

HOUSE BILL 565

IN THE HOUSE

February 5, 1979

Introduced and referred to
Committee on Local Government

February 20, 1979

Committee recommend bill,
as amended.

February 21, 1979

Printed and placed on members'
desks.

February 22, 1979

Second reading, do not pass.

1 *House* BILL NO. *565*
 2 INTRODUCED BY *Kesler, Doris Melcally, Oberg - Gluck*
 3 *Kammin, Helenahane, Ruskamp*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO SIMPLIFY AND
 5 MODERNIZE THE ANNEXATION AND DETACHMENT PROCEDURES
 6 AUTHORIZED FOR MUNICIPALITIES; AMENDING SECTION 7-33-2127,
 7 MCA; REPEALING SECTIONS 7-2-4201 THROUGH 7-2-4203, 7-2-4301
 8 THROUGH 7-2-4325, 7-2-4401 THROUGH 7-2-4407, 7-2-4501
 9 THROUGH 7-2-4504, 7-2-4601 THROUGH 7-2-4609, 7-2-4701
 10 THROUGH 7-2-4752, AND 7-2-4801 THROUGH 7-2-4810, MCA."

11 WHEREAS, orderly urban development is essential to the
 12 continued economic development of the state; and

13 WHEREAS, a municipality is an appropriate unit of local
 14 government to provide the governmental services essential
 15 for orderly urban development and for the protection of
 16 health, safety, and welfare in areas being used intensively
 17 for residential, commercial, industrial, institutional, and
 18 governmental purposes or in areas undergoing such
 19 development; and

20 WHEREAS, annexation and detachment must be based on the
 21 interests of those being annexed or detached and on the
 22 interests of the community as a whole.

23 THEREFORE, it is the purpose of [this act] to effect
 24 these policies by facilitating municipal annexation and
 25

1 allowing municipal detachment.

2
 3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4 NEW SECTION. Section 1. General definitions. In
 5 [sections 1 through 20], unless otherwise provided or the
 6 context requires a technical or other interpretation, the
 7 following definitions apply:

8 (1) "Agricultural land" means land meeting the
 9 following qualifications:

10 (a) The area of such land is not less than 5
 11 contiguous acres, and it has been actively devoted to
 12 agriculture during the last growing season and it continues
 13 to be actively devoted to agricultural use.

14 (b) It produces for sale or home consumption the
 15 equivalent of 15% or more of the owner's annual gross income
 16 regardless of the number of contiguous acres in the
 17 ownership.

18 (c) Land shall not be classified or valued as
 19 agricultural if it is subdivided with stated restrictions
 20 prohibiting its use for agricultural purposes.

21 (d) The grazing on land by a horse or other animal
 22 kept as a hobby and not as a part of a bona fide
 23 agricultural enterprise shall not be considered a bona fide
 24 agricultural operation.

25 (2) "Agricultural use" means land used to produced

1 field crops, including but not limited to grains, feed
2 crops, fruits, vegetables, or for grazing or in a cropland
3 retirement program.

4 (3) "Area" means the territory proposed to be annexed
5 or detached.

6 (4) "Annexation" means the alteration of the
7 boundaries of a municipality to add territory to the
8 municipality.

9 (5) "Contiguous" means any area which, at the time
10 annexation procedures are initiated, either abuts directly
11 or converges at any point with the municipal limits or a
12 municipality or is separated from the municipal limits by a
13 trafficway or right-of-way, a strip of unplatted land too
14 narrow or too small to be platted, a creek or river, the
15 right-of-way of a railroad or other public service
16 corporation, lands owned by the municipality or other
17 political subdivision, or lands owned by the state or
18 federal government.

19 (6) "Detachment" means the exclusion of an area
20 included within the municipal limits from the jurisdiction
21 of the municipality.

22 (7) "Mineral extraction" means only the extraction of
23 gas, oil, coal, or other metals from the land.

24 (8) "Resident freeholder" means a person who maintains
25 his residence on real property in which he holds an estate

1 for life or inheritance or for which he is the purchaser of
2 such an estate under a contract for deed, some memorandum of
3 which has been filed with the county clerk and recorder.

4 (9) "Wholly surrounded area" means an area of land
5 which is completely encircled by land included within the
6 municipal limits.

7 (10) "Finding of public endangerment" means a finding,
8 adopted in accordance with [section 15], which states that
9 the public health, safety, and welfare of the inhabitants of
10 both the municipality and the area proposed to be annexed
11 are endangered by the lack of or inadequacy of public
12 services in the area to be annexed which could be provided
13 by a municipality in a manner which would eliminate the
14 public endangerment.

15 (11) "Governing body" means the legislative body of the
16 local government.

17 (12) "Chief executive" means the elected executive in
18 government adopting the commission-executive form, the
19 manager in a government adopting the commission-manager
20 form, the chairman in a government adopting the
21 commission-chairman form, the town chairman in a government
22 adopting the town meeting form, or the officer or officers
23 so designated in the charter in a government adopting a
24 charter.

25 (13) "Elections administrator" means the person

1 designated by the governing body as the registrar.

2 (14) "Subordinate service district" means any local
3 government district authorized by law to provide any local
4 government service, with specific boundaries in which
5 certain services are carried out and in which taxes may or
6 may not be levied to finance the service.

7 NEW SECTION. Section 2. Methods of annexation. There
8 are six separate and distinct procedures by which areas may
9 be annexed to a municipality. These include:

10 (1) annexation of municipal property as authorized by
11 [section 10];

12 (2) annexation of any real property by request as
13 authorized by [section 11];

14 (3) annexation of parcels of land platted as additions
15 to a municipality as authorized by [section 12];

16 (4) annexation of a wholly surrounded area as
17 authorized by [section 13];

18 (5) annexation with or without protest as authorized
19 by [section 14]; and

20 (6) annexation through a finding of public
21 endangerment as authorized by [section 15].

22 NEW SECTION. Section 3. Procedure for annexation.
23 Except as specifically provided in [sections 10 through 12],
24 all annexation procedures authorized by [this act] shall
25 include the following minimum requirements and the

1 additional requirements specified for each separate
2 procedure:

3 (1) Upon the initiative of the governing body or upon
4 the receipt of a petition signed by 50% of the resident
5 freeholders of an area, the governing body shall adopt a
6 resolution of intent which includes a finding of public
7 interest, a clear description of the boundaries of the area
8 under consideration, the method for annexation, and a
9 statement that the area proposed to be annexed meets the
10 requirements of [section 4].

11 (2) (a) The governing body shall provide for the
12 publication of notice of:

13 (i) the resolution of intent; and

14 (ii) the public hearing to consider the proposed
15 annexation.

16 (b) The notice shall clearly describe the boundaries
17 of the area under consideration for annexation and set the
18 date and place of the public hearing.

19 (3) The governing body shall conduct a public hearing
20 on the proposed annexation, which shall be held not less
21 than 30 days or more than 60 days after the passage of the
22 resolution of intent, except for a hearing under [section
23 14], which shall be held not less than 30 days or more than
24 60 days after the deadline for receiving written protests.

25 (4) At the public hearing, a representative of the

1 municipality shall explain the proposed annexation.
 2 Following the explanation, any person residing or owning
 3 property in the proposed area and any resident of the
 4 municipality or other interested person shall be given an
 5 opportunity to testify.

6 (5) Before reaching a final decision, the governing
 7 body shall take into consideration all information received,
 8 opinions expressed, and protests received.

9 (6) (a) The governing body may, at any regular or
 10 special meeting held no sooner than 6 days and no later than
 11 60 days following the public hearing, either adopt a
 12 resolution terminating the annexation proceeding or adopt an
 13 annexation resolution extending the municipal limits to
 14 include all or any part of the area described in the notice
 15 of the public hearing which meets the requirements of the
 16 annexation procedure used.

17 (b) The annexation resolution shall:

18 (i) contain a finding of public interest;

19 (ii) contain a statement that the area to be annexed
 20 meets the requirements of [section 4];

21 (iii) contain any other statement required by the
 22 procedure used;

23 (iv) describe the external boundaries of the area to be
 24 annexed;

25 (v) contain a statement of the intent of the

1 municipality to provide services to the area being annexed
 2 as required by [section 6] and, if annexed under the
 3 procedures authorized in [section 15], contain a statement
 4 of intent of the municipality to provide services in the
 5 area being annexed as set forth in the report adopted by the
 6 governing body as required by [sections 15 and 16];

7 (vi) establish the effective date of the annexation,
 8 which may be any date within 12 months from the date of
 9 passage of the resolution.

