

1 SENATE BILL NO. 11

2 INTRODUCED BY F. MANDEVILLE

3 BY REQUEST OF THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LOCAL GOVERNMENT BALLOT
6 ISSUES; PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS AND PROCEDURES FOR LOCAL
7 GOVERNMENT BALLOT ISSUES; PROVIDING PROCEDURES FOR SIGNATURE GATHERING AND
8 SIGNATURE VERIFICATION; AMENDING SECTIONS 3-10-101, 3-11-101, 7-1-4130, 7-3-1204, 7-5-131, 7-6-
9 1504, 13-1-201, 13-10-612, 13-27-611, 16-1-205, 16-12-301, AND 16-12-311, MCA; REPEALING SECTIONS
10 7-5-132, 7-5-133, 7-5-134, AND 7-5-135, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND
11 AN APPLICABILITY DATE."

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

14
15 NEW SECTION. **Section 1. Purpose.** The right of the people to exercise the rights of initiative and
16 referendum in a local government unit is guaranteed by Article XI, section 8, of the Montana constitution and
17 may be exercised through adherence to the procedures established in [sections 1 through 13].

18
19 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 13], unless the context
20 clearly indicates otherwise, the following definitions apply:

21 (1) "Local government" means any city, town, county, or consolidated city-county.

22 (2) "Local government's next election held in accordance with Title 13, chapter 1, part 4" means a
23 primary or general election that includes the regularly scheduled nomination or election of officers of that local
24 government unit.

25
26 NEW SECTION. **Section 3. Requirements for ballot issues referred by local government or by**
27 **petition.** A petition provided for in [sections 4 through 10] or a resolution provided for in [section 11] for an
28 election must:

- 1 (1) embrace only a single comprehensive subject;
- 2 (2) set out fully the ordinance sought, the ordinance to be amended and the proposed amendment,
- 3 or the ordinance to be repealed;
- 4 (3) be in the form provided by [sections 1 through 13]; and
- 5 (4) contain transition provisions if the measure changes terms of office or forms of government.
- 6

7 **NEW SECTION. Section 4. Procedure for election on local government petition.** (1) Except as

8 provided in 7-5-131, the electors of a local government may, by petition, request an election on whether to

9 enact, repeal, or amend an ordinance.

10 (2) Except as provided in [section 9(3)], a petition under [sections 4 through 10] signed by at least

11 15% of the local government's qualified electors is sufficient to require an election. In order to determine the

12 number of signatures needed on a petition to meet the percentage requirements of this subsection, the number

13 of electors must be the number of individuals registered to vote at the preceding general election for the local

14 government.

15 (3) (A) Before a petition may be circulated for signatures, a sample petition must be submitted in

16 the form in which it will be circulated to the county election administrator. On receiving the sample petition, the

17 county election administrator shall DESIGNATE A BALLOT ISSUE AND ITS NUMBER PURSUANT TO SUBSECTION (3)(B)

18 AND THEN promptly refer a copy of the sample petition to the attorney for the relevant local government unit.

19 (B) THE ELECTION ADMINISTRATOR SHALL SERIALY NUMBER ALL SUBMITTED PETITIONS THAT ARE

20 APPROVED AS TO FORM CONTINUOUSLY FROM YEAR TO YEAR. THE NUMBERING SYSTEM MUST DISTINGUISH THE

21 DIFFERENT TYPES OF PETITIONS RECEIVED AND INCLUDE PROVISIONS FOR NUMBERING MEASURES REFERRED TO THE

22 PEOPLE BY A GOVERNING BODY. THE ELECTION ADMINISTRATOR MAY DISTINGUISH THE NUMBERING SYSTEM FOR EACH

23 LOCAL GOVERNMENT UNIT.

24 (4) (a) The local government attorney shall review the sample petition for proper form and

25 compliance with 7-5-131 and [sections 1 through 13].

26 (b) If the sample petition is rejected as to form, within 21 days after submission of the sample

27 petition, the local government attorney shall send written notice and a statement of the reasons for rejection to

28 the person who submitted the sample petition and the county election administrator.

