

Seeley Lake- Missoula County Sewer District By-laws amendments

The Board adopted amended bylaws at the November 2019 Board meeting except for Section 14. The following amendments were presented at Dec 19, 2019 board meeting for consideration. The Bylaw Committee, Beth, Walt and Rachelle asked to delay action and met by phone and have another proposal. At the January 16, 2020 Board meeting the Board will discuss both options.

December Proposal drafted by Jean Curtiss with input from Board discussion in November. Strikeouts in green were suggested by Walt Hill for consideration.

Amendments for ARTICLE VII: Section 14 Duties. (substitute language)

Section 14. Duties The Board of Directors, subject to restrictions of law, the Articles of Incorporation, and these Bylaws, shall exercise all of the powers of the District, and without prejudice to or limitation upon their general powers, it is hereby expressly provide that the Board of Directors shall have, and are hereby given full power and authority in respect to the matters set forth in M.C.A. 7-13-2201, et seq., and M.C.A. 7-13-2301 et seq., and hereinafter set forth to be exercised by ordinance and resolution duly adopted by the Board.

- A. To select and appoint all agents of the District, remove such agents of the District, prescribe such duties and designate such powers consistent with these Bylaws and fix their compensation and pay for such services.
- B. To prescribe, adopt and amend, from time to time, such equitable uniform rules and regulations as, in its discretion, may be deemed essential **or convenient** for the conduct of the business and affairs of the District and the guidance and control of its officers and employees; and to prescribe adequate penalties for the breach thereof.
- C. To order, as required by law, an independent audit of the books and accounts for the District and accept the report of the independent auditor at a regular meeting of the Board.
- D. To set an annual financial budget once a year for the management of the business of the District. The proposed budget shall be available for public review, properly noticed and a public hearing conducted prior to adoption by the Board. The budget shall be approved by a majority of the board prior to July 1 each year. The Board of Directors may, from time to time, review the budget and revise the same by a majority vote of the directors present **at the meeting**. Any revisions in the budget that require an increase in user fees will be submitted for public notice.
- E. To review rates for sewer usage rates charged by the District as often as deemed necessary, but at least once every **two** years, prior to the beginning of the new fiscal year, in order to fix the rate or charge for the services, facilities and benefits directly afforded or received, that will be sufficient in each year to provide income and revenue adequate for:
 - a. The payment of the reasonable expense of operation, maintenance and repair of the sewer system;
 - b. Administration of the District;
 - i. The establishment of maintenance of any required reserves, including reserves needed for expenditures for depreciation and replacement of system facilities, as may be determined necessary from time to time by the Board or as covenanted in the ordinance or resolution authorizing the outstanding bonds of the District.

Prior to the passage or enactment of an ordinance or resolution imposing, establishing, changing, increasing rates, fees or charges for services or facilities, the Board shall order a public hearing as provided in M.C.A. 7-13-2275.

- F. To determine and require performance bonds for certain District employees deemed necessary by the directors, the costs, thereof, to be paid by the District (M.C.A 7-13-2279).

The Board is elected to be the fiduciaries of the District. The Board of Directors has three primary legal, fiduciary duties known as the “duty of trust”, “duty of loyalty”, and “duty of good faith”.

1. Duty of Trust: Take care of the District by ensuring prudent use of all assets; to advance the mission of the District; and to make sure funds are used for their intended purposes focused on accomplishing the mission.
2. Duty of Loyalty: Ensure that the District activities and transactions are advancing the mission; are transparent and ethical; recognize and disclose conflicts of interest; reflect decisions in the best interest of the District not providing individual board members personal gain.
3. Duty of Good Faith: Ensure that the District is compliant with applicable laws and regulations; follows its own bylaws; and adheres to the adopted mission and internal policies.

The following text is the proposed bylaw amendment from the Bylaw Committee for Section 14 of the bylaws, the only section the board did not amend in November, and will be presented at the January meeting. The Board may choose to adopt an amendment with wording from either or both options.

Section 14: Public Service and Fiduciary Duties

Both individual board directors and the board at large have fiduciary duties as public servants. Fiduciary is derived from the Latin terms *fides* or *fiducia*, each of which means trust and confidence. In selecting board members, the electors put their trust and confidence in those agents, or fiduciaries, to act in the public’s best interests. The essence of public service ethics is putting the public’s interests first.

Law and ethics regarding fiduciary duties impose strict standards in three broad areas- 1) Diligence/Care, 2) Responsibility/Loyalty/Impartiality and 3) Honesty/Accountability.

Diligence/Care involve the Duty to Do a Good Job: A Board Director is expected to use his/her “best efforts” on behalf of those served- to competently and faithfully execute the duties of the office.

Responsibility/Loyalty/Impartiality involve the Duty to Put Others’ Interests First: Board directors have an absolute obligation to put the public’s interest before their own direct or indirect personal interests and to represent all constituents fairly.

Honesty/Accountability involve the Duty to be Open and Transparent: Fiduciary duties have limits in the public service context; directors are answerable to both courts and the public. When a director and a board focus on the public’s trust and confidence in the decision-making process and avoid conduct that may be strictly speaking, legal but not ethical, they are demonstrating undivided respect and loyalty to the public’s interest.