the board may not determine that the  
 19 continued operation of the district ~~or part of the district~~  
 20 is administratively practicable and feasible unless at least  
 21 a majority of the votes cast in the referendum are cast in  
 22 favor of the continuance of the district ~~or part of the~~  
 23 ~~district.~~

24 (5) Upon receipt from the department of a  
 25 certification of the board that the board has determined

1 that the continued operation of the district or part of the  
 2 district is not administratively practicable and feasible,  
 3 pursuant to this section, the supervisors shall immediately  
 4 proceed to terminate the affairs of the district or part of  
 5 the district. The supervisors shall dispose of all property  
 6 belonging to the district or part of the district at public  
 7 auction and shall pay over the proceeds of the sale to be  
 8 covered into the state treasury. The supervisors shall  
 9 thereupon file an application, duly verified, with the  
 10 secretary of state for the discontinuance of the district or  
 11 part of the district, and shall transmit with the  
 12 application the certificate of the board, setting forth the  
 13 determination of the board that the continued operation of  
 14 the district or part of the district is not administratively  
 15 practicable and feasible. The application shall recite that  
 16 the property of the district or part of the district has  
 17 been disposed of and the proceeds paid over as in this  
 18 section provided, and shall set forth a full accounting of  
 19 the properties and proceeds of the sale. The secretary of  
 20 state shall issue to the supervisors a certificate of  
 21 dissolution and shall record the certificate in an  
 22 appropriate book of record in his office.

23 (6) Upon issuance of a certificate of dissolution  
 24 under this section, all ordinances and regulations  
 25 theretofore adopted and in force within the district or in

1 that part of the district are void. All contracts previously  
 2 entered into, to which the district or supervisors are  
 3 parties, remain in effect for the period provided in those  
 4 contracts. The department shall be substituted for the  
 5 district or supervisors as party to the contracts if the  
 6 total district is discontinued. ~~The~~ In this case the  
 7 department is entitled to all benefits and subject to all  
 8 liabilities under the contracts and has the same right and  
 9 liability to perform, to require performance, to sue and be  
 10 sued thereon, and to modify or terminate the contracts by  
 11 mutual consent or otherwise, as the supervisors of the  
 12 district would have had. The dissolution does not affect the  
 13 lien of any judgment entered under section 76-110, nor the  
 14 pendency of an action instituted under that section, and the  
 15 department succeeds to all rights and obligations of the  
 16 district or supervisors as to those liens and actions."

-End-