

CHAPTER NO. 213.

SENATE BILL NO. 334

INTRODUCED BY O'HARA

BY REQUEST OF THE CODE COMMISSIONER

IN THE SENATE

February 2, 1979	Introduced and referred to Committee on Local Government.
February 8, 1979	Committee recommend bill do pass. Report adopted.
February 9, 1979	Printed and placed on members' desks.
February 10, 1979	Second reading, do pass.
February 12, 1979	Considered correctly engrossed.
February 13, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 14, 1979	Introduced and referred to Committee on Local Government.
March 6, 1979	Committee recommend bill be concurred in. Report adopted.
March 8, 1979	Second reading, concurred in.
March 10, 1979	Third reading, concurred in.

IN THE SENATE

March 12, 1979	Returned from second house. Concurred in. Sent to enrolling.  Reported correctly enrolled.
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1 *Senate* BILL NO. 334  
 2 INTRODUCED BY *D. H. ...*  
 3 BY REQUEST OF THE CODE COMMISSIONER

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LOCAL  
 6 GOVERNMENT LAWS RELATING TO RURAL FIRE DISTRICTS, HOSPITAL  
 7 DISTRICTS, AND CEMETERY DISTRICTS TO DELETE TAXPAYER AND  
 8 FREEHOLDER REQUIREMENTS TO VOTE IN CERTAIN ELECTIONS AND TO  
 9 HOLD CERTAIN OFFICES; AMENDING SECTIONS 7-33-2106,  
 10 7-34-2113, 7-35-2108, AND 7-35-2133, MCA."

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

13 Section 1. Section 7-33-2106, MCA, is amended to read:  
 14 "7-33-2106. Details relating to board of trustees of  
 15 fire district. (1) The five trustees initially appointed by  
 16 the county commissioners shall hold office until their  
 17 successors are elected and qualified as hereinafter  
 18 provided.

19 (2) Qualifications of electors and trustees, terms of  
 20 office, vacancies, and manner and date of elections shall,  
 21 as far as possible, be the same as provided in the school  
 22 election laws for school districts of the second class,  
 23 except:

24 (a) that only ~~electors who are taxpayers affected by~~  
 25 ~~the special fire district levies may vote at such elections~~

1 ~~and be qualified to serve as trustees, and~~  
 2 (b) there need be no special registration of electors.  
 3 (3) The trustees shall organize by choosing a chairman  
 4 and appointing one member to act as secretary."

5 Section 2. Section 7-34-2113, MCA, is amended to read:  
 6 "7-34-2113. Who may vote. (1) Only qualified  
 7 registered electors residing within the proposed hospital  
 8 district ~~who are taxpayers upon property therein and whose~~  
 9 ~~names appear on the last completed assessment roll for state~~  
 10 ~~and county taxes shall have the right to~~ may vote on the  
 11 question of the creation of the hospital district.

12 (2) ~~No person shall be qualified to vote at such~~  
 13 ~~election who has not attained legal age, who is not an owner~~  
 14 ~~of property within the boundaries of said district as~~  
 15 ~~defined by the board of county commissioners, and whose name~~  
 16 ~~does not appear on the last completed assessment roll of the~~  
 17 ~~county."~~

18 Section 3. Section 7-35-2108, MCA, is amended to read:  
 19 "7-35-2108. Government of district by trustees. (1)  
 20 ~~said~~ ~~the~~ cemetery district shall be governed and managed by  
 21 three trustees appointed by the board of county  
 22 commissioners. The trustees at their first meeting shall  
 23 adopt bylaws for the government and management of the  
 24 district.

25 (2) The trustees may be appointed from the freeholders

1 residing--within-said residents of the district for terms of  
 2 1, 2, and 3 years, respectively, and until their successors  
 3 shall--be are appointed and qualified. Annually thereafter  
 4 the board of county commissioners shall appoint one trustee  
 5 for a term of 3 years or until his successor shall--be is  
 6 appointed and qualified.

7 (3) Per diem and mileage of such the cemetery trustees  
 8 may be set by resolution of the board of county  
 9 commissioners."

10 Section 4. Section 7-35-2133, MCA, is amended to read:

11 "7-35-2133. Appointment of trustees of fund. (1) The  
 12 district judge of--such--court shall, upon receipt of the  
 13 application, appoint a trustee or a board of trustees to  
 14 administer the fund from a list submitted to him by the  
 15 trustees of such the public cemetery district.

16 (2) ~~Such--trustee--or--such--board--shall--consist--of--not~~  
 17 ~~less--than--one--or--more--than~~ The number of trustees for the  
 18 fund may not exceed five persons, with the exact number to  
 19 ~~rest--in--be--set--at~~ the discretion of the trustees of said the  
 20 public cemetery district. ~~Such~~ Each trustee or--the--members  
 21 of--such--board--of--trustees--of--such--funds for the fund must be  
 22 ~~citizens--and--freeholders~~ a resident of the state of Montana  
 23 during ~~at~~ the time they-exercise he exercises the powers of  
 24 such trust.