10 (c) If a portion of or an entire county subordinate
 11 service district or county rural improvement district is
 12 annexed to a municipality, the municipal government may,
 13 after the consent of the county governing body, in the
 14 resolution annexing the area:

15 (i) authorize the county to continue to administer the
 16 county subordinate service district or county rural
 17 improvement district;

18 (ii) transfer administration of the subordinate service
 19 district or rural improvement district within the municipal
 20 limits to the municipality; or

21 (iii) abolish the subordinate service district or rural
 22 improvement district and assume responsibility for providing
 23 the services and any outstanding indebtedness related to
 24 those services.

25 (7) The chief executive shall file with the county

1 clerk and recorder:

2 (a) a certified copy of the annexation resolution; and

3 (b) an accurate map of the annexed territory.

4 (8) The filing shall complete all required annexation
5 procedures.

6 NEW SECTION. Section 4. Standards to be met before
7 annexation can occur. The total area to be annexed shall:

8 (1) be contiguous to the municipal limits at the time
9 the annexation proceeding is begun;

10 (2) not be included within the municipal limits of
11 another incorporated municipality; and

12 (3) meet any standard established by the separate
13 annexation procedures authorized by [sections 1 through 20].

14 NEW SECTION. Section 5. Description of area. In
15 describing the area to be annexed and the new municipal
16 limits, a municipal governing body shall, wherever
17 practical, use natural topographic features such as ridge
18 lines, streams, and creeks as limits. A municipal governing
19 body shall include land on both sides of a trafficway
20 wherever practical.

21 NEW SECTION. Section 6. Provision for municipal
22 services to annexed areas. (1) Except where services are
23 provided in another manner, after the effective date of the
24 annexation resolution, the newly annexed area and its
25 citizens and property are subject to all general obligation

1 debts, ordinances, and regulations in force in the
2 municipality and shall be entitled to the same privileges
3 and benefits as other parts of the municipality.

4 (2) The newly annexed area shall be subject to the
5 municipal taxes levied for the fiscal year following the
6 effective date of annexation.

7 NEW SECTION. Section 7. Exemption from taxation for
8 water or sewer debt service. Annexed property which is part
9 of a subordinate service district or rural improvement
10 district which has installed water, sewer, or other
11 utilities or improvements paid for by the residents of the
12 subordinate service district may be exempted in the
13 annexation resolution from that part of the municipal taxes
14 levied for sewer, water, or other utility debt service for
15 an appropriate period of time after the effective date of
16 the annexation resolution.

17 NEW SECTION. Section 8. Simultaneous proceedings. (1)
18 If a municipality is considering the annexation or
19 detachment of two or more areas which are all contiguous to
20 the municipal limits but are not adjacent to one another, it
21 may undertake simultaneous proceedings under authority of
22 [sections 1 through 20] for the annexation or detachment of
23 the areas.

24 (2) When undertaking simultaneous proceedings, a
25 municipality may use more than one annexation procedure.

HB 565

1 (3) Whenever two or more adjacent areas taken as a
2 whole are contiguous to a municipality, they may be annexed
3 although one or more of the areas taken alone is not
4 contiguous to the municipal limits when the annexation
5 procedures are initiated.

6 NEW SECTION. Section 9. Moratorium. If an annexation
7 procedure is terminated by protest or election, the
8 governing body may not initiate any further proceedings to
9 annex an area for a period of 1 year beginning on the date
10 of the final action by the governing body on the annexation
11 procedure.

12 NEW SECTION. Section 10. Annexation of municipal
13 property. A municipality may annex any municipal property
14 through the procedure prescribed by [section 3], even though
15 such property is not contiguous to the municipality.

16 NEW SECTION. Section 11. Annexation of real property
17 by request. (1) Any real property or any property of a
18 governmental agency may be annexed to a municipality through
19 the procedures prescribed by this section.

20 (2) The owner or a majority of the owners shall submit
21 to the governing body a description of the property as
22 recorded or filed in the county clerk and recorder's office
23 and a written request that the property be annexed.

24 (3) The municipal governing body may either reject the
25 request or may annex the property by resolution. The

1 annexation resolution shall set forth the conditions of
2 annexation.

3 (4) Prior to the adoption of the annexation
4 resolution, the municipality may require an agreement with
5 the owner or owners of the property to be annexed outlining
6 the manner in which services will be provided. This
7 agreement shall be filed with the county clerk and recorder
8 and shall be binding on the land and all owners, present and
9 future.

10 NEW SECTION. Section 12. Annexation of parcels of
11 land platted as additions to a municipality. (1) Whenever
12 any area that is contiguous to the limits of a municipality
13 is platted, the subdivider may file the preliminary plat as
14 an addition to the municipality.

15 (2) Any plat filed as an addition to a municipality
16 shall come under the jurisdiction of the governing body of
17 the municipality.

18 (3) When the governing body of a municipality adopts a
19 final plat that has been filed as an addition to the
20 municipality, the governing body may also adopt a resolution
21 of annexation accepting the platted area as an addition to
22 the municipality. The annexation resolution shall contain
23 those provisions prescribed in [section 11].

24 NEW SECTION. Section 13. Annexation of wholly
25 surrounded area. Except for land used for agricultural

1 purposes or mineral extraction, a municipality may annex an
2 area wholly surrounded by a municipality through the
3 procedures prescribed by this section. Land used for
4 agricultural purposes or mineral extraction may be annexed
5 through the procedures prescribed by this section with the
6 consent of the owner. The procedure for annexation under
7 this section is as follows:

8 (1) Upon the initiative of the governing body or upon
9 the receipt of a petition signed by 50% of the resident
10 freeholders of an area wholly surrounded by a municipality,
11 the governing body shall adopt a resolution of intent which
12 includes a finding of public interest and a clear
13 description of the boundaries of the area under
14 consideration.

15 (2) (a) The governing body shall provide for the
16 publication of notice of:

17 (i) the resolution of intent; and

18 (ii) the public hearing to consider the proposed
19 annexation.

20 (b) The notice shall clearly describe the boundaries
21 of the area under consideration for annexation and set the
22 date and place of the public hearing.

23 (3) The governing body shall conduct a public hearing
24 on the proposed annexation, which shall be held not less
25 than 30 days or more than 60 days after the passage of the

1 resolution of intent.

2 (4) At the public hearing, a representative of the
3 municipality shall explain the proposed annexation.
4 Following the explanation, any person residing or owning
5 property in the proposed area and any resident of the
6 municipality or other interested person shall be given an
7 opportunity to testify.

8 (5) Before reaching a final decision, the governing
9 body shall take into consideration all information received,
10 opinions expressed, and protests received.

11 (6) (a) The governing body may, at any regular or
12 special meeting held no later than 60 days following the
13 public hearing, either adopt a resolution terminating the
14 annexation proceeding or adopt an annexation resolution
15 extending the municipal limits to include all or any part of
16 the area described in the notice of the public hearing.

17 (b) The annexation resolution shall:

18 (i) contain a finding of public interest;

19 (ii) contain a statement that the area to be annexed is
20 wholly surrounded;

21 (iii) describe the external boundaries of the area to
22 be annexed;

23 (iv) contain a statement that services available to the
24 area to be annexed are equivalent to the services available
25 in the area contiguous to the area to be annexed; and

HB 565

1 (v) establish the effective date of the annexation,
2 which may be any date within 12 months from the date of
3 passage of the resolution.

4 (c) If a portion of or an entire county subordinate
5 service district or county rural improvement district is
6 annexed to a municipality, the municipal government may,
7 after the consent of the county governing body, in the
8 resolution annexing the area:

9 (i) authorize the county to continue to administer the
10 county subordinate service district or county rural
11 improvement district;

12 (ii) transfer administration of the subordinate service
13 district or rural improvement district within the municipal
14 limits to the municipality; or

15 (iii) abolish the subordinate service district or rural
16 improvement district and assume responsibility for providing
17 the services and assume any outstanding debt service of that
18 subordinate service district or rural improvement district.