(c) If the sample petition is approved as to form, within 21 days after submission of the sample petition, the local government attorney shall send written notice to the person who submitted the sample petition and the county election administrator. This notice must include the statement of purpose AND IMPLICATION and the ~~statements of implication~~ YES AND NO STATEMENT prepared by the local government attorney pursuant to subsections (5) and (6) of this section.

(5) If the sample petition is approved as to form, the local government attorney shall prepare a concise statement of purpose AND IMPLICATION not exceeding 135 words. The statement of purpose AND IMPLICATION must be an accurate and impartial explanation of the purpose of the proposed ballot issue in plain, easily understood language. The statement may not be an argument and may not be written so as to create prejudice for or against the issue. The statement prepared pursuant to this subsection, unless altered by court order, must be used as the petition title and the ballot statement if the issue is placed on the ballot. For the purposes of this subsection (5), the word limit does not apply to additional statements required on the ballot by law, including those provided in 7-7-111 and 15-10-425(3).

(6) (A) At the time the statement of purpose AND IMPLICATION is prepared, the local government attorney shall prepare a YES AND NO statement. A YES AND NO STATEMENT SPECIFIES THAT A POSITIVE VOTE INDICATES SUPPORT FOR THE ISSUE AND A NEGATIVE VOTE INDICATES OPPOSITION TO THE ISSUE. ~~of the implication of a vote for and a statement of the implication of a vote against the ballot issue. Unless otherwise provided by law, each statement of implication may not be more than 25 words and must be in simple, impartial language that clearly explains the meaning of a vote for or a vote against the issue. Each statement of implication prepared pursuant to this section, unless altered by a court order, is to be used on the petition and the ballot if the issue is placed on the ballot. The statements of implication must be placed beside the diagram provided for marking of the ballot in a manner similar to the following example:~~

☐ ~~FOR weekly commission meetings.~~

☐ ~~AGAINST weekly commission meetings.~~

(B) THE YES AND NO STATEMENT MUST BE PLACED BESIDE THE DIAGRAM PROVIDED FOR MARKING OF THE BALLOT IN A MANNER SIMILAR TO THE FOLLOWING:

☐ YES ON (INSERT THE TYPE OF BALLOT ISSUE AND ITS NUMBER)

☐ NO ON (INSERT THE TYPE OF BALLOT ISSUE AND ITS NUMBER)

(C) THE TYPE OF BALLOT ISSUE AND ITS NUMBER REQUIRED BY SUBSECTION (6)(B) MUST BE DESIGNATED BY THE ELECTION ADMINISTRATOR AT THE TIME THE PETITION IS SENT TO THE LOCAL GOVERNMENT ATTORNEY FOR REVIEW AS PROVIDED IN SUBSECTION (3).

(D) THE YES AND NO STATEMENT MAY NOT INCLUDE ADDITIONAL MATERIAL BEYOND THE REQUIREMENTS OF SUBSECTION (6)(B).

NEW SECTION. Section 5. Form of petition. (1) A local government petition must be substantially in the form provided by [sections 4 through 10]. Clerical or technical errors that do not interfere with the ability to judge the sufficiency of signatures on the petition do not render a petition void.

(2) (a) Petition sheets may not exceed 8 1/2 x 14 inches in size. Separate sheets of a petition may be fastened in sections of not more than 25 sheets.

(b) Near the top of each sheet containing signature lines must be printed the number of the ordinance referred or the petition title. If signature lines are printed on both the front and back of a petition sheet, the information required above must appear on both the front and back of the sheet.

(c) The complete text of the issue proposed or referred must be attached to or contained within each signature sheet if sheets are circulated separately. The text of the issue must be in the format prescribed by the governing body pursuant to 7-5-103(1) and, unless otherwise provided by the governing body of the local government, use the style and language and form guide of the most recent edition of the bill drafting manual furnished by the legislative services division. If sheets are circulated in sections, the complete text of the issue must be attached to each section.

(3) An internet posting of petition language must include a statement that the petition language and format may not be modified. An internet posting must include an affidavit in substantially the same form as provided in [section 6].