25 (3) ~~In--case--of--the--failure--of--any--of--those~~ Whenever a

1 person, so chosen and appointed, fails to qualify within 30  
 2 days after their his appointment, then a vacancy shall--exist  
 3 exists, and the judge of said the district court shall  
 4 forthwith appoint from a list submitted to him by the  
 5 trustees of such the public cemetery district some person  
 6 possessing the above qualifications to fill the vacancy or  
 7 vacancies in said the board of trustees of such the fund.  
 8 Trustees of such the fund heretofore appointed by such the  
 9 public cemetery district or district court shall prior to  
 10 July 1, 1955, continue to hold their office as such trustees  
 11 until terminated ~~in--one--of--the--manners~~ as provided in  
 12 7-35-2131 through 7-35-2150."

-End-

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LC 0731

1979 Legislature  
Code Commissioner Bill - Summary

*Agmt.* Bill No. *334*

"AN ACT TO AMEND THE LOCAL GOVERNMENT LAWS RELATING TO RURAL FIRE DISTRICTS, HOSPITAL DISTRICTS, AND CEMETERY DISTRICTS TO DELETE TAXPAYER AND FREEHOLDER REQUIREMENTS TO VOTE IN CERTAIN ELECTIONS AND TO HOLD CERTAIN OFFICES; AMENDING SECTIONS 7-33-2106, 7-34-2113, 7-35-2108, AND 7-35-2133, MCA.

(This summary does not include discussion of routine form or grammatical changes.)

This bill addresses a situation which occurs repeatedly in the local government laws and which can also be found throughout the code. Various petition, protest, election, and qualification provisions require an individual to be either a taxpayer or a freeholder and sometimes both. Such requirements have been the object of numerous court cases. The earlier decisions would generally appear to sustain the power of the legislature to restrict certain privileges to taxpayers and/or freeholders and in so doing to discriminate against those not having these qualifications. However, the trend in more recent decisions has been to overturn statutes which restrict participation in an activity to those who are taxpayers and/or freeholders.

The fire, hospital, and cemetery district laws have been singled out for treatment in this bill because they best illustrate the problem.

The Montana Supreme Court in Sadler v. Connolly, 575 P.2d 51 (1978), ruled unconstitutional a freeholder requirement to hold certain public offices. The rationale of the decision, however, would be broad enough to encompass almost all public offices. Whenever the officeholder may exercise broad governmental authority, a freeholder requirement has no rational basis. Based on a United States Supreme Court decision, Saylor Land Co. v. Tulare Water District, 410 U.S. 719 (1973), a special district which in some manner only affects the land can probably restrict its officers to freeholders. (Even here it's not clear if the special status of water in the western states gives irrigation, drainage, and

other such districts a special status.) Consequently sections 3 and 4 of the bill delete freeholder requirements for certain offices. (Section 7-35-2133 is also rewritten for clarity.) The Montana court also pointed out that preventing nonfreeholders from holding office disenfranchises the class of nonfreeholders, which, although it may vote in an election, may not choose one of its own to represent the class.

A series of decisions by the United States Supreme Court; Kramer v. Union Free School District, 395 U.S. 621 (1969), Cipriano v. Houma, 395 U.S. 701 (1969), and Phoenix v. Kolodziejcki, 399 U.S. 204 (1970); struck down freeholder requirements for school district elections, revenue bond elections, and general obligation bond elections. The court stated that when the right to vote is involved the state must demonstrate a "compelling state interest" to sustain a statute discriminating against nonfreeholders. The Saylor case, cited above, sustained voting based on the number of irrigable acres. It is somewhat difficult to reconcile the cases, but two tests seem to be available:

(1) Whenever the landowners are the ones principally burdened and benefitted, a freeholder requirement for voting may be sustained.

(2) Whenever those excluded from voting have substantially the same interests and are affected substantially the same as those permitted to vote, the freeholder requirement will probably be struck.

Based on the above cases, freeholder voting requirements are struck in sections 1 and 2.

The petition and protest areas present a more difficult area and the relevant sections are not considered for amendment in this bill. In Burritt v. City of Butte, 508 P2d 563 (1973), the Montana Supreme Court sustained a freeholder requirement for the right to protest annexation.

In light of the United States Supreme Court cases discussed above, consideration should be given to the possibility that petition and protest provisions which discriminate against nonfreeholders may be invalid for those types of districts which provide a general service which does not principally benefit and burden the land. Fire, hospital, and cemetery districts would seem to fall into the class of district which is designed to help the residents of the district rather than the landowners (in their capacity as landowners).

The petition and protest areas can be differentiated on the surface from the cited Supreme Court cases on the basis that voting rights are not involved. It would seem however that a protest provision could be treated as an activity which is not held under the general election laws but which has the same effect as an election.

LC 0731

In part, this memorandum is designed to explain the changes made in sections 1 through 4, and in part it is intended to alert the legislature to a potential problem which may need to be addressed. Further discussion of the matters raised in this summary can be found in 35 L. Ed.2d 843 (1974) and in numerous law review articles.