19 (7) The chief executive shall file with the county
20 clerk and recorder:

- 21 (a) a certified copy of the annexation resolution; and
- 22 (b) an accurate map of the annexed territory.

23 (8) The filing shall complete the required annexation
24 procedure of this section.

25 NEW SECTION. Section 14. Annexation with and without

1 protest. (1) A municipality may annex any area through the
2 procedures prescribed by [section 3] and this section.

3 (2) The governing body may initiate procedures under
4 this section or the governing body may be requested to begin
5 proceedings under this section by a petition signed by any
6 amount of the resident freeholders in an area requesting
7 annexation.

8 (3) In addition to published notice, mailed notice
9 shall be given to all resident freeholders in the area. In
10 addition to other requirements, both the published and
11 mailed notices shall state that, for a period of 90 days
12 after the publication or mailing date of the notice, written
13 protests to the proposed annexation will be received at the
14 office of the municipality.

15 (4) After the public hearing and before proceeding,
16 the governing body shall consider all written protests; if a
17 majority of the resident freeholders in the area have
18 protested in writing, the governing body may adopt a
19 resolution to annex the area.

20 (5) If a majority of the resident freeholders in the
21 area have objected in writing, the annexation proceedings
22 are terminated and the governing body may not initiate any
23 annexation proceedings upon the area for a period of 1 year.

24 (6) In determining the number of written protests
25 submitted on any annexation proceeding, the municipality

1 shall take into account any waivers of protest of annexation
 2 which are on file with the county clerk and recorder. Such
 3 waivers, which may be entered into between the municipality
 4 and any person or persons wishing to obtain any city service
 5 prior to annexation, shall be binding upon the land, and no
 6 owner of land for which such a waiver has been filed may
 7 protest any annexation proceeding by a municipality.

8 NEW SECTION. Section 15. Annexation through a finding
 9 of public endangerment. (1) (a) A municipality may annex an
 10 area through the procedures prescribed by [subsections (2)
 11 through (7) of section 3] and [section 16] only if a
 12 resolution granting a finding of public endangerment has
 13 been adopted in accordance with the procedures prescribed in
 14 [this act].

15 (b) The governing body of a municipality may by
 16 resolution request the finding of public endangerment.

17 (c) The request shall be delivered to the governing
 18 body of the county in which the proposed area to be annexed
 19 lies and to the district court judge or judges of that
 20 county.

21 (d) The senior district court judge shall, within 10
 22 days of receiving the request, set a date for a public
 23 hearing on the requested finding of public endangerment. The
 24 public hearing shall be held at least 60 but not more than
 25 90 days following receipt of the request. The municipality

1 shall publish notice and shall mail notice to all resident
 2 freeholders in the area. The municipality shall also publish
 3 notice stating that 14 days before the public hearing a
 4 summary of its preliminary findings and its reasons for
 5 requesting a finding of public endangerment shall be
 6 available at the office of the municipality.

7 (e) During the period following reception of the
 8 request and before the public hearing, the district court
 9 judge or judges and the county and municipal governing body
 10 may conduct individual or joint information meetings or
 11 hearings they consider necessary and may make available a
 12 summary of their preliminary findings.

13 (f) At the public hearing, the senior district court
 14 judge shall preside and testimony shall be taken to
 15 investigate the validity of the requested finding of public
 16 endangerment. The municipality, the county, and the district
 17 court judge or judges shall all present their preliminary
 18 findings, if any.

19 (g) No later than 10 days following the public
 20 hearing, a resolution must be adopted granting or denying
 21 the requested finding of public endangerment. Granting of
 22 the requested finding shall be by separate majorities of
 23 both the governing bodies of the municipality and the county
 24 and the unanimous consent of the district court judge or
 25 judges. Failure to gain any majority or the unanimous

1 consent of the judge or judges shall be considered adoption
2 of a resolution denying the finding of public endangerment.

3 (h) If the requested finding of public endangerment is
4 granted, the municipality may proceed through the procedures
5 prescribed by [subsections (2) through (7) of section 3] and
6 [section 16].

7 (2) In addition to other requirements, the published
8 notice shall state that the report required by [section 16]
9 will be available in the office of a designated official at
10 least 14 days prior to the date of the public hearing.

11 (3) At least 14 days before the date of the public
12 hearing, the governing body shall approve the report
13 required by [section 16] and make it available to the public
14 at a designated office. In addition the municipality may
15 prepare a summary of the full report for public
16 distribution.

17 (4) The public hearing shall include an explanation of
18 the report provided for in [section 16].

19 (5) The municipal governing body shall take into
20 consideration facts presented at the public hearing and
21 shall have authority to amend the service report required by
22 [section 16] and to make changes in the plans for serving
23 the area proposed to be annexed so long as such changes meet
24 the requirements of [section 16].

25 NEW SECTION. Section 16. Plans to provide services.

1 (1) A municipality proceeding under [section 15] shall
2 develop plans for the extension of services to the area
3 proposed to be annexed and shall, prior to the public
4 hearing, prepare a report adopting its plans to provide
5 services to the annexed area. This report shall include:

6 (a) a map or maps of the municipality and adjacent
7 areas to show the following information:

8 (i) the present and proposed municipal limits of the
9 municipality;

10 (ii) the present trafficways, major trunk water mains,
11 sewer interceptors and outfalls, and other utility lines as
12 required in subsection (2) of this section; and

13 (iii) the general land use pattern in the areas to be
14 annexed;

15 (b) a statement showing that the area to be annexed
16 meets the requirements of [section 4]; and

17 (c) a statement setting forth the plans of the
18 municipality for extending to the area to be annexed each
19 major municipal service performed within the municipality at
20 the time of annexation.

21 (2) Specifically, the plans shall:

22 (a) provide a long-range plan for the extension of
23 services and the acquisition of public properties outside
24 the municipal limits. This plan must show anticipated
25 development a minimum of 5 years into the future, showing on

1 a yearly basis how the municipality plans to extend services
2 and develop and add sections to the municipality.

3 (b) provide for the status of existing county
4 subordinate service districts and rural improvement
5 districts;

6 (c) provide for extending police protection, fire
7 protection, and garbage collection to the area to be annexed
8 on substantially the same basis and in the same manner as
9 these services are provided within the rest of the
10 municipality prior to the annexation, clearly stating that
11 the entire municipality intends to share the tax burden for
12 these services;

13 (d) provide for future extension of trafficways and of
14 major trunk water mains, sewer outfall lines, and other
15 utility services into the area to be annexed so that when
16 these trafficways and utility lines become necessary and are
17 constructed, property owners in the area to be annexed will
18 be able to secure these services according to the policies
19 in effect in the municipality for extending the services to
20 individual lots or subdivisions;

21 (e) set forth a proposed timetable for construction of
22 trafficways and utility lines if extension of trafficways
23 and water, sewer, or other utility lines into the area to be
24 annexed is necessary; and

25 (f) provide a method to be set forth by which the

1 municipality plans to finance extension of services into the
2 area to be annexed.

3 (3) If the area is currently serviced by adequate
4 water and sewage services, trafficways, and curbs and
5 gutters and no capital improvements are needed to provide
6 adequate services, the plan shall so state.

7 (4) If any public works facility is to be financed by
8 special improvement district bond and an election is not
9 required, the area may be annexed.

10 NEW SECTION. Section 17. Detachment. Any area, any
11 part of which borders on the municipal limits, may be
12 detached from that municipality in the following manner:

13 (1) A petition requesting detachment shall be
14 submitted to the city clerk of the municipality.

15 (2) The petition shall:

16 (a) be signed by either a majority of the electors of
17 the municipality or by the owners of at least three-fourths
18 of the property sought to be detached;

19 (b) adequately set out and describe the area to be
20 detached;

21 (c) adequately set out and describe the proposed new
22 boundaries of the municipality;

23 (d) adequately set out and describe the trafficways
24 and public plans, if any, in the area sought to be detached
25 and shall distinctly specify those which are to be retained

HB 565

1 for use of the public after detachment.

2 (3) Upon receiving an adequate detachment petition if
3 it is found by the governing body of the municipality to be
4 in the public interest, the governing body shall adopt a
5 resolution of intent to detach the area.

6 (4) Notice shall be published stating the findings and
7 resolution of the governing body and that a public hearing
8 will be held on the question of detachment.