(4) Unless otherwise provided by law, the following is substantially the form for a local government petition calling for approval or rejection of an ordinance:

PETITION TO PLACE [ORDINANCE NO. ____ OR PROPOSED ORDINANCE NO. 20__ __]

ON THE ELECTION BALLOT

(a) If [insert appropriate percentage of voters or appropriate number of voters] of [insert

appropriate local government unit] voters sign this petition, this proposal will appear on the election ballot of [insert appropriate local government entity] to be conducted on [insert date of election]. If a majority of voters vote for this proposal at that election it will become law.

(b) We, the undersigned [insert appropriate local government entity] voters, propose that the county election administrator place the following proposal on the election ballot:

(Petition title written in conformity with [section 4])

~~(Statements of implication-YES AND NO STATEMENT~~ written in conformity with [section 4])

(c) Voters are urged to read the complete text of the proposal, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on this petition is only to put the proposal on the ballot and does not necessarily mean the signer agrees with the proposal.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or signs when not a legally registered Montana voter is subject to a \$500 fine, 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration form or the signature will not be counted.

(5) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, date, residence address, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration form may not be used as the only means to disqualify the signature of that petition signer.

NEW SECTION. **Section 6. Affidavit to accompany signatures.** An affidavit, in substantially the form provided in 1-6-105 or in the following form, must be attached to each petition sheet or petition section submitted to the county official:

I, (name of person who is the signature gatherer), swear that I gathered the signatures on the petition to which this affidavit is attached on the stated dates, that I believe the signatures on the petition are genuine, are the signatures of the person whose names they purport to be, and are the signatures of [insert appropriate local government unit] electors who are registered at the address or have the telephone number following the person's signature, and that the signers knew the contents of the petition before signing the petition.

(Date on which the first signature was gathered)

(Signature of petition signature gatherer)

(Address of petition signature gatherer)

Subscribed and sworn to me this ____ day of ____, 20__

Seal

(Person authorized to take oaths)

(Title or notarial information)

NEW SECTION. Section 7. Petition signatures. (1) A petition approved as to form may not be circulated for the purpose of signature gathering more than 1 year prior to the final date for filing the signed petition with the county election administrator.

(2) A local government petition may be signed only by a qualified elector of the local government.

(3) A person gathering signatures for a petition may not be paid anything of value based on the number of signatures gathered.

(4) Signatures may be withdrawn from a petition up to the time of final submission of petition sheets.

(5) Signatures must be verified in the manner provided in 13-27-103.

1 **NEW SECTION. Section 8. Governing body review of petition.** (1) The governing body OF THE
2 LOCAL GOVERNMENT may, within 60 days of receiving the petition, take the action called for in the petition. If the
3 action is taken, the question need not be submitted to the electors. If the county election administrator has
4 already certified the ballot issue pursuant to [section 9], the results of the election are void.

5 (2) If the governing body does not within 60 days take the proposed action and the ballot issue is
6 certified by the county election administrator, then the question must be submitted to the electors at the election
7 specified in the petition.

8
9 **NEW SECTION. Section 9. Submission of signatures -- certification -- election.** (1) Signed
10 sheets or sections of petitions with original signatures must be:

11 (a) collected and filed with the official responsible for the registration of electors in the county in
12 which the signatures were obtained within 90 days of the date of the notice that the petition was approved as to
13 form pursuant to [section 4]; and

14 (b) submitted no later than 4 weeks before the certification date specified in subsection (2) of this
15 section.

16 (2) The county election administrator shall certify a local government ballot issue for a local
17 government election no later than 85 days before the election.

18 (3) Subject to [section 7(1)] and subsections (1) and (2) of this section, an election on an approved
19 petition containing sufficient signatures held pursuant to [sections 1 through 13] must be conducted in
20 conjunction with the local government's next election held in accordance with Title 13, chapter 1, part 4.
21 However, if the petition requests a special election, is signed by at least 25% of the qualified electors, and
22 otherwise complies with the requirements of subsections (1) and (2) of this section, a special election must be
23 held on the date specified in the petition. In order to determine the number of signatures needed on a petition to
24 meet the percentage requirements of this subsection (3), the number of electors must be calculated as provided
25 in [section 4(2)].