Approved by Comm.  
on Local Government

*Amended* BILL NO. 334

INTRODUCED BY *D. H. Fox*  
BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LOCAL GOVERNMENT LAWS RELATING TO RURAL FIRE DISTRICTS, HOSPITAL DISTRICTS, AND CEMETERY DISTRICTS TO DELETE TAXPAYER AND FREEHOLDER REQUIREMENTS TO VOTE IN CERTAIN ELECTIONS AND TO HOLD CERTAIN OFFICES; AMENDING SECTIONS 7-33-2106, 7-34-2113, 7-35-2108, AND 7-35-2133, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
Section 1. Section 7-33-2106, MCA, is amended to read:  
"7-33-2106. Details relating to board of trustees of fire district. (1) The five trustees initially appointed by the county commissioners shall hold office until their successors are elected and qualified as hereinafter provided.  
(2) Qualifications of electors and trustees, terms of office, vacancies, and manner and date of elections shall, as far as possible, be the same as provided in the school election laws for school districts of the second class, except:  
(a) that only ~~electors who are taxpayers affected by the special fire district levies may vote at such elections~~

~~and be qualified to serve as trustees and~~  
(b) there need be no special registration of electors.  
(3) The trustees shall organize by choosing a chairman and appointing one member to act as secretary."  
Section 2. Section 7-34-2113, MCA, is amended to read:  
"7-34-2113. Who may vote. (1) Only qualified, registered electors residing within the proposed hospital district ~~who are taxpayers upon property therein and whose names appear on the last completed assessment roll for state and county taxes shall have the right to~~ may vote on the question of the creation of the hospital district.  
(2) ~~No person shall be qualified to vote at such election who has not attained legal age, who is not an owner of property within the boundaries of said district as defined by the board of county commissioners, and whose name does not appear on the last completed assessment roll of the county.~~"  
Section 3. Section 7-35-2108, MCA, is amended to read:  
"7-35-2108. Government of district by trustees. (1) ~~Said~~ the cemetery district shall be governed and managed by three trustees appointed by the board of county commissioners. The trustees at their first meeting shall adopt bylaws for the government and management of the district.  
(2) The trustees may be appointed from the freeholders

1 ~~residing--within-said~~ residents of the district for terms of  
 2 1, 2, and 3 years, respectively, and until their successors  
 3 ~~shall--be~~ are appointed and qualified. Annually thereafter  
 4 the board of county commissioners shall appoint one trustee  
 5 for a term of 3 years or until his successor ~~shall--be~~ is  
 6 appointed and qualified.

7 (3) Per diem and mileage of ~~such the~~ cemetery trustees  
 8 may be set by resolution of the board of county  
 9 commissioners."

10 Section 4. Section 7-35-2133, MCA, is amended to read:

11 "7-35-2133. Appointment of trustees of fund. (1) The  
 12 ~~district judge of such court~~ shall, upon receipt of the  
 13 application, appoint a trustee or a board of trustees ~~to~~  
 14 ~~administer the fund~~ from a list submitted to him by the  
 15 trustees of ~~such the~~ public cemetery district.

16 (2) ~~Such trustee or such board shall consist of not~~  
 17 ~~less than one or more than~~ The number of trustees for the  
 18 fund may not exceed five persons, ~~with~~ the exact number to  
 19 ~~rest-in~~ be set at the discretion of the trustees of ~~said the~~  
 20 public cemetery district. ~~Such Each~~ trustee or ~~the--members~~  
 21 ~~of such board of trustees of such funds for the fund~~ must be  
 22 citizens ~~--and freeholders~~ a resident of the state of Montana  
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1 ~~person~~ so chosen and appointed, ~~fails~~ to qualify within 30  
 2 days after their ~~his~~ appointment, then a vacancy ~~shall--exist~~  
 3 ~~exists~~, and the judge of ~~said the~~ district court shall  
 4 forthwith appoint from a list submitted to him by the  
 5 trustees of ~~such the~~ public cemetery district some person  
 6 possessing the above qualifications to fill the vacancy or  
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 8 Trustees of ~~such the~~ fund heretofore appointed by ~~such the~~  
 9 public cemetery district or district court ~~shall~~ prior to  
 10 July 1, 1955, continue to hold their office as such trustees  
 11 until terminated ~~in--one--of--the--manner~~ as provided in  
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1 ~~person,~~ so chosen and appointed, ~~fails~~ to qualify within 30  
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 3 ~~exists,~~ and the judge of ~~said~~ the district court shall  
 4 forthwith appoint from a list submitted to him by the  
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 6 possessing the above qualifications to fill the vacancy or  
 7 vacancies in ~~said~~ the board of trustees of such ~~the~~ fund.  
 8 Trustees of such ~~the~~ fund heretofore appointed by such ~~the~~  
 9 public cemetery district or district court ~~shall~~ prior to  
 10 July 1, 1955, continue to hold their office as such trustees  
 11 until terminated ~~in--one--of--the--matters~~ as provided in  
 12 7-35-2131 through 7-35-2150.\*

-End-



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 2 1, 2, and 3 years, respectively, and until their successors  
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