9 (5) The governing body shall hold a public hearing on
10 the detachment proposal and receive testimony from residents
11 and other interested persons.

12 (6) The governing body shall take into consideration
13 all the information received and opinions expressed.

14 (7) The governing body may at any regular or special
15 meeting held no sooner than 6 days and no later than 60 days
16 following the public hearing either adopt a resolution
17 terminating the detachment proceeding or adopt a detachment
18 resolution modifying the municipal limits to exclude all or
19 any part of the area described in the notice of the public
20 hearing which met the requirements of this section.

21 (8) The detachment resolution shall:

22 (a) contain a finding of public interest;

23 (b) contain a statement that the area to be detached
24 meets the requirements of this section;

25 (c) describe the external boundaries of the area to be

1 detached and the new boundaries of the municipality;

2 (d) describe the trafficways and other public places
3 which are to be vacated or remain dedicated for public use;

4 (e) establish the effective date of the detachment,
5 which may be any date within 12 months from the date of
6 passage of the resolution but not sooner than 90 days after
7 passage.

8 (9) The area shall not be detached if written protests
9 are received, within 90 days of the passage of the
10 resolution to detach, from:

11 (a) owners of over 50% of the value of property within
12 the area; or

13 (b) owners of over 50% of the value of property within
14 the municipal limits immediately adjacent to and contiguous
15 to the area. For the purpose of this section, "adjacent" and
16 "contiguous" mean the property on the opposite side of a
17 trafficway from the property sought to be detached.

18 (10) Detachment shall not relieve any detached area
19 from its liability on any outstanding bonded indebtedness of
20 the municipality or any indebtedness of any improvement or
21 subordinate service district of which the detached area was
22 a part at the time of the passage of the resolution.

23 (11) For the purposes of levying any tax or assessment
24 necessary for collection on any indebtedness specified in
25 subsection (10), the detached area is and shall remain under

1 the jurisdiction of the municipality.

2 (12) The chief executive shall file with the county
3 clerk and recorder:

- 4 (a) a certified copy of the detachment resolution;
- 5 (b) an accurate map of the detached area; and
- 6 (c) an accurate map of the new municipal limits.

7 (13) The filing shall complete all required detachment
8 procedures.

9 NEW SECTION. Section 18. Status of trafficways. (1) A
10 county trafficway within an annexed area shall become a
11 municipal trafficway on the effective date of an annexation
12 resolution.

13 (2) A municipal trafficway not vacated by a resolution
14 of detachment shall become a county trafficway on the
15 effective date of a detachment resolution.

16 NEW SECTION. Section 19. Judicial review. (1) Within
17 30 days following the passage of a detachment resolution
18 under authority of [this act], any person owning property in
19 the detached area or area proposed to be detached who
20 believes that he will suffer material injury may file a
21 petition in a district court seeking review of the municipal
22 governing body if:

- 23 (a) the municipal governing body failed to comply with
- 24 the procedures prescribed in [section 17]; or
- 25 (b) the municipal governing body failed to meet any

1 requirements set forth as a part of that procedure and the
2 requirements apply to his property.

3 (2) The petition shall state what exceptions are taken
4 to the action of the municipal governing body and what
5 relief the petitioner seeks. The petition shall be served
6 upon the municipality in the manner provided for the service
7 of civil process.

8 (3) Within 30 days after receipt of the copy of the
9 petition for review or within such additional time as the
10 court may allow, the municipality shall transmit to the
11 review court:

12 (a) a transcript of the portions of the municipal
13 Journal or minute book in which the procedure for detachment
14 has been set forth; and

15 (b) a copy of any report or other document required by
16 the procedure for detachment set forth in [section 17].

17 (4) If two or more petitions for review are submitted
18 to the court, the court may consolidate all the petitions
19 for review at a single hearing.

20 (5) At any time before or during the review
21 proceeding, any petitioner may apply to the reviewing court
22 for an order staying the operation of the detachment
23 resolution pending the outcome of the review. The court may
24 in its discretion grant or deny the stay upon such terms as
25 it considers proper, and it may permit detachment of any

HB 565

1 part of the area described in the resolution concerning
2 which no question for review has been raised.

3 (6) The review shall be conducted by the court without
4 a jury. The court may hear oral arguments and receive
5 written briefs and may take evidence intended to show
6 either:

7 (a) that the statutory procedure was not followed; or

8 (b) that the requirements of [section 17] have not
9 been met.

10 (7) The court may affirm the action of the municipal
11 governing body without change, or it may:

12 (a) remand the resolution to the municipal governing
13 body for further proceedings if procedural irregularities
14 are found to have materially prejudiced the substantive
15 rights of any petitioner; or

16 (b) remand the resolution to the municipal governing
17 body for amendment of the boundaries of the area in question
18 to conform to the requirements of [section 17] if it finds
19 the requirements have not been met.

20 (8) If the municipal governing body fails to take
21 action in accordance with the court's instructions upon
22 remand within 90 days from receipt of the instruction, the
23 detachment proceeding is considered void.

24 (9) Any party to the review proceedings, including the
25 municipality, may appeal to the supreme court from the final

1 judgment of the district court under rules of procedure
2 applicable in other civil cases. The appealing party may
3 apply to the lower court for a stay in its final
4 determination or a stay of the detachment resolution,
5 whichever is appropriate, pending the outcome of the appeal;
6 however, the district court may, with the agreement of the
7 municipality, permit detachment to be effective with respect
8 to any part of the area concerning which no appeal is being
9 made and which can be detached from the municipality without
10 regard to any part of the area concerning which an appeal is
11 being made.

12 (10) If part or all of the area detached under the
13 terms of a detachment resolution is the subject of an appeal
14 to the district court or the supreme court on the effective
15 date of the resolution, then the resolution shall be
16 considered amended to make the effective date with respect
17 to the area the date of the final judgment of the district
18 or supreme court, whichever is appropriate, or the date the
19 municipal governing body completes action to make the
20 resolution conform to the court's instructions in the event
21 of remand.

22 NEW SECTION. Section 20. When property is contiguous,
23 An area that abuts directly on a municipal property annexed
24 under the procedures of [section 10] but does not abut on
25 other municipal limits may not be considered contiguous

1 unless that municipal property annexed under the procedures
2 of [section 10] also abuts the municipal limits of the
3 municipality.

4 Section 21. Section 7-33-2127, MCA, is amended to
5 read:

6 "7-33-2127. Withdrawal by owner of individual tract
7 adjacent to municipality. In lieu of the detraction
8 procedure set forth in 7-33-2122 and 7-33-2123, whenever a
9 person owns land adjacent to a city or town and wishes to
10 have only that land annexed to the city or town, the land
11 may be detracted as follows:

12 (1) The owner shall mail notice to the chairman of the
13 trustees of the fire district or, if none, to the board of
14 county commissioners of his intention to request annexation.

15 (2) The owner shall attach a copy of this notice of
16 intention to his petition to the municipal governing body
17 requesting annexation.

18 (3) Following adoption of the annexation order under
19 ~~7-2-4714~~ [sections 1 through 16], the land is detracted from
20 the fire district."

21 Section 22. Repealer. Sections 7-2-4201 through
22 7-2-4203, 7-2-4301 through 7-2-4325, 7-2-4401 through
23 7-2-4407, 7-2-4501 through 7-2-4504, 7-2-4601 through
24 7-2-4609, 7-2-4701 through 7-2-4752, and 7-2-4801 through
25 7-2-4810, MCA, are repealed.

Approved by Comm.
on Local Government

HOUSE BILL NO. 565

INTRODUCED BY KESSLER, DOZIER, METCALF, OBERG,

GERKE, KEMMIS, HUENNEKENS, OUSSAULT

A BILL FOR AN ACT ENTITLED: "AN ACT TO SIMPLIFY AND
MODERNIZE THE ANNEXATION AND DETACHMENT PROCEDURES
AUTHORIZED FOR MUNICIPALITIES; AMENDING SECTION 7-33-2127,
MCA; REPEALING SECTIONS 7-2-4201 THROUGH 7-2-4203, 7-2-4301
THROUGH 7-2-4325, 7-2-4401 THROUGH 7-2-4407, 7-2-4501
THROUGH 7-2-4504, 7-2-4601 THROUGH 7-2-4609, 7-2-4701
THROUGH 7-2-4752, AND 7-2-4801 THROUGH 7-2-4810, MCA."