26
27 **NEW SECTION. Section 10. Delay of effective date of ordinance -- suspension of emergency**
28 **ordinance.** (1) If an approved petition containing sufficient signatures is filed prior to the ordinance's effective

1 date or within 60 days after the passage of the ordinance, whichever is later, a petition requesting an election
2 on whether to amend or repeal the ordinance delays the ordinance's effective date until the ordinance is ratified
3 by the electors.

4 (2) If an approved petition containing sufficient signatures is filed within 60 days after the effective
5 date of an emergency ordinance, the emergency ordinance is suspended until it is ratified by the electors.

6
7 **NEW SECTION. Section 11. Ballot issue referred by governing body of local government.** (1) A
8 governing body of a local government may refer an existing or proposed ordinance to a vote of the people by
9 resolution.

10 (2) Unless otherwise provided by law, an ordinance referred to a vote of the people by the
11 governing body of a local government must comply with the statement of purpose AND IMPLICATION requirements
12 of [section 4(5)] and the ~~statements of implication~~ YES AND NO STATEMENT requirements provided by [section
13 4(6)].

14 (3) The governing body of the local government shall transmit a local government ballot issue
15 referred to a vote of the people according to the requirements of Title 13, chapter 1, part 4. THE ELECTION
16 ADMINISTRATOR SHALL DESIGNATE A BALLOT ISSUE AND ITS NUMBER AS PROVIDED IN [SECTION 4] WHEN THE ELECTION
17 ADMINISTRATOR RECEIVES THE TRANSMISSION OF A BALLOT ISSUE BY THE GOVERNING BODY PURSUANT TO THIS
18 SECTION.

19
20 **NEW SECTION. Section 12. Effective date of local government ballot issue.** If a majority of
21 people voting on the question of a local government ballot issue conducted pursuant to [sections 1 through 13]
22 approve the proposal, the local government ballot issue becomes effective when the election results are
23 officially declared, unless otherwise stated in the proposal.

24
25 **NEW SECTION. Section 13. Suit to determine validity and constitutionality of petition and**
26 **proposed action.** (1) The governing body OF THE LOCAL GOVERNMENT may direct that a suit be brought in
27 district court by the local government to determine whether the proposed action is valid and constitutional. The
28 suit must be initiated within 14 days of the date a petition is approved as to form under [section 4].

(2) An action brought under this section takes precedence over other cases and matters in the district court. The court shall render a decision as soon as possible as to whether the proposed action is valid and constitutional.

(3) If the defendant prevails, the defendant is entitled to be reimbursed by the local government for costs and reasonable attorney fees incurred.

(4) The 90-day period during which petition signatures must be collected under [section 10] begins on the date of the court order resolving the suit.

Section 14. Section 3-10-101, MCA, is amended to read:

"3-10-101. Number and location of justices' courts -- authorization to combine with city court -- justice's court of record. (1) There must be at least one justice's court in each county of the state, which must be located at the county seat. The board of county commissioners shall designate the number of justices in each justice's court.

(2) The board of county commissioners of each county of the state may establish:

(a) one additional justice's court located anywhere in the county; and

(b) one additional justice's court located in each city having a population of over 5,000, as provided in subsection (3).

(3) A city having a population of over 5,000 may, by resolution, request the board of county commissioners to constitute a justice's court in the city. A justice's court must be established in the city if the board of county commissioners approves the request by resolution.

(4) A justice of the peace of a court established pursuant to subsection (3) may act as the city judge upon passage of a city ordinance authorizing the action and upon approval of the ordinance by resolution of the board of county commissioners. If the ordinance and resolution are passed, the city and the county shall enter into an agreement for proportionate payment of the justice's salary, as established under 3-10-207 and 3-11-202, and for proportionate reimbursement for the use of facilities.

(5) A county may establish the justice's court as a court of record. If the justice's court is established as a court of record, it must be known as a "justice's court of record" and, in addition to the provisions of this chapter, is also subject to the provisions of 3-10-115 and 3-10-116. The court's proceedings

1 must be recorded by electronic recording or stenographic transcription and all papers filed in a proceeding must
2 be included in the record. A justice's court of record may be established by a resolution of the county
3 commissioners or pursuant to ~~7-5-131 through 7-5-135 and 7-5-137~~ and [sections 1 through 13]."

4
5 **Section 15.** Section 3-11-101, MCA, is amended to read:

6 **"3-11-101. City court established -- city court of record.** (1) A city court is established in each city
7 or town. A city judge shall establish regular sessions of the court. On judicial days, the court must be open for
8 all business, civil and criminal. On nonjudicial days, as defined in 3-1-302, the court may transact criminal
9 business only.

10 (2) A city may establish the city court as a court of record. If the city court is established as a court
11 of record, it must be known as a "city court of record". The court's proceedings must be recorded by electronic
12 recording or stenographic transcription, and all papers filed in a proceeding must be included in the record. A
13 city court of record may be established by a resolution of the city commissioners or pursuant to ~~7-5-131 through~~
14 ~~7-5-135 and 7-5-137~~ and [sections 1 through 13]."

15
16 **Section 16.** Section 7-1-4130, MCA, is amended to read:

17 **"7-1-4130. Petition.** Whenever a petition is authorized, unless the section authorizing the petition
18 establishes different criteria, the petition is subject to ~~7-5-131 through 7-5-135 and 7-5-137~~ and [sections 1
19 through 13]."

20
21 **Section 17.** Section 7-3-1204, MCA, is amended to read:

22 **"7-3-1204. Petition for city-county consolidated government -- election required.** (1) The
23 question of the abandonment and termination of the separate corporate existence and government of a county
24 and of each city and town ~~therein~~ within the county and the consolidation and merging of the existence and
25 government of the county and each of the cities and towns ~~therein~~ within the county into one municipal
26 corporation and government under the provisions of this part and part 13 ~~shall~~ must be submitted to the
27 registered electors of the county if a petition is filed in the office of the election administrator of the county,
28 signed by at least 20% of the electors of the county whose names appear on the official register of voters of the

1 county on the date of the filing of the petition, requesting that ~~such~~the question be submitted to the registered
 2 electors of the county.

3 (2) The petition ~~shall~~must be substantially in the form and ~~shall~~must be signed, verified, and filed
 4 in the manner prescribed in ~~7-5-132 through 7-5-135 and 7-5-137~~ and [sections 1 through 13] for initiative and
 5 referendum petitions and ~~shall~~must designate ~~therein~~within the petition the name by which the consolidated
 6 government is to be known, which must be either that of the county or of some one of the cities or towns ~~therein~~
 7 within the county."

8

9 **Section 18.** Section 7-5-131, MCA, is amended to read:

10 **"7-5-131. Right of initiative and referendum.** (1) Except as provided in subsection (2), the powers of
 11 initiative and referendum are reserved to the electors of each local government. Resolutions and ordinances
 12 within the legislative jurisdiction and power of the governing body of the local government may be proposed or
 13 amended and prior resolutions and ordinances may be repealed in the manner provided in ~~7-5-132 through 7-5-~~
 14 ~~135 and 7-5-137~~ and [sections 1 through 13].

15 (2) The powers of initiative do not extend to the following:

- 16 (a) the annual budget;
- 17 (b) bond proceedings, except for ordinances authorizing bonds;
- 18 (c) the establishment and collection of charges pledged for the payment of principal and interest
 19 on bonds;
- 20 (d) the levy of special assessments pledged for the payment of principal and interest on bonds;
- 21 (e) the prioritization of the enforcement of any state law by a unit of local government; or
- 22 (f) the regulation of auxiliary containers, defined in 7-1-121(4), as prohibited by 7-1-121(2)."

23

24 **Section 19.** Section 7-6-1504, MCA, is amended to read:

25 **"7-6-1504. Resort tax -- election required -- procedure -- notice.** (1) A resort community, resort
 26 area, or resort area district may not impose or, except as provided in 7-6-1505, amend or repeal a resort tax
 27 unless the resort tax question has been approved by a majority of the qualified electors voting on the question.