WHEREAS, orderly urban development is essential to the
continued economic development of the state; and

WHEREAS, a municipality is an appropriate unit of local
government to provide the governmental services essential
for orderly urban development and for the protection of
health, safety, and welfare in areas being used intensively
for residential, commercial, industrial, institutional, and
governmental purposes or in areas undergoing such
development; and

WHEREAS, annexation and detachment must be based on the
interests of those being annexed or detached and on the
interests of the community as a whole.

THEREFORE, it is the purpose of [this act] to effect

these policies by facilitating municipal annexation and
allowing municipal detachment.

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

NEW SECTION. Section 1. General definitions. In
[sections 1 through 20], unless otherwise provided or the
context requires a technical or other interpretation, the
following definitions apply:

(1) "Agricultural land" means land meeting the
following qualifications:

(a) The area of such land is not less than 5
contiguous acres, and it has been actively devoted to
agriculture during the last growing season and it continues
to be actively devoted to agricultural use.

(b) It produces for sale or home consumption the
equivalent of 15% or more of the owner's annual gross income
regardless of the number of contiguous acres in the
ownership.

(c) Land shall not be classified or valued as
agricultural if it is subdivided with stated restrictions
prohibiting its use for agricultural purposes.

(d) The grazing on land by a horse or other animal
kept as a hobby and not as a part of a bona fide
agricultural enterprise shall not be considered a bona fide
agricultural operation.

1 (2) "Agricultural use" means land used to produce
2 field crops, including but not limited to grains, feed
3 crops, fruits, vegetables, or for grazing or in a cropland
4 retirement program.

5 (3) "Area" means the territory proposed to be annexed
6 or detached.

7 (4) "Annexation" means the alteration of the
8 boundaries of a municipality to add territory to the
9 municipality.

10 (5) "Contiguous" means any area which, at the time
11 annexation procedures are initiated, either abuts directly
12 or converges at any point with the municipal limits or a
13 municipality or is separated from the municipal limits by a
14 trafficway or right-of-way, a strip of unplatted land too
15 narrow or too small to be platted, a creek or river, the
16 right-of-way of a railroad or other public service
17 corporation, lands owned by the municipality or other
18 political subdivision, or lands owned by the state or
19 federal government.

20 (6) "Detachment" means the exclusion of an area
21 included within the municipal limits from the jurisdiction
22 of the municipality.

23 (7) "Mineral extraction" means only the extraction of
24 gas, oil, coal, or other metals from the land.

25 (8) "Resident freeholder" means a person who maintains

1 his residence on real property in which he holds an estate
2 for life or inheritance or for which he is the purchaser of
3 such an estate under a contract for deed, some memorandum of
4 which has been filed with the county clerk and recorder.

5 (9) "Wholly surrounded area" means an area of land
6 which is completely encircled by land included within the
7 municipal limits.

8 (10) "Finding of public endangerment" means a finding,
9 adopted in accordance with [section 15], which states that
10 the public health, safety, and welfare of the inhabitants of
11 both the municipality and the area proposed to be annexed
12 are endangered by the lack of or inadequacy of public
13 services in the area to be annexed which could be provided
14 by a municipality in a manner which would eliminate the
15 public endangerment.

16 (11) "Governing body" means the legislative body of the
17 local government.

18 (12) "Chief executive" means the elected executive in a
19 government adopting the commission-executive form, the
20 manager in a government adopting the commission-manager
21 form, the chairman in a government adopting the
22 commission-chairman form, the town chairman in a government
23 adopting the town meeting form, or the officer or officers
24 so designated in the charter in a government adopting a
25 charter.

1 (13) "Elections administrator" means the person
2 designated by the governing body as the registrar.

3 (14) "Subordinate service district" means any local
4 government district authorized by law to provide any local
5 government service, with specific boundaries in which
6 certain services are carried out and in which taxes may or
7 may not be levied to finance the service.

8 SECTION 2. THERE IS A NEW MCA SECTION THAT READS:

9 Notice, hearing, and protest requirements. (1) When a
10 municipality is required to give notice of a hearing or
11 other official act, the requirement may be met by:

12 (a) deposit of the notice in the United States mail
13 with postage paid at the first-class rate and envelope
14 properly addressed; or

15 (b) sending the notice by registered or certified mail
16 rather than first class.

17 (2) When a municipality is required to conduct a
18 public hearing, at a minimum the hearing shall provide for
19 the submission of both oral and written testimony for or
20 against the action or matter at issue. Petitions and
21 letters received by the governing body or chief executive
22 prior to the hearing shall be entered into the minutes of
23 the governing body and considered as other testimony at the
24 hearing.

25 (3) (a) Whenever a protest is authorized, it is

1 sufficient if it is in writing, signed, and contains the
2 following:

3 (i) a description of the action protested sufficient
4 to identify the action against which the protest is lodged;

5 (ii) a statement of the protester's qualifications to
6 protest the action against which the protest is lodged,
7 including ownership of property affected by the action;

8 (iii) the address of the person protesting.

9 (b) The protest may contain the signatures of more
10 than one person, each of which is a valid protest by each
11 signer.

12 NEW SECTION. Section 3. Methods of annexation. There
13 are six separate and distinct procedures by which areas may
14 be annexed to a municipality. These include:

15 (1) annexation of municipal property as authorized by
16 [section 10];

17 (2) annexation of any real property by request as
18 authorized by [section 11];

19 (3) annexation of parcels of land platted as additions
20 to a municipality as authorized by [section 12];

21 (4) annexation of a wholly surrounded area as
22 authorized by [section 13];

23 (5) annexation with or without protest as authorized
24 by [section 14]; and

25 (6) annexation through a finding of public

1 endangerment as authorized by [section 15].

2 **NEW SECTION.** Section 4. Procedure for annexation.
3 Except as specifically provided in [sections 10 through 12],
4 all annexation procedures authorized by [this act] shall
5 include the following minimum requirements and the
6 additional requirements specified for each separate
7 procedure:

8 (1) Upon the initiative of the governing body or upon
9 the receipt of a petition signed by 50% of the resident
10 freeholders of an area, the governing body shall adopt a
11 resolution of intent which includes a finding of public
12 interest, a clear description of the boundaries of the area
13 under consideration, the method for annexation, and a
14 statement that the area proposed to be annexed meets the
15 requirements of [section 4].

16 (2) (a) The governing body shall provide for the
17 publication of notice of:

18 (i) the resolution of intent; and
19 (ii) the public hearing to consider the proposed
20 annexation.

21 (b) The notice shall clearly describe the boundaries
22 of the area under consideration for annexation and set the
23 date and place of the public hearing.

24 (3) The governing body shall conduct a public hearing
25 on the proposed annexation, which shall be held not less

1 than 30 days or more than 60 days after the passage of the
2 resolution of intent, except for a hearing under [section
3 14], which shall be held not less than 30 days or more than
4 60 days after the deadline for receiving written protests.

5 (4) At the public hearing, a representative of the
6 municipality shall explain the proposed annexation.
7 Following the explanation, any person residing or owning
8 property in the proposed area and any resident of the
9 municipality or other interested person shall be given an
10 opportunity to testify.

11 (5) Before reaching a final decision, the governing
12 body shall take into consideration all information received,
13 opinions expressed, and protests received.

14 (6) (a) The governing body may, at any regular or
15 special meeting held no sooner than 6 days and no later than
16 60 days following the public hearing, either adopt a
17 resolution terminating the annexation proceeding or adopt an
18 annexation resolution extending the municipal limits to
19 include all or any part of the area described in the notice
20 of the public hearing which meets the requirements of the
21 annexation procedure used.

22 (b) The annexation resolution shall:

23 (i) contain a finding of public interest;

24 (ii) contain a statement that the area to be annexed
25 meets the requirements of [section 4];

1 (iii) contain any other statement required by the
2 procedure used;

3 (iv) describe the external boundaries of the area to be
4 annexed;

5 (v) contain a statement of the intent of the
6 municipality to provide services to the area being annexed
7 as required by [section 6] and, if annexed under the
8 procedures authorized in [section 15], contain a statement
9 of intent of the municipality to provide services in the
10 area being annexed as set forth in the report adopted by the
11 governing body as required by [sections 15 and 16];

12 (vi) establish the effective date of the annexation,
13 which may be any date within 12 months from the date of
14 passage of the resolution.