28 (2) The resort tax question may be presented to the qualified electors of:

1 (a) a resort community by a petition of the electors as provided in ~~7-5-131, 7-5-132, 7-5-134, 7-5-~~
2 ~~135, and 7-5-137~~ and [sections 1 through 13] or by a resolution of the governing body of the resort community;

3 (b) a resort area by a resolution of the board of county commissioners, following receipt of a
4 petition of electors as provided in 7-6-1508;

5 (c) an existing resort area district by a resolution of the board of directors of the resort area district
6 in accordance with special district election procedures provided in 13-1-501 through 13-1-505.

7 (3) If a proposed resort area is in more than one county, the resort tax question must be presented
8 to and approved by the qualified electors in the resort area of each county.

9 (4) The petition or resolution referring the taxing question must state:

10 (a) the rate of the resort tax;

11 (b) the duration of the resort tax;

12 (c) the date when the tax becomes effective, which date may not be earlier than 35 days after the
13 election; and

14 (d) the purposes that may be funded by the resort tax revenue. If the petition or resolution includes
15 the additional tax provided for in 7-6-1503(1)(b)(i), the revenue from the additional tax must be designated for
16 infrastructure and the specific uses must be identified in the petition or resolution. The additional levy for
17 infrastructure authorized under this subsection (4)(d) terminates when the specified infrastructure debts and
18 project costs are paid unless the board submits and the qualified electors approve another levy for
19 infrastructure.

20 (5) On receipt of an adequate petition, the governing body shall hold an election in accordance
21 with Title 13, chapter 1, part 5.

22 (6) (a) Before the resort tax question is submitted to the electorate of a resort community or resort
23 area, the governing body of the resort community or the board of county commissioners in the county in which
24 the resort area is located shall provide notice of the goods and services subject to the resort tax by a method
25 described in 13-1-108.

26 (b) The notice must be given two times, with at least 6 days separating the notices. The first notice
27 must be no more than 45 days prior to the election, and the last notice must be no less than 30 days prior to the
28 election.

(7) Notice of the election must be given as provided in 13-1-108 and include the information listed in subsection (4) of this section.

(8) The question of the imposition of a resort tax may not be placed before the qualified electors more than once in any fiscal year.

(9) The governing body, as defined in 7-6-1505, of a resort area, resort area district, or resort community that already imposes a resort tax may submit to the qualified electors of the resort area, resort area district, or resort community the question of whether to levy the additional resort tax provided for in 7-6-1503(1)(b)(i). The election must be noticed as provided in this section and conducted as provided in 13-1-501 through 13-1-505."

SECTION 20. SECTION 13-1-201, MCA, IS AMENDED TO READ:

"13-1-201. Chief election officer. The secretary of state is the chief election officer of this state, and it is the secretary of state's responsibility to obtain and maintain uniformity in the application, operation, and interpretation of the election laws other than those in Title 13, chapter 35, 36, or 37, or [sections 1 through 13]."

Section 21. Section 13-10-612, MCA, is amended to read:

"13-10-612. Violations -- penalties. A person who knowingly makes a false entry on a petition or affidavit ~~under this part~~ required by Title 13, chapter 27, or [sections 1 through 13] or who knowingly signs a petition to qualify the same political party for the same primary election more than once is guilty of unsworn falsification or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-203 or 45-7-208, as applicable."

Section 22. Section 13-27-611, MCA, is amended to read:

"13-27-611. Physical prevention of obtaining signatures or physical intimidation of signature gatherers prohibited. A person may not knowingly or purposefully physically prevent an individual from obtaining signatures or attempting to obtain signatures on a petition for a statewide or local government ballot issue or physically intimidate another individual when that individual is obtaining or attempting to obtain signatures on a petition for a statewide or local government ballot issue. A person who violates this section is

1 guilty of a misdemeanor and ~~upon~~on conviction shall be punished by a fine of not more than \$500, by
2 imprisonment for not more than 90 days, or by both a fine and imprisonment."

3

4 **Section 23.** Section 16-1-205, MCA, is amended to read:

5 **"16-1-205. Local option.** The electors of a county may, by approving an initiative as provided under
6 ~~7-5-131 through 7-5-135 and 7-5-137~~ and [sections 1 through 13], prohibit the sale and consumption of liquor or
7 of all alcoholic beverages within the county. If the initiative is presented to the board of county commissioners,
8 the board may not approve it but shall submit the proposal to the people as provided in ~~7-5-132~~ [section 4]."

9

10 **Section 24.** Section 16-12-301, MCA, is amended to read:

11 **"16-12-301. Local government authority to regulate -- opt-in requirement in certain counties --**
12 **exemption for existing licensees.** (1) (a) Except as provided in subsection (1)(b), a marijuana business may
13 not operate in a county in which the majority of voters voted against approval of Initiative Measure No. 190 in
14 the November 3, 2020, general election until:

15 (i) the category or categories of license that the marijuana business seeks has or have been
16 approved by the local jurisdiction where the marijuana business intends to operate as provided in subsection
17 (3) or (4); and

18 (ii) the business is licensed by the department pursuant to this chapter.

19 (b) A former medical marijuana licensee that does not apply for licensure as an adult-use
20 dispensary may operate in its existing premises in compliance with rules adopted by the department pursuant
21 to 16-12-201(2) notwithstanding a local jurisdiction's failure to take action pursuant to subsections (3) through
22 (6).

23 (c) A former medical marijuana licensee that intends to apply for licensure as a cultivator,
24 manufacturer, adult-use dispensary, or testing laboratory may operate in compliance with rules adopted by the
25 department pursuant to 16-12-201(2) notwithstanding a local jurisdiction's failure to take action pursuant to
26 subsections (3) through (6), provided that the former marijuana licensee has remained in good standing with
27 the department.

28 (d) For the purpose of this section, the marijuana business categories that must be approved by a

1 local jurisdiction under subsections (3) through (6) in a county in which the majority of voters voted against
2 approval of Initiative Measure No. 190 in the November 3, 2020, general election before a business may
3 operate are:

- 4 (i) cultivator;
- 5 (ii) manufacturer;
- 6 (iii) medical marijuana dispensary, except as provided in subsection (1)(b);
- 7 (iv) adult-use dispensary;
- 8 (v) combined-use marijuana licensee;
- 9 (vi) testing laboratory; and
- 10 (vii) marijuana transporter facility.

11 (e) Marijuana businesses located in counties in which the majority of voters voted to approve
12 Initiative Measure No. 190 in the November 3, 2020, general election are not subject to the local government
13 approval process under subsections (3) through (6).

14 (2) (a) To protect the public health, safety, or welfare, a local government may by ordinance or
15 otherwise regulate a marijuana business that operates within the local government's jurisdictional area. The
16 regulations may include but are not limited to inspections of licensed premises, including but not limited to
17 indoor cultivation facilities, dispensaries, manufacturing facilities, and testing laboratories in order to ensure
18 compliance with any public health, safety, and welfare requirements established by the department or the local
19 government.

20 (b) A former medical marijuana licensee that does not apply for licensure as an adult-use
21 dispensary is exempt from complying with any local governmental regulations that are adopted under this
22 subsection after July 1, 2021, until its first license renewal date occurring after January 1, 2022, or the
23 expiration of any grace period granted by the locality, whichever is later.

24 (3) An election regarding whether to approve any or all of the marijuana business categories listed
25 in subsection (1)(d) to be located within a local jurisdiction may be requested by filing a petition in accordance
26 with ~~7-5-131 through 7-5-135 and 7-5-137~~ and [sections 1 through 13] by:

- 27 (a) the qualified electors of a county; or
- 28 (b) the qualified electors of a municipality.

1 (4) (a) An election held pursuant to this section must be called, conducted, counted, and
2 canvassed in accordance with Title 13, chapter 1, part 4.

3 (b) An election pursuant to this section may be held in conjunction with a regular election of the
4 governing body, general election, or a regular local or special election.

5 (5) If the qualified electors of a county vote to approve a type of marijuana business to be located
6 in the jurisdiction, the governing body shall enter the approval into the records of the local government and
7 notify the department of the election results.

8 (6) (a) If an election is held pursuant to this section in a county that contains within its limits a
9 municipality of more than 5,000 persons according to the most recent federal decennial census:

10 (i) it is not necessary for the registered qualified electors in the municipality to file a separate
11 petition asking for a separate or different vote on the question of whether to prohibit a category of marijuana
12 business from being located in the municipality; and

13 (ii) the county shall conduct the election in a manner that separates the votes in the municipality
14 from those in the remaining parts of the county.