15 (c) If a portion of or an entire county subordinate
16 service district or county rural improvement district is
17 annexed to a municipality, the municipal government may,
18 after the consent of the county governing body, in the
19 resolution annexing the area:

20 (i) authorize the county to continue to administer the
21 county subordinate service district or county rural
22 improvement district;

23 (ii) transfer administration of the subordinate service
24 district or rural improvement district within the municipal
25 limits to the municipality; or

1 (iii) abolish the subordinate service district or rural
2 improvement district and assume responsibility for providing
3 the services and any outstanding indebtedness related to
4 those services.

5 (7) The chief executive shall file with the county
6 clerk and recorder:

7 (a) a certified copy of the annexation resolution; and

8 (b) an accurate map of the annexed territory.

9 (8) The filing shall complete all required annexation
10 procedures.

11 **NEW SECTION.** Section 5. Standards to be met before
12 annexation can occur. The total area to be annexed shall:

13 (1) be contiguous to the municipal limits at the time
14 the annexation proceeding is begun;

15 (2) not be included within the municipal limits of
16 another incorporated municipality; and

17 (3) meet any standard established by the separate
18 annexation procedures authorized by [sections 1 through 20].

19 **NEW SECTION.** Section 6. Description of area. In
20 describing the area to be annexed and the new municipal
21 limits, a municipal governing body shall, wherever
22 practical, use natural topographic features such as ridge
23 lines, streams, and creeks as limits. A municipal governing
24 body shall include land on both sides of a trafficway
25 wherever practical.

1 NEW SECTION. Section 7. Provision for municipal
 2 services to annexed areas. (1) Except where services are
 3 provided in another manner, after the effective date of the
 4 annexation resolution, the newly annexed area and its
 5 citizens and property are subject to all general obligation
 6 debts, ordinances, and regulations in force in the
 7 municipality and shall be entitled to the same privileges
 8 and benefits as other parts of the municipality.

9 (2) The newly annexed area shall be subject to the
 10 municipal taxes levied for the fiscal year following the
 11 effective date of annexation.

12 NEW SECTION. Section 8. Exemption from taxation for
 13 water or sewer debt service. Annexed property which is part
 14 of a subordinate service district or rural improvement
 15 district which has installed water, sewer, or other
 16 utilities or improvements paid for by the residents of the
 17 subordinate service district may be exempted in the
 18 annexation resolution from that part of the municipal taxes
 19 levied for sewer, water, or other utility debt service for
 20 an appropriate period of time after the effective date of
 21 the annexation resolution.

22 NEW SECTION. Section 9. Simultaneous proceedings. (1)
 23 If a municipality is considering the annexation or
 24 detachment of two or more areas which are all contiguous to
 25 the municipal limits but are not adjacent to one another, it

1 may undertake simultaneous proceedings under authority of
 2 [sections 1 through 20] for the annexation or detachment of
 3 the areas.

4 (2) When undertaking simultaneous proceedings, a
 5 municipality may use more than one annexation procedure.

6 (3) Whenever two or more adjacent areas taken as a
 7 whole are contiguous to a municipality, they may be annexed
 8 although one or more of the areas taken alone is not
 9 contiguous to the municipal limits when the annexation
 10 procedures are initiated.

11 NEW SECTION. Section 10. Moratorium. If an annexation
 12 procedure is terminated by protest or election, the
 13 governing body may not initiate any further proceedings to
 14 annex an area for a period of 1 year beginning on the date
 15 of the final action by the governing body on the annexation
 16 procedure.

17 NEW SECTION. Section 11. Annexation of municipal
 18 property. A municipality may annex any municipal property
 19 through the procedure prescribed by [section 3], even though
 20 such property is not contiguous to the municipality.

21 NEW SECTION. Section 12. Annexation of real property
 22 by request. (1) Any real property or any property of a
 23 governmental agency may be annexed to a municipality through
 24 the procedures prescribed by this section.

25 (2) The owner or a majority of the owners shall submit

1 to the governing body a description of the property as
2 recorded or filed in the county clerk and recorder's office
3 and a written request that the property be annexed.

4 (3) The municipal governing body may either reject the
5 request or may annex the property by resolution. The
6 annexation resolution shall set forth the conditions of
7 annexation.

8 (4) Prior to the adoption of the annexation
9 resolution, the municipality may require an agreement with
10 the owner or owners of the property to be annexed outlining
11 the manner in which services will be provided. This
12 agreement shall be filed with the county clerk and recorder
13 and shall be binding on the land and all owners, present and
14 future.

15 NEW SECTION. Section 13. Annexation of parcels of
16 land platted as additions to a municipality. (1) Whenever
17 any area that is contiguous to the limits of a municipality
18 is platted, the subdivider may file the preliminary plat as
19 an addition to the municipality.

20 (2) Any plat filed as an addition to a municipality
21 shall come under the jurisdiction of the governing body of
22 the municipality.

23 (3) When the governing body of a municipality adopts a
24 final plat that has been filed as an addition to the
25 municipality, the governing body may also adopt a resolution

1 of annexation accepting the platted area as an addition to
2 the municipality. The annexation resolution shall contain
3 those provisions prescribed in [section 11].

4 NEW SECTION. Section 14. Annexation of wholly
5 surrounded area. Except for land used for agricultural
6 purposes or mineral extraction, a municipality may annex an
7 area wholly surrounded by a municipality through the
8 procedures prescribed by this section. Land used for
9 agricultural purposes or mineral extraction may be annexed
10 through the procedures prescribed by this section with the
11 consent of the owner. The procedure for annexation under
12 this section is as follows:

13 (1) Upon the initiative of the governing body or upon
14 the receipt of a petition signed by 50% of the resident
15 freeholders of an area wholly surrounded by a municipality,
16 the governing body shall adopt a resolution of intent which
17 includes a finding of public interest and a clear
18 description of the boundaries of the area under
19 consideration.

20 (2) (a) The governing body shall provide for the
21 publication of notice of:

22 (i) the resolution of intent; and
23 (ii) the public hearing to consider the proposed
24 annexation.

25 (b) The notice shall clearly describe the boundaries

1 of the area under consideration for annexation and set the
 2 date and place of the public hearing.

3 (3) The governing body shall conduct a public hearing
 4 on the proposed annexation, which shall be held not less
 5 than 30 days or more than 60 days after the passage of the
 6 resolution of intent.

7 (4) At the public hearing, a representative of the
 8 municipality shall explain the proposed annexation.
 9 Following the explanation, any person residing or owning
 10 property in the proposed area and any resident of the
 11 municipality or other interested person shall be given an
 12 opportunity to testify.

13 (5) Before reaching a final decision, the governing
 14 body shall take into consideration all information received,
 15 opinions expressed, and protests received.

16 (6) (a) The governing body may, at any regular or
 17 special meeting held no later than 60 days following the
 18 public hearing, either adopt a resolution terminating the
 19 annexation proceeding or adopt an annexation resolution
 20 extending the municipal limits to include all or any part of
 21 the area described in the notice of the public hearing.

22 (b) The annexation resolution shall:

23 (i) contain a finding of public interest;

24 (ii) contain a statement that the area to be annexed is
 25 wholly surrounded;

1 (iii) describe the external boundaries of the area to
 2 be annexed;

3 (iv) contain a statement that services available to the
 4 area to be annexed are equivalent to the services available
 5 in the area contiguous to the area to be annexed; and

6 (v) establish the effective date of the annexation,
 7 which may be any date within 12 months from the date of
 8 passage of the resolution.

9 (c) If a portion of or an entire county subordinate
 10 service district or county rural improvement district is
 11 annexed to a municipality, the municipal government may,
 12 after the consent of the county governing body, in the
 13 resolution annexing the area:

14 (i) authorize the county to continue to administer the
 15 county subordinate service district or county rural
 16 improvement district;

17 (ii) transfer administration of the subordinate service
 18 district or rural improvement district within the municipal
 19 limits to the municipality; or

20 (iii) abolish the subordinate service district or rural
 21 improvement district and assume responsibility for providing
 22 the services and assume any outstanding debt service of that
 23 subordinate service district or rural improvement district.

24 (7) The chief executive shall file with the county
 25 clerk and recorder:

- 1 (a) a certified copy of the annexation resolution; and
- 2 (b) an accurate map of the annexed territory.

3 (8) The filing shall complete the required annexation
4 procedure of this section.

5 NEW SECTION. Section 15. Annexation with and without
6 protest. (1) A municipality may annex any area through the
7 procedures prescribed by [section 3] and this section.

8 (2) The governing body may initiate procedures under
9 this section or the governing body may be requested to begin
10 proceedings under this section by a petition signed by any
11 amount of the resident freeholders in an area requesting
12 annexation.

13 (3) In addition to published notice, mailed notice
14 shall be given to all resident freeholders in the area. In
15 addition to other requirements, both the published and
16 mailed notices shall state that, for a period of 90 days
17 after the publication or mailing date of the notice, written
18 protests to the proposed annexation will be received at the
19 office of the municipality.

20 (4) After the public hearing and before proceeding,
21 the governing body shall consider all written protests; if a
22 majority of the resident freeholders in the area have not
23 protested in writing, the governing body may adopt a
24 resolution to annex the area.

25 (5) If a majority of the resident freeholders in the

1 area have objected in writing, the annexation proceedings
2 are terminated and the governing body may not initiate any
3 annexation proceedings upon the area for a period of 1 year.

4 (6) In determining the number of written protests
5 submitted on any annexation proceeding, the municipality
6 shall take into account any waivers of protest of annexation
7 which are on file with the county clerk and recorder. Such
8 waivers, which may be entered into between the municipality
9 and any person or persons wishing to obtain any city service
10 prior to annexation, shall be binding upon the land, and no
11 owner of land for which such a waiver has been filed may
12 protest any annexation proceeding by a municipality.

13 NEW SECTION. Section 16. Annexation through a finding
14 of public endangerment. (1) (a) A municipality may annex an
15 area through the procedures prescribed by [subsections (2)
16 through (7) of section 3] and [section 16] only if a
17 resolution granting a finding of public endangerment has
18 been adopted in accordance with the procedures prescribed in
19 [this act].

20 (b) The governing body of a municipality may by
21 resolution request the finding of public endangerment.

22 (c) The request shall be delivered to the governing
23 body of the county in which the proposed area to be annexed
24 lies and to the district court judge or judges of that
25 county.

1 (d) The senior district court judge shall, within 10
 2 days of receiving the request, set a date for a public
 3 hearing on the requested finding of public endangerment. The
 4 public hearing shall be held at least 60 but not more than
 5 90 days following receipt of the request. The municipality
 6 shall publish notice and shall mail notice to all resident
 7 freeholders in the area. The municipality shall also publish
 8 notice stating that 14 days before the public hearing a
 9 summary of its preliminary findings and its reasons for
 10 requesting a finding of public endangerment shall be
 11 available at the office of the municipality.

12 (e) During the period following reception of the
 13 request and before the public hearing, the district court
 14 judge or judges and the county and municipal governing body
 15 may conduct individual or joint information meetings or
 16 hearings they consider necessary and may make available a
 17 summary of their preliminary findings.

18 (f) At the public hearing, the senior district court
 19 judge shall preside and testimony shall be taken to
 20 investigate the validity of the requested finding of public
 21 endangerment. The municipality, the county, and the district
 22 court judge or judges shall all present their preliminary
 23 findings, if any.

24 (g) No later than 10 days following the public
 25 hearing, a resolution must be adopted granting or denying

1 the requested finding of public endangerment. Granting of
 2 the requested finding shall be by separate majorities of
 3 both the governing bodies of the municipality and the county
 4 and the unanimous consent of the district court judge or
 5 judges. Failure to gain any majority or the unanimous
 6 consent of the judge or judges shall be considered adoption
 7 of a resolution denying the finding of public endangerment.

8 (h) If the requested finding of public endangerment is
 9 granted, the municipality may proceed through the procedures
 10 prescribed by [subsections (2) through (7) of section 3] and
 11 [section 16].

12 (2) In addition to other requirements, the published
 13 notice shall state that the report required by [section 16]
 14 will be available in the office of a designated official at
 15 least 14 days prior to the date of the public hearing.

16 (3) At least 14 days before the date of the public
 17 hearing, the governing body shall approve the report
 18 required by [section 16] and make it available to the public
 19 at a designated office. In addition the municipality may
 20 prepare a summary of the full report for public
 21 distribution.

22 (4) The public hearing shall include an explanation of
 23 the report provided for in [section 16].

24 (5) The municipal governing body shall take into
 25 consideration facts presented at the public hearing and

1 shall have authority to amend the service report required by
 2 [section 16] and to make changes in the plans for serving
 3 the area proposed to be annexed so long as such changes meet
 4 the requirements of [section 16].

5 NEW SECTION. Section 17. Plans to provide services.

6 (1) A municipality proceeding under [section 15] shall
 7 develop plans for the extension of services to the area
 8 proposed to be annexed and shall, prior to the public
 9 hearing, prepare a report adopting its plans to provide
 10 services to the annexed area. This report shall include:

11 (a) a map or maps of the municipality and adjacent
 12 areas to show the following information:

13 (i) the present and proposed municipal limits of the
 14 municipality;

15 (ii) the present trafficways, major trunk water mains,
 16 sewer interceptors and outfalls, and other utility lines as
 17 required in subsection (2) of this section; and

18 (iii) the general land use pattern in the areas to be
 19 annexed;

20 (b) a statement showing that the area to be annexed
 21 meets the requirements of [section 4]; and

22 (c) a statement setting forth the plans of the
 23 municipality for extending to the area to be annexed each
 24 major municipal service performed within the municipality at
 25 the time of annexation.

1 (2) Specifically, the plans shall:

2 (a) provide a long-range plan for the extension of
 3 services and the acquisition of public properties outside
 4 the municipal limits. This plan must show anticipated
 5 development a minimum of 5 years into the future, showing on
 6 a yearly basis how the municipality plans to extend services
 7 and develop and add sections to the municipality.

8 (b) provide for the status of existing county
 9 subordinate service districts and rural improvement
 10 districts;

11 (c) provide for extending police protection, fire
 12 protection, and garbage collection to the area to be annexed
 13 on substantially the same basis and in the same manner as
 14 these services are provided within the rest of the
 15 municipality prior to the annexation, clearly stating that
 16 the entire municipality intends to share the tax burden for
 17 these services;

18 (d) provide for future extension of trafficways and of
 19 major trunk water mains, sewer outfall lines, and other
 20 utility services into the area to be annexed so that when
 21 these trafficways and utility lines become necessary and are
 22 constructed, property owners in the area to be annexed will
 23 be able to secure these services according to the policies
 24 in effect in the municipality for extending the services to
 25 individual lots or subdivisions;

1 (e) set forth a proposed timetable for construction of
 2 trafficways and utility lines if extension of trafficways
 3 and water, sewer, or other utility lines into the area to be
 4 annexed is necessary; and

5 (f) provide a method to be set forth by which the
 6 municipality plans to finance extension of services into the
 7 area to be annexed.

8 (3) If the area is currently serviced by adequate
 9 water and sewage services, trafficways, and curbs and
 10 gutters and no capital improvements are needed to provide
 11 adequate services, the plan shall so state.

12 (4) If any public works facility is to be financed by
 13 special improvement district bond and an election is not
 14 required, the area may be annexed.

15 NEW SECTION. Section 18. Detachment. Any area, any
 16 part of which borders on the municipal limits, may be
 17 detached from that municipality in the following manner:

18 (1) A petition requesting detachment shall be
 19 submitted to the city clerk of the municipality.

20 (2) The petition shall:

21 (a) be signed by either a majority of the electors of
 22 the municipality or by the owners of at least three-fourths
 23 of the property sought to be detached;

24 (b) adequately set out and describe the area to be
 25 detached;

1 (c) adequately set out and describe the proposed new
 2 boundaries of the municipality;

3 (d) adequately set out and describe the trafficways
 4 and public plans, if any, in the area sought to be detached
 5 and shall distinctly specify those which are to be retained
 6 for use of the public after detachment.

7 (3) Upon receiving an adequate detachment petition if
 8 it is found by the governing body of the municipality to be
 9 in the public interest, the governing body shall adopt a
 10 resolution of intent to detach the area.