15 (b) If a majority of the qualified electors in the county, including the qualified electors in the
16 municipality, vote to approve a category of marijuana business to be located in the county, the county may
17 allow that category of marijuana business to operate in the county.

18 (c) (i) If a majority of the qualified electors in the municipality vote to approve a category of
19 marijuana business to be located in the municipality, the municipality may allow that type of marijuana business
20 to operate in the municipality.

21 (ii) If a majority of the qualified electors in the municipality vote to prohibit a category of marijuana
22 business from being located in the municipality, the municipality may not allow that type of marijuana business
23 to operate in the municipality.

24 (d) Nothing contained in this subsection (6) prevents any municipality from having a separate
25 election under the terms of this section.

26 (7) (a) A county or municipality that has voted to approve a category of marijuana business to be
27 located in the jurisdiction or a county in which the majority of voters voted to approve Initiative Measure No. 190
28 in the November 3, 2020, general election may vote to prohibit the previously approved or allowed operations

1 within the jurisdiction.

2 (b) A vote overturning the approval of a category of marijuana business or prohibiting the
3 previously permitted operation of marijuana businesses is effective on the 90th day after the local election is
4 held.

5 (8) A local government may not prohibit the transportation of marijuana within or through its
6 jurisdiction on public roads by any person licensed to do so by the department or as otherwise allowed by this
7 chapter."

8

9 **Section 25.** Section 16-12-311, MCA, is amended to read:

10 **"16-12-311. Local government excise tax-- election required -- procedure -- notice.** (1) A county
11 that has permitted an adult-use dispensary or medical marijuana dispensary to operate within its borders
12 pursuant to 16-12-301 or a county in which the majority of voters voted to approve Initiative Measure No. 190 in
13 the November 3, 2020, general election, may not impose or, except as provided in this section, amend or
14 repeal a local-option marijuana excise tax unless the local-option marijuana excise tax question has been
15 approved by a majority of the qualified electors voting on the question.

16 (2) The local-option marijuana excise tax question may be presented to the qualified electors of a
17 county by a petition of the electors as provided in ~~7-5-131, 7-5-132, 7-5-134, 7-5-135, and 7-5-137~~ and
18 [sections 1 through 13] or by a resolution of the governing body of the county.

19 (3) The petition or resolution referring the taxing question must state:

20 (a) the rate of the tax, which may not exceed 3% of the retail value of all marijuana and marijuana
21 products sold at an adult-use dispensary or medical marijuana dispensary;

22 (b) the date when the tax becomes effective, which may not be earlier than 90 days after the
23 election; and

24 (c) the purposes that may be funded by the tax revenue.

25 (4) On receipt of an adequate petition, the county's governing body shall hold an election in
26 accordance with Title 13, chapter 1, part 5.

27 (5) Notice of the election must be given as provided in 13-1-108 and include the information listed
28 in subsection (3) of this section.

(6) The question of the imposition of a local-option marijuana excise tax may not be placed before the qualified electors more than once in any fiscal year."

NEW SECTION. Section 26. Repealer. The following sections of the Montana Code Annotated are repealed:

7-5-132. Procedure for initiative or referendum election.

7-5-133. Processing of petition.

7-5-134. Signatures -- submission for approval -- statement of purpose and implication.

7-5-135. Suit to determine validity and constitutionality of petition and proposed action.

NEW SECTION. Section 27. Directions to code commissioner. Sections 13-10-612 and 13-27-611 are intended to be renumbered and codified as an integral part of Title 13, chapter 35, part 2.

NEW SECTION. Section 28. Codification instruction. [Sections 1 through 13] are intended to be codified as ~~an integral part of~~ A NEW CHAPTER IN Title 13, and the provisions of Title 13 apply to [sections 1 through 13].

NEW SECTION. Section 29. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 30. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 31. Applicability. [This act] applies to any local government ballot issue submitted to a local government for placement on the ballot on or after [the effective date of this act].

- END -