11 (4) Notice shall be published stating the findings and
 12 resolution of the governing body and that a public hearing
 13 will be held on the question of detachment.

14 (5) The governing body shall hold a public hearing on
 15 the detachment proposal and receive testimony from residents
 16 and other interested persons.

17 (6) The governing body shall take into consideration
 18 all the information received and opinions expressed.

19 (7) The governing body may at any regular or special
 20 meeting held no sooner than 6 days and no later than 60 days
 21 following the public hearing either adopt a resolution
 22 terminating the detachment proceeding or adopt a detachment
 23 resolution modifying the municipal limits to exclude all or
 24 any part of the area described in the notice of the public
 25 hearing which met the requirements of this section.

1 (8) The detachment resolution shall:
 2 (a) contain a finding of public interest;
 3 (b) contain a statement that the area to be detached
 4 meets the requirements of this section;
 5 (c) describe the external boundaries of the area to be
 6 detached and the new boundaries of the municipality;
 7 (d) describe the trafficways and other public places
 8 which are to be vacated or remain dedicated for public use;
 9 (e) establish the effective date of the detachment,
 10 which may be any date within 12 months from the date of
 11 passage of the resolution but not sooner than 90 days after
 12 passage.
 13 (9) The area shall not be detached if written protests
 14 are received, within 90 days of the passage of the
 15 resolution to detach, from:
 16 (a) owners of over 50% of the value of property within
 17 the area; or
 18 (b) owners of over 50% of the value of property within
 19 the municipal limits immediately adjacent to and contiguous
 20 to the area. For the purpose of this section, "adjacent" and
 21 "contiguous" mean the property on the opposite side of a
 22 trafficway from the property sought to be detached.
 23 (10) Detachment shall not relieve any detached area
 24 from its liability on any outstanding bonded indebtedness of
 25 the municipality or any indebtedness of any improvement or

1 subordinate service district of which the detached area was
 2 a part at the time of the passage of the resolution.
 3 (11) For the purposes of levying any tax or assessment
 4 necessary for collection on any indebtedness specified in
 5 subsection (10), the detached area is and shall remain under
 6 the jurisdiction of the municipality.
 7 (12) The chief executive shall file with the county
 8 clerk and recorder:
 9 (a) a certified copy of the detachment resolution;
 10 (b) an accurate map of the detached area; and
 11 (c) an accurate map of the new municipal limits.
 12 (13) The filing shall complete all required detachment
 13 procedures.
 14 NEW SECTION. Section 19. Status of trafficways. (1) A
 15 county trafficway within an annexed area shall become a
 16 municipal trafficway on the effective date of an annexation
 17 resolution.
 18 (2) A municipal trafficway not vacated by a resolution
 19 of detachment shall become a county trafficway on the
 20 effective date of a detachment resolution.
 21 NEW SECTION. Section 20. Judicial review. (1) Within
 22 30 days following the passage of a AN ANNEXATION OR
 23 DETACHMENT RESOLUTION under authority of [this act], any
 24 person owning property in the ANNEXED OR detached area or
 25 area proposed to be ANNEXED OR detached who believes that he

1 will suffer material injury may file a petition in a
 2 district court seeking review of the municipal governing
 3 body if:

4 (a) the municipal governing body failed to comply with
 5 the procedures prescribed in ~~[section-17]~~ [IHIS_ACI]; or

6 (b) the municipal governing body failed to meet any
 7 requirements set forth as a part of that procedure and the
 8 requirements apply to his property.

9 (2) The petition shall state what exceptions are taken
 10 to the action of the municipal governing body and what
 11 relief the petitioner seeks. The petition shall be served
 12 upon the municipality in the manner provided for the service
 13 of civil process.

14 (3) Within 30 days after receipt of the copy of the
 15 petition for review or within such additional time as the
 16 court may allow, the municipality shall transmit to the
 17 review court:

18 (a) a transcript of the portions of the municipal
 19 journal or minute book in which the procedure for ANNEXATION
 20 OR detachment has been set forth; and

21 (b) a copy of any report or other document required by
 22 the procedure for ANNEXATION OR detachment set forth in
 23 ~~[section-17]~~ [IHIS_ACI].

24 (4) If two or more petitions for review are submitted
 25 to the court, the court may consolidate all the petitions

1 for review at a single hearing.

2 (5) At any time before or during the review
 3 proceeding, any petitioner may apply to the reviewing court
 4 for an order staying the operation of the ANNEXATION OR
 5 detachment resolution pending the outcome of the review. The
 6 court may in its discretion grant or deny the stay upon such
 7 terms as it considers proper, and it may permit ANNEXATION
 8 OR detachment of any part of the area described in the
 9 resolution concerning which no question for review has been
 10 raised.

11 (6) The review shall be conducted by the court without
 12 a jury. The court may hear oral arguments and receive
 13 written briefs and may take evidence intended to show
 14 either:

15 (a) that the statutory procedure was not followed; or

16 (b) that the requirements of ~~[section-17]~~ [IHIS_ACI]
 17 have not been met.

18 (7) The court may affirm the action of the municipal
 19 governing body without change, or it may:

20 (a) remand the resolution to the municipal governing
 21 body for further proceedings if procedural irregularities
 22 are found to have materially prejudiced the substantive
 23 rights of any petitioner; or

24 (b) remand the resolution to the municipal governing
 25 body for amendment of the boundaries of the area in question

1 to conform to the requirements of ~~[section 17]~~ [THIS ACT] if
2 it finds the requirements have not been met.

3 (8) If the municipal governing body fails to take
4 action in accordance with the court's instructions upon
5 remand within 90 days from receipt of the instruction, the
6 ANNEXATION OR detachment proceeding is considered void.

7 (9) Any party to the review proceedings, including the
8 municipality, may appeal to the supreme court from the final
9 judgment of the district court under rules of procedure
10 applicable in other civil cases. The appealing party may
11 apply to the lower court for a stay in its final
12 determination or a stay of the ANNEXATION OR detachment
13 resolution, whichever is appropriate, pending the outcome of
14 the appeal; however, the district court may, with the
15 agreement of the municipality, permit ANNEXATION OR
16 detachment to be effective with respect to any part of the
17 area concerning which no appeal is being made and which can
18 be ANNEXED OR detached from the municipality without regard
19 to any part of the area concerning which an appeal is being
20 made.

21 (10) If part or all of the area ANNEXED OR detached
22 under the terms of a AN ANNEXATION OR detachment resolution
23 is the subject of an appeal to the district court or the
24 supreme court on the effective date of the resolution, then
25 the resolution shall be considered amended to make the

1 effective date with respect to the area the date of the
2 final judgment of the district or supreme court, whichever
3 is appropriate, or the date the municipal governing body
4 completes action to make the resolution conform to the
5 court's instructions in the event of remand.

6 NEW SECTION. Section 21. When property is contiguous,
7 An area that abuts directly on a municipal property annexed
8 under the procedures of [section 10] but does not abut on
9 other municipal limits may not be considered contiguous
10 unless that municipal property annexed under the procedures
11 of [section 10] also abuts the municipal limits of the
12 municipality.

13 Section 22. Section 7-33-2127, MCA, is amended to
14 read:

15 "7-33-2127. Withdrawal by owner of individual tract
16 adjacent to municipality. In lieu of the detraction
17 procedure set forth in 7-33-2122 and 7-33-2123, whenever a
18 person owns land adjacent to a city or town and wishes to
19 have only that land annexed to the city or town, the land
20 may be detracted as follows:

21 (1) The owner shall mail notice to the chairman of the
22 trustees of the fire district or, if none, to the board of
23 county commissioners of his intention to request annexation.

24 (2) The owner shall attach a copy of this notice of
25 intention to his petition to the municipal governing body

1 requesting annexation.

2 (3) Following adoption of the annexation order under
3 7-2-4714 ~~[sections--1--through--10]~~ [SECTION 3], the land is
4 detracted from the fire district."

5 Section 23. Repealer. Sections 7-2-4201 through
6 7-2-4203, 7-2-4301 through 7-2-4325, 7-2-4401 through
7 7-2-4407, 7-2-4501 through 7-2-4504, 7-2-4601 through
8 7-2-4609, 7-2-4701 through 7-2-4752, and 7-2-4801 through
9 7-2-4810, MCA, are repealed.

-End-